AN INVESTIGATION REPORT INTO
ALLEGATIONS OF CHILD SEXUAL ABUSE AND CORPORAL PUNISHMENT AT
KALIBU ACADEMY

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MALAWI HUMAN RIGHTS COMMISSION

REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF CHILD SEXUAL ABUSE AND CORPORAL PUNISHMENT AT KALIBU ACADEMY

We, the members of the Panel of a Public Hearing into allegations of child sexual abuse and corporal punishment at Kalibu Academy, submit this Report pursuant to section 129 of the Constitution of the Republic of Malawi as read with section 12 and 13 (e) of the Human Rights Commission Act and commend the Report and its recommendations to the Government, Kalibu Academy and the people of Malawi.

MEMBERS:

Dr Sunduzwayo Madise
Chairperson of the Public Hearing Panel
Commissioner
Malawi Human Rights Commission

Ms Chikondi Chijozi
Member of the Public Hearing Panel
Commissioner Responsible for the Child Rights Thematic Committee
Malawi Human Rights Commission

Dr Bertha Sefu
Member of the Public Hearing Panel
Chairperson for the Child Rights Thematic Committee
Malawi Human Rights Commission

Ms Grace Malera
Member of the Public Hearing Panel
Commissioner Responsible for the Child Rights Thematic Committee
Malawi Human Rights Commission
ACKNOWLEDGEMENTS

This is a report on an investigation into allegations of child sexual abuse and corporal punishment at Kalibu Academy which was conducted by the Malawi Human Rights Commission (the Commission). The investigation was undertaken through a literature review, one-on-one interviews, public hearings, and engagements with key parties involved in the matter, some relevant players with interest in the matter and various stakeholders, including the student from Kalibu Academy.

The Commission would like to extend special gratitude to all children and witnesses who availed themselves to the public hearings and provided testimonies and information that revealed the violations that children are undergoing at Kalibu Academy and at the same time provided insights that can inform strategies which Government can develop to create a safe and protective environment for children in schools.

Profound gratitude is also extended to the team of panelists comprising Dr. Sunduzwayo Madise, Chairperson of the Inquiry, Dr. Bertha Sefu, Chairperson of the Child Rights Thematic Committee, Commissioner Chikondi Chijozi, and Commissioner Grace Malera. In addition, the Commission extends special thanks to all the respondents: especially staff from Kalibu Academy, DNC Chambers, and the Ministry of Education.

Further, the Commission would like to sincerely thank Counsels Innocent Chirwa and Susan Masiku for sparing his time to represent the witnesses for the Commission during the public hearings and assisting the Commission when investigation went to the High Court.

Special appreciation is also extended to all the stakeholders that participated in the whole process of the Inquiry starting from the individual interviews to the actual public hearing, and for sharing valuable information that has enriched this Report. These are; The Ministry of Education, Malawi Police Services, Independent Schools Association of Malawi (ISAMA), NGO CCR, Teachers Union of Malawi (TUM), Ministry of Justice, the Ministry of Gender, members of the media, and the general public.

The Commission also sincerely acknowledges with gratitude the financial support from EU Chilungamo Project, Save the Children International (SCI) and the Malawi Government through ORT that enabled the Commission to conduct this investigation and all related activities.

Last but not least, profound gratitude goes to the Secretariat of the Commission who tirelessly worked to ensure conclusion of the case under the leadership of Ms. Habiba Osman, the Executive Secretary. These are Ms. Priscilla Thawe, the Acting Director for Child Rights and her team, Counsel Grace Mtawali and the Commission’s legal team.
EXECUTIVE SUMMARY

1.0 Background

1.1 The Malawi Human Rights Commission (the Commission), pursuant to its mandate under section 129 of the Constitution of the Republic of Malawi (the Constitution), and in terms of the Human Rights Commission Act, conducted an investigation into allegations of child sexual abuse and corporal punishment at Kalibu Academy. The Commission learnt through social that a male teacher at Kalibu Academy in Blantyre attempted to rape a female learner in class after lessons. The issue attracted a lot of public attention and an avalanche of comments that further alleged that apart from the reported incident, the school also subjected its students to corporal punishment as an appropriate disciplinary measure.

1.2 The Commission observed that the matter signaled issues relating to human rights enshrined in the Constitution, particularly the right to personal liberty (section 18), the right to human dignity (section 19), the best interests of the child (section 23), and the right to education (section 25). Pursuant to its constitutional and statutory mandate, the Commission instituted an independent human rights investigation.

1.3 The Commission was also moved by increasing calls both at local and international levels to urge the state to among others eradicate harmful practices including corporal punishments, child labour or forced labour, address all inhuman or degrading treatment or punishment, and ensure prompt and thorough investigation of all offences and providing all necessary assistance to the victims.

1.4 The investigation is also a response to the call by both the African Committee of experts on the Rights and welfare of the Child (ACERWC), the United Nations Committee on the Rights of the Child (UNCRC) through their Concluding observations for 2017 and 2018 upon the Malawi Government to review its pieces of legislation and work towards eliminating corporal punishment and other cruel or degrading forms of punishment in order to protect children from corporal punishment both in schools and in the homes including other private settings. Both Committees urges the Malawi Government to review relevant laws and expressly prohibit corporal punishment in all settings and create awareness in schools, among parents, community, traditional and cultural leaders, and among personnel of the justice system on the negative impacts of corporal punishment on the wellbeing of children.

1.5 Further to this, the 2020 UPR recommendations urge the state to eradicate harmful cultural practices including corporal punishment, child labour, or forced labour and ensure effective investigation of the same.

1.6 In early 2021, the African Committee of Experts on Human and People’s Rights (ACEHPR) in its list of issues questioned the Government of Malawi to explain to the Committee what it has done to implement the recommendations from the public inquiry which the Commission conducted in 2016 including the need to amend the Education Act 2013 in order to address corporal punishment in schools. This was after the state submitted its 2nd Periodic Report on the African Charter on Human and People’s Rights and the Maputo Protocol covering the period between May 2015 to March, 2019.
1.7 The main objective of this investigation was to establish facts surrounding the allegations of the administration of corporal punishment and sexual abuse at Kalibu Academy.

1.8 This report, therefore, presents the Commission’s approach to the investigation, its factual and legal findings, and recommendations.

2.1 Methodology

The process of the investigation was informed by a comprehensive review and analysis of relevant documents such as; reports, circulars, school rules, guidelines, and policies. (Annex 2 for a full list of documents). The Commission also reviewed relevant national and international legal instruments. A qualitative investigative design where face-to-face interviews with key parties involved in the matter and some relevant players with interest in the matter were done.

2.2 Noting the overwhelming public interest in the matter, the Commission on 5th July 2021, issued a public notice calling upon the general public, parents, teachers, and learners from Kalibu Academy who had the knowledge and were privy to any incident of alleged child abuse at Kalibu Academy to make submissions to the Commission for thorough review by the Commission. It was at this point that the Commission identified those that were willing to testify during the public inquiry and recorded statements prior to the public hearings.

2.3 The Commission recorded a total of fourteen (14) statements but only five (5) were willing to testify physically. The Commission recorded submissions from those who did not want to testify physically through audio and this was played at the inquiries.

2.4 The Commission also engaged the Ministry of Education in order to appreciate if they were aware of the issues under investigation and if so, what efforts they had taken to address them.

2.5 Public hearing

2.5.1 The Commission instituted a public hearing where witnesses testified on issues under investigation. Two hearings were done, the first one on 5th May 2022 at Golden Peacock Hotel in Blantyre and the second one, on 15th June, 2022 at Crossroads Hotel, Blantyre. Kalibu Academy representatives were in attendance and had a chance to respond to the allegations levelled against them, rebut, and cross-examine those that gave testimonies against the Academy.

2.5.2 The public hearing was chaired by Commissioner Dr. Sunduzwayo Madise who was assisted by Commissioners: Chikondi Chijozi, Dr. Bertha Sefu, and Grace Malera. Kalibu Academy was represented by DNC Chambers, attorneys at Law led by Counsel Davis Njobvu.

2.5.3 The third hearing was scheduled to take place virtually on 8th September 2022 to hear oral testimonies from Kalibu Academy but the Commission failed to proceed due to late attendance. Prior to the scheduled third hearing, Kalibu Academy had already submitted to the Commission detailed statements in response to the allegations. Due to resource constraints and in the spirit of expediting the investigations, on the request of the
Commission, Kalibu Academy accepted to adopt the written statements and the deponents of the statements took an oath and adopted their statements as part of the response from Kalibu Academy.

2.6 Safeguarding guidelines
Mindful of the fact that the investigation involved minors, the Commission conducted a risk assessment to safeguard the witnesses from any risks that could arise because of their involvement in the investigation. All the identified risks were thoroughly assessed and their potential risks were addressed.

4.0. Key Findings
The following are the key findings in relation to the objectives and other emerging issues with regard to the allegations:

4.1. Corporal Punishment

4.1.1. Kalibu Academy administers corporal punishment on students as an appropriate disciplinary measure for unruly behaviour. Corporal punishment takes various forms such as canning, spanking, donkey standing, standing in the same position for a long time, detention, and prison.

4.1.2. Canning is the type of punishment that is mostly administered at the school. The school’s Disciplinary Issues Book where the school records all disciplinary matters indicates that canning is mostly used as a measure for punishing and disciplining students.

4.1.3. Students at Kalibu Academy are forcibly subjected to undertake hard labour as a form of punishment. These include digging a swimming pool, digging and ferrying sand in a wheelbarrow, cutting grass, carrying rocks and carrying bricks, watering flowers and plants, digging manures and applying them in the gardens, and cleaning toilets during learning hours. The physical labour would often be undertaken without any protective garments and would sometimes last for hours or even extend to days until the task is completed to the teacher’s satisfaction.

4.1.4. Students are subjected to corporal punishment for breaking school rules and for unruly behaviour. These include smoking and being found in possession of Indian hemp, taking alcohol, being late for classes or dining room, not doing their homework, being rude to a teacher, sneaking out of campus, and speaking Chichewa.

4.1.5. Members of staff are responsible for administering the punishments. The members of staff mentioned in the testimonies are; Pastor Michael Howard, Pastor Paisley Mavutula, Norma Konono, Andrew Mhango, Sphiwe Masuku, Silibaziso Chibvongodzi, Manford Nhlane (Deceased) and Gilbert Nyanjaya. They mostly use broomsticks to whip or cane students and forced confession.
4.1.6. School prefects also administer corporal punishment on fellow students. The prefects derive powers from the administration and when this occurs the administration defends them.

4.1.7. Some parents sign in the disciplinary issues book (black book) consenting or encouraging the school to administer corporal punishment to their children as a disciplinary measure.

4.1.8. At least one student was seriously injured as a result of corporal punishment. Moreover, Corporal punishment psychologically affected students some of whom sought psychosocial services in various facilities in the country including in Lilongwe.

4.1.9. There are notable inconsistencies in the information given by some witnesses for Kalibu Academy between what they told the Commission during one-on-one interviews at the Commencement of the investigation and what they have presented in their witness statements and that these inconsistencies signify the fact that corporal punishment and hard labour is administered at Kalibu Academy.

4.1.10. There is a culture of secrecy at the school where parents are mandated to sign that they will not participate in any criticism of Kalibu Academy for failing which the Academy will have the right to suspend or expel their child.

4.1.11. The Commission was served with two sets of school rules and regulations. The first set that was submitted to the Commission during the initial investigation had clauses permitting the administration of corporal punishment and Manual labour. However, the second set which was attached to Pastor Paisley’s witness statement had the clauses permitting corporal punishment, manual labour, absolute powers to school prefects, and a culture of secrecy removed.

4.1.12. In relation to 4.1.11 above, Kalibu Academy made some notable changes or amendments to its School Rules and Regulations without notifying the Commission or acknowledging it in their witness statements. Further, it is the Commission’s considered view that these changes, alterations, or amendments were made in bad faith to mask the truth during the Commission’s investigation.

4.1.13. There are reports on the school inspections conducted by the Ministry of Education (MoE) in 2016, 2019, and 2020 which established that students from Kalibu Academy school are subjected to corporal punishment as a disciplinary measure. Following these findings, the MOE recommended that management should abolish the administration of corporal punishments and other degrading treatments. However, the school continues administering corporal punishment.

4.1.14. Kalibu Academy does not have child-friendly reporting mechanisms and policies such as Parents Teachers Association (PTA), Safeguarding Policy, and a student council.

4.1.15. Kalibu Academy restricts students from freely practicing their religion. This includes those practicing Christianity but of different denominations than that of Kalibu Academy.
4.1.16. Teachers at Kalibu Academy lack knowledge training on effective non-violent disciplinary measures as a result they use corporal punishment as an easy option for maintaining discipline and order for the students.

4.1.17. Some claims in the sworn statements by witnesses for Kalibu Academy were exclusively absorbed in rebutting allegations of administration of corporal punishment and hard labour at the school and masking the truth but not necessarily presenting the facts on the ground regarding the administration of corporal punishment, Hard labour, right to religion and a culture of secrecy. Thus, the totality of the evidence against Kalibu Academy attests to this fact.

4.1.18. In view of all the above, the conduct by Kalibu Academy infringes on the student’s constitutional rights to personal liberty (section 18), human dignity (section 19), and the best interests of the child by administering punishment harmful to their physical, mental and social development (section 23), right to education (section 25) and right to freedom of conscience (section 33).

4.2. Alleged Child Sexual Abuse
4.2.1. The totality of the evidence presented to the Commission did not establish that child sexual abuse occurred at the school as alleged by the girl and her mother. It should also be noted that in the course of the investigation, the girl’s mother issued a public statement retracting the allegations of sexual abuse against her daughter and apologized to the school.

4.2.2. However, there have been other reported cases of child sexual abuse at the school, the case of a teacher who was dismissed on grounds of holding a girl in the waist and wanting to kiss her, and another case of child sexual abuse which was reported by female learners at the school involving the teacher in question and the teacher was dismissed.

4.2.3. The school takes action once a case of sexual abuse has been reported to the authorities.

5.0. Recommendations
Pursuant to the powers conferred on it by section 130 of the Constitution, section 22 of the Human Rights Commission Act, the Commission makes the following recommendations:

5.1. KALIBU ACADEMY
5.1.1. Immediately and completely abolish administration corporal punishment

5.1.2. Review the school rules, regulations, and policies to remove clauses permitting the administration of corporal punishment within 6 months of the release of this report

5.1.3. Develop, implement and enforce a safeguarding policy that should adopt child-friendly reporting structures where students are empowered to freely voice out their concerns

5.1.4. Adopt non-violent methods of disciplining the students to ensure that the classroom remains a safe and protective learning environment for the students.
5.1.5. Reinstitute the Parent Teachers Association (PTA), and establish the Students Council within three months of the release of this report.

5.1.6. The school should ensure that members of staff are trained on child protection, sexual harassment, and child sexual abuse within six months of the release of this report.

5.2. **MINISTRY OF EDUCATION**

5.2.1. Monitor compliance with recommendations made to Kalibu Academy.

5.2.2. Ensure that the National Teachers Council actively enforces the professional conduct of all teachers as provided for in the Education Act.

5.2.3. Follow the recommendation in Article 19 of the Convention of the Rights of the Child and expedite the amendment of the Education Act of 2013 and other policies in order to explicitly prohibit the use of corporal punishment in all primary and secondary educational institutions, private and public.

5.2.4. Ensure that all schools public or private should have child safeguarding policies.

5.3. **COMMITMENTS BY THE COMMISSION**

The Commission commits itself to do the following:

5.3.1. Train and sensitize the school staff, teachers, and learners on child rights and child protection, including issues of corporal punishment and good governance. This should target all private schools.

5.3.2. Monitor the implementation of the recommendations made to both Kalibu Academy and the Ministry of Education.

5.3.3. Monitor the implementation of the UPR recommendations on corporal punishment, and UNCRC and ACERWC 2017 and 2018 concluding observations which urges the Malawi Government to review relevant laws and expressly prohibit corporal punishment in all settings.

5.3.4. Advocating for the prohibition of corporal punishment in Malawian laws similar to regional trends in South Africa and Zambia.
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LIST OF ACRONYMS

MHRC  Malawi Human Rights Commission
MoE   Ministry of Education.
CRC   Committee on the Rights of a Child.
CCPJA Child Care Protection and Justice Act.
GEA   Gender Equality Act.
PTA   Parent Teachers Association.
ToD   Teacher on Duty
PM    Paisley Mavutula.
MH    Michael Howard.
1.0. INTRODUCTION
1.1 This is a report on the public inquiry into allegations of administration of corporal punishment and sexual abuse at Kalibu Academy.
1.2 The report provides circumstances surrounding the alleged administration of corporal punishment and sexual abuse at the school; the legal mandate of the Human Rights Commission ("Commission"); the methodology used and limitations of the investigation; analysis of the facts and evidence gathered; factual findings; recommendations; and conclusion. The report has been arranged according to specific sections in relation to each of the aforementioned areas.
1.3 Various documents, records, and a list of people consulted have been included as an appendix.

2.0. ALLEGED HUMAN RIGHTS VIOLATIONS

2.1 On 5th July 2021, the Commission received reports of alleged sexual abuse and attempted rape on a female learner by her teacher at Kalibu Academy in Blantyre. It was alleged that the incident happened in a classroom after lessons when the teacher told the girl to remain behind so that he should punish her for booing the teacher when he made a comment during lessons. It was further alleged that students from the school were subjected to corporal punishment which is administered by teachers from the school, as an appropriate disciplinary measure for the students.

2.2 The Commission observed that the matter signaled issues relating to human rights enshrined in the Constitution of the Republic of Malawi particularly, the right to personal liberty (section 18), the right to human dignity (section 19), the best interests of the child (section 23) and the right to education (section 25).

2.3 Pursuant to its constitutional and statutory mandate, the Commission instituted an independent human rights investigation.

2.4 This report, therefore, presents the Commission’s approach to the investigation, its factual and legal findings, and recommendations.

3.0 HUMAN RIGHTS ISSUES AND APPLICABLE LAW
This report is founded upon the Constitution of the Republic of Malawi, the Child Care, Protection and Justice Act, and the Penal Code. The report also relies on the United Nations Convention on the Rights of the Child and the African Charter on the Rights and Welfare of the Child. The allegations raise the following human rights issues:
3.1. CORPORAL PUNISHMENT

3.1.1. In terms of the law, Section 12(1)(d) of the Constitution of Malawi (the Constitution) provides that the Constitution is founded upon the inherent dignity and worth of each human. The inherent dignity and worth of each human being require that the State and all persons shall recognize and protect human rights and afford the fullest protection to the rights and views of all individuals, groups, and minorities whether or not they are entitled to vote.

3.1.2. Section 18 of the Constitution provides that “Every person has the right to personal liberty.” The right to personal liberty, when broadly and generously interpreted, includes the right to personal security and integrity of the person. Personal liberty includes the liberty not to have one’s body physically violated by means of violence. The right is particularly pertinent in respect of vulnerable persons such as children.

3.1.3. Section 19 (4) of the Constitution states that “No person shall be subject to torture of any kind or cruel, inhuman or degrading treatment or punishment

3.1.4. Section 23(1) & (5) provides that; the dignity of one shall be inviolable and all children, regardless of the circumstances of their birth, are entitled to equal treatment before the law, and the best interests and welfare of children shall be a primary consideration in all decisions affecting them. Children are entitled to be protected from economic exploitation or any treatment, work, or punishment that is, or is likely to be hazardous, interfere with their education, or be harmful to their health or their physical, mental or spiritual or social development.

3.1.5. Section 25(1) of the Constitution provides that “all persons are entitled to education”. Furthermore, the Code of Ethics and conduct for the teaching profession require teachers to always maintain social distance from pupils and to respect pupils’ fundamental human rights.

3.1.6. Section 3(1)(b)(i) and (1)(b)(ii) of the Child Care, Protection and Justice Act (CCPJ Act) provides that; parents have the responsibility to protect their child from neglect, discrimination, violence, abuse, exploitation, oppression, and exposure to physical, mental, social and moral hazards. Parents also have the responsibility to provide proper guidance, care, assistance, and maintenance for the child to ensure his or her survival and development.

3.1.7. Section 80 states that; no person shall subject a child to a social or customary practice that is harmful to the health or general development of the child.
3.1.8. Section 211 of the Constitution, international agreements entered into after the commencement of this Constitution shall form part of the law in the country as though provided by an Act of Parliament.

3.1.9. Article 37 of the United Nations Convention on the Rights of the Child states that “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment and no child shall be deprived of his or her liberty unlawfully or arbitrarily.” Article 32 of the United Nations Convention on the Rights of the Child states that States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

3.1.10. Article 19 of the Convention on the Rights of the Child states that, State Parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury, or abuse, neglect, or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. State Parties should also ensure that school discipline is administered in a manner consistent with a child’s human dignity. And Section 28(2) of the Convention on the Rights of the Child states that shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3.1.11. Articles 11(5) and 19 of the African Charter on the Rights and Welfare of the Child, requires that; States Parties to the present Charter shall take specific legislative, administrative, social, and educational measures to protect the child from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment including sexual abuse, while in the care of the child. State Parties are also required to take all appropriate measures to ensure that a child who is subjected to schools or parental discipline shall be treated with humanity and with respect for the inherent dignity of the child and in conformity with the present Charter.

3.1.12. Article 15 of the African Charter on the Rights and Welfare of the Child states that Every child shall be protected from all forms of economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s physical, mental, spiritual, moral, or social development.

3.1.13. Section 5 of the Constitution provides that “any law or provision in contravention with any Constitutional provisions will be invalid to the extent of its inconsistency.”
3.1.14. **Section 33 of the Constitution** provides a right to freedom of conscience and the right was deemed by the High Court to be one that cannot be deviated from even if a state of emergency is declared in *Kathumba v President of Malawi*.

3.1.15. In the matter of *Likongolo v Attorney General* [1995] 1 MLR 112 (HC), the Court held that stated that punishment being imposed should be proportional to an offence and when it comes to serious punishment. The Court further found that *the way the teacher-imposed punishment towards the student in the case before it was improper*. The Court went further to state that *a pupil subject to serious punishment should be rendered a fair hearing by the inflictor of the punishment*.

3.2. **SEXUAL ABUSE**

3.2.1 **Section 23 (5) of the Constitution** provides that children should be protected from, among other things, any treatment that is likely to be hazardous, interfere with their education, or are harmful to their health or their physical, mental, spiritual, or social development. The consequence of breaching the above attracts the offence found in section 134 of the Penal Code stipulates that any person who attempts to commit sexual abuse shall be guilty of a felony and liable to imprisonment for life, with or without corporal punishment.

3.2.2 **Section 23(1) of the Constitution** states that “*all children, regardless of the circumstances of their birth, are entitled to equal treatment before the law, and the best interest and welfare of the children shall be a primary consideration in all decisions affecting them*”.

3.2.3 **Article 34 of the United Nations Convention on the Rights of the Child** (UNCRC) states that children have the right to protection from sexual abuse regardless of whether they are male or female. The allegations levelled against the teacher, in this case, raise violations of children’s right to protection from any kind of sexual abuse.

3.2.4 **Section 137 of the Penal Code** states that “*Any person who unlawfully and in decently assaults any woman or girl shall be guilty of a felony and shall be liable to imprisonment for 14 years. It shall be no defense to a charge of indecent assaults on a girl who is below the age of 16 to prove that she consented to the act of indecency.*”

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1 Constitution of the Republic of Malawi, Act No. 20 of 1994, Chapter IV section 23(5)
4.0. MANDATE OF THE COMMISSION

4.1. The Commission is empowered by the Constitution to carry out investigations and make recommendations on human rights issues in response to a complaint or of its own volition. Section 130 of the Constitution provides as follows: “The Human Rights Commission shall, with respect to the applications of an individual or class of persons, or on its own motion, have such powers of investigation and recommendation as are reasonably necessary for the effective promotion of the rights conferred by or under this Constitution, or any other written law but shall not exercise a judicial or legislative function and shall not be given powers to do so.”

4.2. Further, section 12 of the Commission’s enabling Act, the Human Rights Commission Act (the “HRC Act”), outlines the Commission’s competence and powers as regards the promotion and protection of human rights as well as the investigation of human rights violations. Section 12 of the HRC Act provides: “The Commission shall be competent in every respect to protect and promote human rights in Malawi in the broadest sense possible and to investigate violations of human rights on its own motion or upon complaints received from any person, class or persons or body.” The allegations in the case, therefore, fall within its mandate.

4.3. The Commission was also moved by increasing calls both at local and international levels to urge the state to among others eradicate harmful practices including corporal punishments, child labour or forced labour, address all inhuman or Degrading Treatment or Punishment, and ensure prompt and thorough investigation of all offences and providing all necessary assistance to the victims. For instance, the United Nations Committee on the Rights of the Child (UNCRC) through their Concluding observations for 2017 urged Malawi to work towards eliminating corporal punishment and other cruel or degrading forms of punishment. In early 2021, the African Committee of Experts on Human and People’s Rights (ACEHPR) in its list of issues to the government of Malawi to explain what it has done to address corporal punishment in schools. This was after the state submitted its 2nd Periodic Report on the African Charter on Human and People’s Rights and the Maputo Protocol covering the period between May 2015 to March, 2019. The 2020 UPR recommendations urge the state to eradicate harmful cultural practices including corporal punishment, child labour, or forced labour and ensure effective investigation of the same.

4.4. Therefore, the Commission cannot afford to turn a blind eye or remain silent when such complaints come before the Commission. Hence, the investigation into the matter.

5.0. OBJECTIVES

5.1. Main Objective
The main objective of this investigation was to establish facts surrounding the allegations of the administration of corporal punishment and sexual abuse at Kalibu Academy.

### 5.1.1. Specific Objectives

The specific objectives were to:

5.1.1.1. Ascertain the administration of corporal punishment at the school
5.1.1.2. Establish the circumstances of the alleged child sexual abuse;
5.1.1.3. Determine the human rights violations occasioned;
5.1.1.4. Facilitate access to justice based on the findings
5.1.1.5. Recommend remedial measures to relevant authorities.

### 6.0. METHODOLOGY

#### 6.1. Preliminary Investigations

6.1.1. By virtue of the nature of the matter, which required an in-depth appreciation of the issues at hand, the Commission instituted an investigation team comprising members of staff. The investigation adopted a qualitative investigative design where face-to-face interviews (within the scope of strict Covid-19 guidelines) with key parties involved in the matter and some relevant players with interest in the matter were done. (Annex 1 for list of persons of interest).

6.1.2. In order to effectively inform the investigations, the Commission issued a public notice on 5th July 2021, calling upon the general public, parents, teachers, and learners from Kalibu Academy that had the knowledge and were aware of any incidence of child abuse at Kalibu Academy to relay the information to the Commission. The Commission received submissions from parents, former students, and teachers from Kalibu Academy. The information assisted the Commission to establish facts surrounding the reports of child abuse at the school.

6.1.3. The Commission further held two meetings with the Ministry of Education to appreciate any actions taken by the Ministry to address the allegations of corporal punishment and sexual abuse at Kalibu Academy.

#### 6.2. Document Collection

6.2.1. During the investigations, the Commission collected and reviewed relevant documents such as; reports, circulars, school rules and regulations, guidelines, and policies (Annex 2
for a full list of documents). The Commission also reviewed relevant national and international legal instruments.

6.3. **Public hearing**

6.3.1. The Commission carried out a public hearing into the matter to build upon the facts already gathered during the preliminary investigation to arrive at a logical conclusion regarding both allegations. The main purpose of the hearing was to consolidate and collect more evidence to come to a fair conclusion on the issues surrounding the allegations of child sexual abuse and the administration of corporal punishment. The hearing further probed into the complaint handling systems, the policies, and services available for accessing redress when a child is a subject of corporal punishment or sexual abuse at Kalibu Academy.

6.3.2. **Pre-Public Public Hearing**

6.3.2.1. The Commission conducted pre-inquiry activities where it gathered testimonies from those who knew something about the issues under investigation and they shared their own experiences on the allegations of corporal punishment and sexual abuse, the effects, and the processes taken to report the same. Testimonies were given by students (both former and current) who had been victims of corporal punishment, teachers, and parents. People who were free to present their testimonies regarding the issue of allegations of corporal punishment and sexual abuse at Kalibu Academy had the opportunity to narrate their experiences.

6.3.2.1. **Public Notice**

A call was made to the public asking people to make written submissions on the matters under investigation narrating their or someone’s experiences of sexual abuse and corporal punishment at Kalibu Academy.

6.3.2.2. **Press Release**

The Commission issued a press release informing the public that it will hold a public hearing on allegations of sexual abuse and corporal punishment, as a final phase of its investigations into alleged child sexual abuse and corporal punishment at Kalibu Academy.

6.3.2.3. **Safeguarding guidelines**

To ensure the safeguarding of the witnesses, the Commission conducted a risk assessment and put in place several measures to mitigate the impact of the risks. The following are some of the measures that put in place:
I. The Commission sought prior consent from the witnesses, students, and their parent.

II. The Commission instituted strict measures to protect its sources of information and other persons cooperating and providing information from any reprisals or abuse following their voluntary cooperation with the Commission.

III. The identities of the victims, witnesses, and other cooperating persons were hidden and strictly safeguarded from the public. In this case, the Commission used codes for the witnesses instead of their actual names.

IV. Sought prior consent from witnesses before taking photos and recording testimonies during the sessions.

V. Protected the witnesses from mixing with other participants.

VI. Kalibu Academy was advised that MHRC will take legal action on any reprisals against those who testified against Kalibu Academy.

VII. The Commission was guided by its Child safeguarding policy throughout the whole process.

6.3.2.4. Recorded submission/testimonies

6.3.2.4.1. The Commission recorded a total of fourteen (14) witnesses but only five (5) were willing to give oral testimonies. For those that did not give oral evidence, their recorded testimonies were played at the public hearing.

6.3.2.4.2. The first session of the public hearing took place on 5 May 2022.

6.3.2.4.3. At the hearing, five witnesses (three former students, one former teacher, and one parent) who are victims of corporal punishment testified in camera after taking an oath that was administered by Counsel Grace Jere of the Commission.

6.3.2.4.4. On 15 June 2022, which was the second session of the hearing, Kalibu Academy was accorded a chance to cross-examine the witnesses. Four witnesses were cross-examined during the hearing; three former students, one parent, and one former teacher. One witness who is a former teacher was not cross-examined as he was not physically present in the building and his number could not connect.

6.3.2.4.5. 8th September 2022 was earmarked for the third session which was a virtual session aimed at getting responses from Kalibu Academy to the allegations raised by the witnesses. The session was scheduled to start at 9:00 am, however, only members from the Commission joined at that time and members from Kalibu Academy joined an hour later which resulted in the adjournment of the hearing. However, Kalibu Academy already submitted responses to the Commission through their Counsel, and oaths were taken.

7.0 LIMITATIONS OF THE INVESTIGATIONS

7.1.1 Efforts to interview the Director of Kalibu Academy Pastor Michael Howard to verify both allegations proved futile since he was always unavailable for multiple reasons.
7.1.2 Kalibu Academy took an injunction against the Commission that caused delays in the commencement of the public hearing.
7.1.3 Kalibu Academy changed legal representation in the course of the investigation. This had a bearing on the progress of the hearings.
7.1.4 There were multiple postponements of hearings occasioned by non-adherence to notices and the non-availability of witnesses for Kalibu Academy.
7.1.5 Kalibu Academy changed legal representatives during the course of the hearings.
7.1.6 The Commission was burdened with budgetary constraints which rendered it difficult to hold another hearing to hear oral testimony from Kalibu Academy and cross-examine the witnesses for Kalibu Academy.
7.1.7 The Commission collected statements from 14 witnesses but only 5 witnesses came forward to testify.
7.1.8 Current students and parents were afraid to testify for fear of reprisals and social media backlash despite the Commission assuring them of their safety and to protect them.
7.1.9 Even though there were allegations of sexual abuse at the school, none of the witnesses testified on these allegations.

8.0. FACTS AND EVIDENCE (STATEMENTS)
8.1. Allegations of corporal punishment by witnesses against Kalibu Academy
8.2. SUMMARY OF FACTS FROM KAS002
8.2.1. In her statement, she indicated that she was at the school from 2007-2012. She further stated that during her time at Kalibu, the school used to administer corporal punishment. According to her, dormitory mothers would make girls wash their clothes and also clean places.
8.2.2. On her part it was worse because of a student named F who was close to pastor Howard. According to her, F used to harass girls and touch them inappropriately. For her, he used to touch her cheeks. When she got tired of it, she became rude to him. There was nothing that she could do because F was close to Pastor Howard and nothing would happen to him if reported.
8.2.3. One day Pastor Howard came and pointed her out of a group saying she laughed at him. He told her that F had reported that she was being rude to him. F was a head boy and prefects had so much power that they would affect punishment on other students including beating them up.
8.2.4. She was later given a week-long punishment that required her to dig a swimming pool and carry bricks, ten at a time even when another student came to confess that it was her who laughed and that she was laughing at something else, not pastor Howard.
8.2.5. At one point she was also made to mop a female teacher’s house because the teacher simply hated her.
8.2.6. At one point she got sick and was held for one week without going to the hospital.
8.2.7. She also stated that there was a place called a prison where students would be put in by teachers or even prefects.

8.2.8. She said that she would never recommend anyone to go to Kalibu Academy.

8.3. SUMMARY OF FACTS FROM KAS003

8.3.1. This witness was a student at Kalibu from 2011 to 2015. He stated that he did not experience any forms of sexual abuse but he did experience corporal punishment. Other punishments included manual work such as digging sand from a river that runs through the school campus and carrying it up in a wheelbarrow to one of the fields. There was also the cutting of grass and carrying of rocks.

8.3.2. Another form of punishment at the school was what was known as a prison which was a small room where students would be kept. He further stated that some punishments would take place during class time and were not reported due to the culture of secrecy at the school which made reporting hard as students would be punished for reporting.

8.4. SUMMARY OF FACTS FROM KAS004

8.4.1. In her sworn statement, the witness stated that she was at Kalibu Academy in 2009 and left in 2010 because of the punishments that were being administered at the school. She said that at Kalibu Academy, students would get punished for minor issues including forgetting their homework, bad handwriting, not drawing a straight line under the notes, or being found walking outside during school hours and students were also being punished for things that happened during holidays.

8.4.2. She said that these punishments included canning, donkey stand, being told to run up and down the stairs 20 times, and being asked to pick rocks. They were also made to dig holes each the size of 1 square metre deep. Students would also be detained and made to stand long hours during assemblies which led to some students fainting and being left unattended.

8.4.3. The witness also complained of other issues such as public humiliation during assemblies and intercessions, not being attended to when sick and the school not having proper reporting channels which led to fear among students when it came to reporting issues.

8.5. SUMMARY OF FACTS FROM KAT001

8.5.1. The teacher joined the school in 2006 and left in 2013. Immediately after joining the school, he observed that there were a lot of abuses such as canning, digging a swimming pool, and carrying heavy bricks. This made him see that the punishments rendered to the students were not fit for them as they were children, especially those coming from primary school and were then in forms 1 and 2. They all complained of feeling like their world is
ending. What was worse, the teacher observed that the punishments were also done during school hours and not during break time.

8.5.2. He further observed that most parents were against corporal punishments except the few who wanted their children to be straightened. Those who spoke out about corporal punishments at the school were told to remove their wards as they find it not fit for them.

8.5.3. The perpetrators of these punishments were mostly the Director, Pastor Howard who had a canning rod. He used to beat the students and shout at teachers violently and not forgetting the help around the school as well. The head teacher, Boarding mistress, some Zimbabwean teachers, and prefects.

8.5.4. He noticed that there was a time when the government intervened in corporal punishment and these acts of punishment stopped for some time and resumed after it all died down.

8.6. SUMMARY OF FACTS FROM KAP001

8.6.1. In her sworn statement, the witness stated that her niece enrolled at Kalibu Academy in 2009 and left in 2010. She stated that her niece had complained that she did not want the school anymore because she could not cope with the forms of punishments given there by the teachers and sometimes some students.

8.6.2. These punishments included the donkey stand and stone picking; where a student was required to pick stones and pile them up to a thousand stones, students were asked to dig a meter depth by 1-meter width hole as part of a project of constructing a swimming pool, Students were also made to walk up and down some stairs and that they were also being flogged and whipped by a sjambok by Pastor Howard. The witness informed that her niece also mentioned detention as another form of punishment, saying that students were detained in a room for 2 hours and that there was a room called prison, where students were kept for misconduct.

8.2. Responses from Kalibu Academy

8.2.1. SUMMARY OF FACTS FROM PASTOR MICHAEL HOWARD, THE DIRECTOR OF KALIBU ACADEMY

8.2.1.1. He is the Director of Kalibu Academy, born in Zimbabwe. He says that the groundwork for Kalibu Academy was established in 2000 and eventually the school had its first intake in 2007.

8.2.1.2. He states that the school has various rules that prohibit corporal punishment and they contain provisions on the prohibition of corporal punishment and sexual harassment.
These are found in the Misconduct Policy, Regulations for all teaching staff, and the Job Description – Teaching Staff.

8.2.1.3. The terms and conditions of the school provide that the employer shall be entitled to take disciplinary action including warning, suspension, and dismissal. The student school rules stipulate that there will be zero tolerance for any form of paedophilia or defilement whether in the Academy or at home. The school rules prohibit bullying and teasing and are said to be unacceptable. The rules provide that orders of prefects must be viewed as orders by members of staff because they are responsibly chosen. The rules explicitly state that “Any prefect found abusing his or her position will be severely disciplined”. He said that in line with this, prefects who have been acting contrary to the rules, have been disciplined before including by expulsion. He further said the school aims to teach prefects the importance of being respectful, humble, and well-behaved leaders to set a good example.

8.2.1.4. As for prefectorial duties, they provide that prefects should not slap, punch, pinch or cane any student.

8.2.1.5. Pastor Howard stated that it is not true that he cans, whip, or administer any form of corporal punishment on students or teachers. He said as explained above, corporal punishment is prohibited and he has made it clear at Kalibu Academy. He said as stated in the rules listed above, the rules make it clear that physical violence, corporal punishment, and sexual harassment are prohibited. Further, the rules impose an obligation on staff to always safeguard the health and safety of students. Therefore, if a member of staff acts in contravention of the rules, they are disciplined and can be dismissed. He sighted an example of the attachment MH1 and MH2 where a teacher was given a final warning for administering corporal punishment at the school.

8.2.1.6. He further refuted allegations that he calls students legions or gorillas. He indicated that he has never called students any of these words. He indicated that he sincerely loves the students and wishes them well and he would not describe them in such a derogatory or offensive matter. He said in 2010, he received a complaint that some teachers had referred to staff as monkeys and the teacher was immediately dismissed from Kalibu Academy as that could not be tolerated at all.

8.2.1.7. Lastly on the issue of forcing students to be baptized, he said that this is not true. He said Kalibu Academy is a Christian school and all prayers are conducted on campus. The school does not preach against any other religion and the school has students of other
religions. No student undergoes forced baptism and the school explicitly informs parents of this in advance.

8.2.2. SUMMARY OF FACTS FROM PASTOR PAISLEY MAVUTULA, THE HEADTEACHER FOR KALIBU ACADEMY

8.2.2.1. Pastor Mavutula stated that he was not aware of the allegations of attempted sexual abuse circulating on social media involving a student and a teacher. He learnt about the matter from social media. He further stated that the student did not report the matter to the school management nor brought the issue to his attention as the Head Teacher for the school.

8.2.2.2. He informed the investigating team that the only case that was brought to his attention concerning a teacher, was to do with derogatory remarks on female learners which was brought to his attention by ten students from Form 1 class on 16th June 2021.

8.2.2.3. The students complained that they did not understand Mathematics and that the teacher was making unwelcome remarks to the girls.

8.2.2.4. That following this, the teacher was summoned by management (the Headteacher, the Deputy head teacher, and 2 Inspectors) and he admitted in the presence of the girls about the use of vernacular language during lessons. Management referred the matter to the disciplinary committee. The disciplinary Committee summoned the teacher for a hearing and the teacher was later dismissed on 22nd June 2021.

8.2.2.5. The matter was also reported to Chileka Police and the teacher was arrested on the same day 22nd June 2021.

8.2.2.6. He stated that the school has in place rules and regulations that students are expected to abide by. He stated that the school has rules and regulations which include; Admission form, school and boarding rules, undertaking Declaration rules, Religious/ spiritual undertaking indemnity, indemnity form, student rules, rules for boarders, required standards of academic work at Kalibu Academy and misconduct policy. He further stated that the Academy makes available the school rules and regulations to students and parents or guardians for them to seriously consider before admission. He further indicated that parents and students have ample time to appraise themselves with the rules. If they agree with the rules, they are required to append their signatures to show that they have understood and will abide by the rules and regulations. Under 9.5(student rules) or PM5 of his sworn statement, it stipulates that there will be zero tolerance for any form of pedophilia or defilement whether in the school or the home.

8.2.2.7. He further refuted all the allegations of corporal punishment at the school stating that the school does not condone corporal punishment and that it is a disciplinary offence and that
disciplinary action has been taken against some teachers. He further stated that the school has rules and regulations on how to handle such cases whenever students or parents report to the school management. He cites among others the misconduct policy which prohibits corporal punishment and sexual harassment.

8.2.2.8. He acknowledges in paragraph 11.1 of his sworn statement that he is aware that once in a while some parents are called to the school concerning disciplinary issues of their wards and try to administer corporal punishment on the wards right in front of the headmaster (Pastor Mavutula himself or the Director (Pastor Howard) though the school discourages it.

8.2.2.9. In paragraph 26 of his sworn statement, he also states that he is the one who introduced a black book as one way of monitoring students’ discipline.

8.2.2.10. According to paragraph 9.5 of his sworn statement, he cites (PM 5) student rules that it clearly states that teasing and bullying are prohibited and unacceptable at Kalibu Academy. The rules further provide that orders of the prefects must be deemed as orders by members of staff.

8.2.2.11. In terms of manual labour, in his statement under paragraph 12, he states that the school had other forms of punishment such as manual labour and detention punishments that were taking place before 2015.

8.2.2.12. Pastor Mavutula further states that school rules explicitly prohibit prefects from slapping, punching, pinching, or caning fellow students. He provided Evidence of Prefects under PM8a-c that were expelled in 2019 because of caning fellow students.

8.2.2.13. With regards to the digging of a swimming pool, in paragraph 14 of his statements, pastor paisley stated that no student was required to dig a swimming pool and there never was any swimming pool project in the school.

8.2.2.14. Regarding the right to religion, under paragraphs 19 to 2022, pastor paisley states that the school is fundamentally a Christian school and follows the Christian faith. He further stated that no student is compelled to join their faith nor forced to be baptized.

8.2.2.15. In paragraph 16, Pastor Paisley refuted the allegation that the school used to punish students by imprisonment them. He however admitted that there is a room in the boy’s hostels where a student once used to study and he called it “Prison”. Further, he says that there was once an incident where some students returned to the school intoxicated thus to keep them out of trouble, some prefects hid them in this room.
8.2.3. SUMMARY OF FACTS FROM NORMA KONONO, DEPUTY HEADTEACHER

8.2.3.1. Ms. Norma Konono is the Deputy Headteacher. She has been working for Kalibu since 2011. Her duties are basically to assess the performance of students and teachers, supervise, check on students’ work, and attend to any issues that arise from time to time including running day-to-day duties of the school.

8.2.3.2. She said she knew nothing about the alleged story as it was never brought to her attention. She further stated that the girl who was claiming to have been harassed by the teacher did not teach in her class.

8.2.3.3. She stated that the teacher in question had a physical disability and his classroom was close to the administration. The school gave him a class where could be stationed and students used to find him there to attend Mathematics lessons. According to her, the teacher was teaching Mathematics in Form One. The girl in question (the student) was in Form three C1 and her class was very far from where this teacher was stationed (form 1). She further stated that the mathematics teacher for Form three was not the alleged teacher who committed the offence.

8.2.3.4. She indicated that she heard of the student’s story from social media when people tagged the school. The case that went to the police was on complaints from a group of girls who complained that the teacher used to teach them in Chichewa. The girls further alleged that teacher used offensive words on the girls like commenting on the buttocks of the girls in class. The student’s name wasn’t on the list of the girls who complained.

8.2.3.5. She further stated that the school had guidelines that were followed when disciplining a student. The students in most cases were disciplined by a Superintendent and these are Ms. Siphiwe Masuku who was the Superintendent for the girls and Mr. Michael Saiti who was the superintendent for boys. There was also a consent book that parents and students sign during enrolment allowing them to be punished. These punishments can be manual work for extreme cases such as being found in possession or smoking Chamba/ Indian hemp.

8.2.3.6. According to her, all punishments were meted out during students’ free time.

8.2.3.7. On the administration of corporal punishment, Ms. Konono admitted that students were sometimes caned when the parent asked the school to discipline their child on their behalf. According to her, the boys’ superintendent Mr. Michael Saiti and the girls’ superintendent Ms. Sphiwe Masuku are the only ones allowed to do the caning.

8.2.3.8. She further stated that on disciplinary issues within the school, the only people allowed to do the canning were the headteacher Pastor paisley, and the Director pastor Michael
Howard. According to her, such disciplinary action is carried out in the presence of their parents. She stated that parents are required to sign in the consent book. In the absence of the parents or where the parent has refused to sign, the boarding superintendent signs on their behalf and the punishment is meted out.

8.2.3.9. Ms. Konono showed the investigation team the consent book which contained names of students who were punished through caning and the offences the students committed as well as evidence that their parents consented pending their signatures.

8.2.3.9.1. The following table 1.0. shows some of the details contained in the consent book;

**Table 1.0.** sampled Names of students that were subjected to corporal punishment at Kalibu Academy.

<table>
<thead>
<tr>
<th>Name of student</th>
<th>Offence Committed</th>
<th>Punishment</th>
<th>Date the punishment was administered</th>
<th>The parent/boarding master signed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Student X(Male) of form 4 B1</td>
<td>Smoking etc</td>
<td>Punished with 5 canes and given Manual labour</td>
<td>16th November 2020</td>
<td>Signed by Parent</td>
</tr>
<tr>
<td>Student G(Male) of form 5 B1</td>
<td>Smoking</td>
<td>Punished by 5 canes and given manual work for 3 days</td>
<td>17th November 2020</td>
<td>Parent consented</td>
</tr>
<tr>
<td>Student(female) of form 5B2</td>
<td>Sneaking home and lying</td>
<td>Punished with 5 canes and given manual labour</td>
<td>23rd November 2020</td>
<td>Parent consented</td>
</tr>
<tr>
<td>Student H(male) of form 5B2</td>
<td>Smoking and possession</td>
<td>Punished by whipping instead of suspension for two weeks</td>
<td>9th November 2020</td>
<td>Parent consented</td>
</tr>
</tbody>
</table>

8.2.3.10. She further mentioned that teachers and staff at the school have never received adequate training on positive, child-friendly disciplinary techniques, and child protection

8.2.3.11. In her sworn statement, however, she indicates that corporal punishment is prohibited at Kalibu. She also indicates that she does not administer corporal punishment to the students herself. Although the school believes in a certain level of discipline, where punishment is used to correct behaviour and not to inflict pain

8.2.3.12. She stated that Pastor Mavutula, the headmaster has on numerous occasions in staff meetings emphasised to teachers not to cane the students. Disciplinary action is taken against teachers who do not comply. For example, she once received a complaint about canning from a teacher, and an investigation was promptly conducted which led to the
issuing of a strong warning against the errant teacher. Where the teacher apologised in writing and undertook a change.

8.2.3.13. According to her, the allegations of students digging a swimming pool, carrying stones and bricks, and any form of imprisonment are false. She has never seen such a form of punishment ever being administered. However, the form of punishment that is no longer imposed is detention which was for students who did not finish their work and remained in a classroom for them to finish the work. However, she saw this as a productive punishment.

8.2.3.14. On the health of students, there were allegations of a student fainting at assembly. Where she does not recall any student ever fainting during assembly. In any event, as a precautionary measure, there are always nurses during assembly time who are there to attend to any health-related issues should any rise. Furthermore, the school has a designated motor vehicle and a driver for taking students to the hospital.

8.2.3.15. In her statement, she further went on saying no student has ever been forced to be baptised. The students have an inter-denominational worship service on Saturday evenings and this is usually led by the students.

8.2.4. SUMMARY OF FACTS FROM THOMSON MULINGO (CHIEF SECURITY OFFICER)

8.2.4.1. Mr. Thomson Mulingo has worked for Kalibu Academy for 3 years. He is the Chief Security Officer and his duties are to safeguard, and protect the institution, ensuring that students and members of staff are safe, check what comes in and out of the school, maintain order and instil discipline around school premises.

8.2.4.2. According to Mr. Mulingo, the allegation of attempted sexual abuse did not happen at the school and he never handled such a case. The only case that he remembered having handled involved ten form-one students who claimed that the teacher used unwelcome remarks. The issue was reported to the administration on 16th June 2021. The teacher was summoned for a disciplinary hearing from which he was found with a case to answer. The Disciplinary Committee wrote recommendations to the Director. The school formerly dismissed the teacher on 22nd June 2021.

8.2.4.3. Considering that this issue had to deal with the girl child, as the Chief Security Officer he was advised by the Director to report the matter to the Police. On the day that the teacher was dismissed, Mr. Mulungo reported the matter to Chileka Police. The Police responded by sending Criminal Investigation Department officers by the name of Madam Lizzie and
Sub Inspector Lipenga. The two officers went to pick up the teacher to Chileka Police for further questioning.

8.2.4.4. He refuted allegations that he or any of the security guards at Kalibu Academy had ever gone to Chileka Police with the student.

8.2.4.5. He said the school did not condone child sexual abuse or any type of relationship with teachers or amongst the students themselves. If such things happened, they invited parents to discipline their children. The Director usually advised students to report any form of harassment they experienced because they because his office was there to protect the students.

8.2.4.6. He states that caning and corporal punishment are prohibited at the school. The students would face appropriate action from the Administration when they have been caught going off-bounds or causing trouble by his security team.

8.2.4.7. He further states that there is no such thing as a “Prison” at the school.

8.2.5. SUMMARY OF FACTS FROM MR MICHAEL SAITI, SUPERINTENDENT FOR BOYS

8.2.5.1. Mr. Michael Saiti is the Boys’ Superintendent and the Economics teacher at the school. His duties include advising boys in terms of conduct, behaviour, cleanliness, being in charge of the teacher on duty, and in general, any issue pertaining to the boy child.

8.2.5.2. He stated that he learnt of the teacher’s alleged sexual abuse case from the boys in class. I asked the boys about those allegations and they confirmed that the teacher indeed used inappropriate words on the girls. The students then wrote reports which were submitted to the administration and the teacher was dismissed from the school and was later taken to the Police. The case was reported by the girls to the administration but it was reported to him by the boys. He said he did not get any reports from the girls and he did not ask them because he only dealt with issues pertaining to the boy child.

8.2.5.3. He said he did not know the student very well but what he could say was that the girl is not normal. He said the school had well-mannered and bad-mannered students. Students
with bad manners are the ones that are always getting in trouble by skipping classes or being late for events. He said the student belonged to this second group.

8.2.5.4. On allegations from the voice note, he said the teacher used the class that was close to the administration and does not go to any class because of his physical disability and did not teach the student so this was surprising.

8.2.5.5. He further said in his time at Kalibu Academy, he had never heard of any teacher who had been dismissed on grounds of child sexual abuse apart from the alleged teacher.

8.2.5.6. He said as a superintendent for boys, the complaints that he normally got from the boys about the teachers were not getting what teachers were teaching. The boys were always afraid to ask so they go to him to approach the teacher. He said the punishments that are given to students are usually manual work, cleaning dining tables, cleaning windows at the hostels, picking litter, etc. These punishments were normally done after classes.

8.2.5.7. On corporal punishment, he stated that there were times when parents asked him to cane their children as a disciplinary measure and he did this once. He said due to the nature of the offense, the parents came to school to cane their children themselves or the teachers did it themselves. For example, there was an issue about two years ago when the parents of the child were invited on disciplinary matters, the parents advised him to cane the child and he did so in the presence of the parents. He said that such parents take caning as a disciplinary measure for their children.

8.2.5.8. In terms of complaints mechanisms, he said that when students had issues, they could approach the Prefect if it was a minor issue or the teacher on duty depending on the nature of the issue. He said, in a hostel setup, they had a Prefect and two captains who represented the hostel, whatever happened in the hostels was taken to them and if they could not solve it, they took it to the necessary authorities. For major issues such as smoking Indian hemp, and taking alcohol, such matters went straight to the headmaster or deputy head teacher.

8.2.6. SUMMARY OF FACTS FROM MS SIPHIWE MASUKU, THE MATRON

8.2.6.1. During preliminary investigations in 2021, she stated that she had worked for the school since 2008. As a matron, she took care of the girls, looked at their welfare issues and all matters affecting the girls.

8.2.6.2. She said she was not aware of the allegations of attempted sexual abuse circulating on social media.

8.2.6.3. She said the only issue that was reported to her by the girls was about the teacher’s making unwelcome remarks to some girls which made them feel uncomfortable. She called all girls from the classes that the teacher was teaching to ascertain the matter and the girls
confirmed that the teacher had been using vulgar language on them and teaching in vernacular language.

8.2.6.4. In her witness statement provided in 2022, on the issue of caning, she states that the practice is prohibited at the school and that she has never at any given time caned a student.

8.2.6.5. On the issue of prison, she says there is no such place at the school and that no student has been placed in any room similar to a prison.

8.2.6.6. Ms. Masuku on detention states that she knows about students who failed to finish their work and were required to remain in class on Fridays between 14:00 and 16:00hrs. However, students placed on this punishment would be allowed to visit washrooms if needed. This is what she says was termed detention and is no longer imposed as a form of punishment at the school.

8.2.6.7. She says that she does not know anything about a swimming pool or any project to that effect and that no student has been made to dig such a thing at the school.

8.2.6.8. Further, she states that she knows nothing about that kind of punishment called donkey stand and has never seen anyone mete it out on any student.

8.2.6.9. She says that she did not force students to finish their food. Ms. Masuku explained that the dining arrangement requires students to dish for themselves and as part of the dining discipline, the school encourages students to dish only what they can afford to finish to avoid wastage.

8.2.6.10. She said that she never recalled seeing anyone/student picking stones as a form of punishment.

8.2.6.11. She continues that she does not remember kicking any student who had fainted and that the behavior cannot be tolerated at the school. She further says the school has health personnel and a first aid kit for teachers in case a student faints while in class.

8.2.6.12. When it comes to religion, Ms. Masuku says Kalibu is a Christian school and holds an interdenominational worship service every Saturday where students are allowed to preach. She says that sometimes there is baptism but no student is forced to get baptized and that students who desire to get baptized are asked to seek consent from their parents/guardians

8.2.6.13. On the reporting of matters in the boarding section, Ms. Masuku said all complaints or grievances of students in the boarding section are reported to the Boarding master. The matron or Boarding Master would then escalate the issue to the Deputy Head Mistress or
Headmaster. She says every Monday the matron and boarding master submit to the headmaster a situation reports about the boarding section.

8.2.6.14. On the ill-treatment by Dormitory Mothers, she says that it is not true that dorm mums ill-treat younger female students. She says that she encourages female students to report any complaints they have about dorm mums and prefects. She further says dormitory mothers and prefects are strictly disciplined including by expulsion.

8.2.6.15. Ms. Masuku in her sworn statement given in 2022, denies allegations that she whipped some girls in their hostels at night.

8.2.6.16. On the alleged cleaning of my house by a student because “I disliked her”, Ms. Masuku stated that it was not true as at the material time she didn’t have a house. She says she was by then lodging in one of the rooms of the boarding mistress’s house which has four rooms. She further states that Kalibu Academy’s policy does not allow students to visit the Boarding mistress house unless there is an emergency like fainting of the student or if the student has a personal problem and she wants to talk to the boarding mistress.

8.2.6.17. On allegations of giving punishments for petty issues like having bad handwriting, Ms. Masuku states that it is not true. However, she says that students with bad handwriting are required to practice until their handwriting matches the set standards for work presented at the school. She further states that handwriting drills are done during a particular lesson and at times remedial classes are done to assist the student to write legibly and neatly and match the Cambridge requirements. She finally states that handwriting drills are not a form of punishment but rather a means of correction.

8.2.6.18. Lastly, allegations that she left a student in the hostel for a week even after being told she was sick, Ms. Masuku states that this is not true as she was in the first place not a Superintendent but a mere boarding teacher at the time. She further states that even then there are procedures and processes followed concerning sick students. She says there is always a Teacher on Duty who does everyday morning inspections in the hostels to ensure the cleanliness of the hostel and that students are well-kitted. According to her, it is during this time that the ToD takes note of sick students and makes necessary arrangements for their food and medical attention by the health personnel. She thus states she is surprised how the student would say was left in the hostel for one week with such a process.

8.2.7. SUMMARY OF FACTS FROM MR ANDREW MHANGGO, SCHOOL INSPECTOR & EXAMINATIONS OFFICER

8.2.7.1. During the preliminary investigations in 2021, he explained that he had worked for the school for 14 years and his role was to ensure quality control on the administration of programs and registration of students for examinations. He stated that he was aware of
Form one students’ complaints against the teacher. According to him, the teacher was convicted by the Disciplinary Committee for using vulgar words on female students. He went further to cite examples of the Phrases of which he was convicted among which include phrases such as; “your bum is nice”, and “your breasts are nice”. And “you look nice:

8.2.7.2. In his witness statement provided in 2022, Mr. Mhango indicates that the school never administered it to the students. He said that the school believes in using reasonable, proportionate, and appropriate means to discipline students to help them reform.

8.2.7.3. He indicated that manual labour only involved picking bottle tops around the tuckshop, and strengthening desks among other things but nothing like carrying bricks and digging a swimming pool as there was no swimming pool project at the school.

8.2.7.4. Mr. Mhango also indicated that there was no prison at the school. There was/is a place at the boy’s hostel that is used by plumbers, the room is well ventilated and at one point one student used to prefer reading in there, he is the one who coined the word prison, at one point a student came back drunk when he went out of bounds with others. The school prefects hid him there to also sober up without reporting him to the boarding master.

8.2.7.5. He further said the administration sanctioned an investigation on the matter. Both students and the teacher were asked to write reports on the matter. The administration formerly dismissed him on 22nd June 2021.

8.2.7.6. On the social media rumours regarding allegations of attempted sexual abuse, he denied knowing anything since according to him, the case never occurred at the school.

8.2.8. SUMMARY OF FACTS FROM RUTH KATUNGA

8.2.8.1. According to her sworn statement, Ms. Ruth Katunga joined Kalibu Academy on 1st January, 2007 as a Health Assistant. She states that her role is to take vital signs for students that complain of being unwell. She was drawn into the investigation to respond to allegations pertaining to not allowing students to go home when sick, keeping them in the hostel without being attended to, and sometimes keeping them standing during Assembly up to the point one student had to faint.

8.2.8.2. She refutes all allegations against Kalibu regarding access to medical attention when students fall sick. She stated that the school has a robust health system where they encourage all students to report when they fall ill and depending on the gravity of the illness, the school refers them to Blantyre Adventist Hospital where she accompanies the sick student. She further states that the school keeps an exit form for all students who leave campus for medical purposes. As for the extended standing during assembly and students fainting, she says ever since joining the school, she has never experienced any student fainting during assembly.

8.3. Allegations of sexual abuse
8.3.1 SUMMARY OF FACTS FROM THE STUDENT, THE ALLEGED VICTIM

8.3.1.1. She stated that she is 14 years old and in Form 3 at Kalibu Academy.

8.3.1.2. According to the student, three weeks before the closure of the second term (could not remember the exact date), she had a Mathematics class in the morning, before the break. She observed that the mathematics teacher always made nasty remarks about girls. On this day, he made a derogatory comment about one of the girls (Not sure of the same). He commented about the girl’s thighs, and then the whole class was said to have booed him. He then told all girls who booed him to remain behind.

8.3.1.3. The girl remained behind, then he looked at the student and told everyone else to leave except her. The student remained in class and told her friend to wait for her outside the class. The teacher told the student to turn around as he wanted to cane her. She turned around and the teacher brushed her skirt and lifted it.

8.3.1.4. The student said she thought it was the stick but when she turned, she saw that it wasn’t a stick but it was the teacher’s hand. She then decided to leave the class because she wondered why he touched her skirt.

8.3.1.5. When she got to the door, the teacher started pulling up her skirt, and pulling it up. She said she tried fighting him off and then she shouted calling her friend! Her friend opened the door and pushed him away from the student.

8.3.1.6. The teacher then held the student’s friend’s hand but the girls managed to get out of the classroom. The student’s friend got out first, when the student was getting out, he banged the door and it scratched her thigh. She then managed to get out and they both went back to class.

8.3.1.7. She said she could not manage to deal with the situation, so she went to Pastor Howard (the Director) to complain. The Director advised her to write the complaint on a piece of paper and slot it under his door. She wrote the complaint as advised and slotted it under his door as the students were going for lunch at 12:30 PM.

8.3.1.8. After lunch, they went back to class, and nothing happened. In the evening, the Boarding Mistress Ms. Masuku called all Form 1 and some Form 3 students, the student was not among the girls, but her friend attended the meeting.

8.3.1.9. During the meeting with the students, the student’s friend narrated the story about the incident that took place in class involving the student. The next morning during assembly, Pastor Howard, the Director of the School, apologized and told the girls that all was going to be fine and that the alleged teacher had been arrested. He advised the student not to tell her parents because the school was going to deal with the issue and everything was going to be okay. They were then dismissed from their classes.

8.3.1.10. While in their class, and before break time, Mr. Mulingo (the Chief Security Officer) went to her class with a piece of paper in his handwritten the student and called her out. She walked with him and went to the class car park, entered a car, and drove to Chileka Police. When they arrived at Chileka Police, they took a turn to the cell, and the student
saw the teacher in the cell. She immediately rushed out of the police building because she was scared of meeting him.

8.3.1.11. Mr. Mulungo followed her and held her shoulder and said ‘it’s okay, he is in a police cell, it is going to be okay. She however did not speak to any police officer and no statement was recorded from her. She was then taken back to school. She heard nothing from the school authorities until the school closed on 2nd July, 2022, when she reported to her mother.

8.3.1.12. Although she could not remember the actual dates, the student stated that the incident happened three weeks before closing the school on 2nd July, 2021. This means the incident occurred the week between 14th to 18th June 2021 or thereabout.

8.2.2 SUMMARY OF FACTS THE MOTHER OF THE ALLEGED VICTIM

8.2.2.1 She stated that on 2nd July, 2021, she went to pick up her daughter who had just arrived from school at the bus station. Whilst she was driving home, her daughter showed her a bruise on her thigh. She asked her what happened, the student said her teacher wanted to sexually abuse her. She stated that she was shocked and immediately stopped the car and asked her daughter to tell her what exactly happened. Her daughter then explained the whole story.

8.2.2.2 She said she got very angry and called her father and asked him if he knew what happened to their daughter at school. The father denied having any knowledge about the ordeal. She narrated to him about the attempt against their daughter and the bruise on her thigh. She said she wondered why the matter was not reported to her because the Principal for Kalibu Academy, was related to her daughter’s father, and the previous week they met at a funeral at Area 47 in Lilongwe where the principal could have informed her about the incident. The student’s father then promised that he would find out.

8.2.2.3 She stated that she decided to share what had happened with the school’s parents’ group on WhatsApp. She confirmed to be the one who sent the audio that was circulated on social media regarding the allegations of attempted sexual abuse on her daughter by the teacher through the school’s parents group.

SUMMARY OF FACTS FROM THE ALLEGED TEACHER

8.2.3.1 He stated that he was a former teacher for Form 1B1 at Kalibu Academy and used to teach Mathematics in Forms 3A1, 3B2, 4B2, 5C.

8.2.3.2 He indicated that he didn’t know the girl who accused him of attempting to sexually abuse her. According to him, he never taught in Form 3C during the entire two months that worked at Kalibu Academy. He stated that he heard about the issue on Monday, 5th July, 2021, when Mr. Mhango the School inspector, called and asked him to go to Kalibu Academy to explain
his side of the story. The same day, he was summoned by Chileka Police Unit and he gave out a statement on the matter.

8.2.3.3 He refuted the allegations that he wanted to sexually abuse the student based on the following reasons:

8.2.3.4 That he had a physical disability, and with his condition, he cannot manage to force himself on the girl

8.2.3.5 He has never taught the girl and he doesn’t know her

8.2.3.6 Due to his physical disability, he was allocated his class which is far away from the girl’s class, form 3C1. According to him, with his condition, he has never gone to form 3C1 class, and Mr. K is the one who teaches form 3 C1.

8.2.3.7 He further stated that he has never been arrested on allegations that he wanted to sexually abuse the student.

8.2.3.8 However, he stated that he was aware of the case of derogatory remarks in which female learners from Form 1B1 complained against him. According to him, students alleged that when he was teaching, he was using derogatory remarks such as; ‘you factorise two’ instead of ‘you fuck two’. Further, the students accused him of teaching using Chichewa which is not allowed at the school considering that some learners of foreign origin cannot understand Chichewa. He further stated that the students also accused him that he touched the breast and buttocks of a girl named CS (1b2). According to him, these allegations were levelled against him the week between 12th to 16th April 2021.

8.2.3.9 On 17th June 2021 in the morning, he was summoned by the School’s Disciplinary Committee where he explained his side of the story. During the meeting, he denied all the allegations levelled against him by the students. After the hearing, he was told to go home and wait until the management would call him back. On 21st June 2021, he was again summoned to appear before the School’s Disciplinary Committee comprised of Mr. Manford Nhlane, Mr. Thom Mulingo, Mr. Gilbert Nyanjaya, Ms. Sphiwe Masuku, and Mr. Michael Saiti.

8.2.3.10 Following the hearing, he was formerly dismissed on 22nd June 2021 through a dismissal letter. Whilst at Kalibu Academy and around 4 PM, three Officers from Chileka Police (Mr. Lipenga, Ms. Banda, and another male police officer) came to pick him up. At the police, they took his particulars like Physical address and personal details. He was then told to go back on the 23rd June 2021.

8.2.3.11 On 23rd June, he again reported to Chileka Police and met Miss Banda who took the same details and told him to return home.

8.2.3.12 On Monday, 5th July 2021, he was again invited for statement recording. The statement was recorded in one of the rooms by a police officer named Mr. Simtchaya. He was informed that he was going to be charged with an offence of conduct likely to cause a breach of peace about allegations of making derogatory remarks about female learners while teaching in class.
He further indicated that he was expected to report back to Chileka Police on 16th July 2021 as one of his bail conditions.

8.2.3.13 During the interview, he admitted that he was using Chichewa when teaching but refuted allegations that he gave unwelcome remarks to the female learners which made them feel uncomfortable. He went further to say that if it was true that made those remarks, then he did so unknowingly.

8.2.3.14 He further denied all the allegations of child sexual abuse against him. He admitted to having told students that they could undress right in class at one point when the girls wanted to leave the class earlier so that they could change into their sports attire.

8.2.3.15 He however indicated that he did not know that such a remark would be ‘blown out of proportion because it was said in good faith to allow him to finish the lesson.

8.2.4. SUMMARY OF FACTS FROM THE VICTIM'S FATHER
He stated that he heard about the story from the mother and when he asked her over the phone, she narrated the same story.

8.2.5. SUMMARY OF FACTS FROM MR. MANFORD NHLANE, THE SCHOOL INSPECTOR

8.2.5.1. Manford Nhlane is the Inspector of the school and the Chairperson of the School Disciplinary Committee at Kalibu Academy.

8.2.5.2. He stated that “I read your email and what I can say is that this is not true and very incorrect about the sexual allegations.” He explained an event related to the claims of the child and stated that on 16th June 2021, he got a report from the girls (students from form one B1 and One B2) that they would like to meet him as the Inspector. The girls complained to the teacher about two things. Firstly, the teacher was teaching in Chichewa which made the students uncomfortable. Secondly, he was using inappropriate language with girls in class and the girls reported to Mr. Sapiri the Form One teacher.

8.2.5.3. Some of the comments that the students complained about included the following: “you have big breasts to feed yourself and I can even help you do it.” At some point, girls were
going for sports and wanted to go to the hostels to change into their sports attire and the
teacher told them that they could even change in the class in his presence.

8.2.5.4. He then contacted Mr. Sapiri who is the Form 1 teacher, Mr. Sapiri confirmed that the
students had reported to him on the same, and on the same day, the school inspector
summoned the alleged teacher.

8.2.5.5. On 17th June, the issue was brought to the attention of the Management Committee which
consisted of the Deputy head teacher, Ms. Konono, and 2 school inspectors Mr. Mhango
and Mr. Nyajaya, headmaster. The alleged teacher appeared before the management to
give his side of the story and he admitted to the allegations

8.2.5.6. Management referred the matter to the disciplinary committee and advised the teacher to
go back home to give them ample time to investigate the matter.

8.2.5.7. He was called back to work on the 21st of June for a disciplinary hearing. Members of the
disciplinary hearing consisted of Thom Mulingo, Manford Nhlane, Gilbert Nyanjaya,
Siphiwe Masuku, and Michael Saiti. Considering the seriousness of the allegations and
that the teacher in question was only two months old in the school and still on probation,
the disciplinary committee recommended, among others, that the teacher be relieved of
his duties with immediate effect. The Committee submitted the recommendations to the
school management to act on the matter;

8.2.5.8. Mr. Nhlane reiterated that the teacher was dismissed on two counts. First, failure to
observe appropriate boundaries of teacher-student interaction by using inappropriate
language to members of the opposite sex and using vernacular language when teaching
which was against the terms of reference for their employment.

8.2.5.9. The reasons for firing him are stipulated in his dismissal letter. However, considering the
nature of the offense, the unpalatable sex jokes towards the girls was an issue of child
sexual abuse on the part of the girls.

8.2.5.10. He stated that the issue was reported to Chileka Police by the Chief Security Officer of
the school Mr. Mulingo. The Officer in Charge at Chileka Police and his crew arrested the
teacher on 22nd June 2022, the same day management dismissed him.

8.2.5.11. On 22nd of June, 2021, the Director addressed the students at the Assembly notifying them
that no teacher is supposed to touch a girl or make any silly joke towards the girls and
condemned the girls for reporting. The Director also informed the students that the
teacher was dismissed.

8.2.5.12. He stated that the school management was surprised with the version that the Commission
brought that a teacher tried to sexually abuse the student because it never happened at the
school. The most surprising thing according to him was that the alleged teacher did not teach the student as the mathematics teacher for her class Form 3 C1 was Mr. Katenje.

8.2.5.13. He said the alleged teacher had a disability and had a special class where students were going to him and he was only teaching Form One. There is quite a distance between the student’s class from the alleged teacher’s class and was surprised by what the student reported to her parents. He requested the investigating team to check the timetables to appreciate the classes and shared some copies of the timetable.

8.2.5.14. He said the issue was never reported and it never came to his attention.

8.2.5.15. He further stated that the student never went to the Police as she claimed. The girls that were interrogated by the Director on unwelcome remarks by the teacher were told to write reports, and the original copies were given to the Police. The girls did not go to Police and Mr. Mulingo, the Security Officer, was advised that it would be intimidating to take the girls to Police for statement recording.

8.2.5.16. He said issues that require disciplinary action, depending on the gravity of the offense, students were either suspended or dismissed otherwise for minor offenses, students were given small punishments. He said he had never handled any other issue of child sexual abuse at the school and this was the first one.

8.2.5.17. He said caning the students is not allowed and this was stressed in the teaching contract. He however indicated that there were times when parents could direct the school to do so. He further stated that the administration encouraged students to report to the administration or to form teachers on any issues that they faced.

8.2.5.18. He further said that punishments on students included; Suspension, expulsion, non-participation in afternoon activities, and manual work which includes; watering banana fields with watering cans.

8.2.6. SUMMARY OF FACTS FROM ISAAC MDALA, CRIMINAL INVESTIGATION OFFICER AT CHILEKA POLICE

8.2.6.1. He explained that on 22\textsuperscript{nd} June 2021, the Police received a report that the teacher was verbally abusing female students. It was Andrew Mhango, the School Inspector, who reported the matter. Several students complained to the school administration. After recording the statement from Mr. Mhango, the suspect the teacher was arrested and taken to Chileka Police Unit for questioning on the grounds of “conduct likely to cause a breach of peace” under section 181 of the Penal Code. After spending close to two hours at
Chileka Police, the suspect was released the same day. Mr. Sintchaya was the one who recorded a statement for the suspect.

8.2.6.2. The police further asked the Kalibu Academy to serve them with the statements that students wrote to the school administration and they were submitted to Chileka police on 3rd July 2021. After going through the letters which students wrote, the police wanted to meet the students in order to record statements. However, the Police did not pursue the matter further as schools had closed for holidays on 2nd July 2021. However, the case was expected to resume in September, 2021 when the school opens.

8.2.6.3. According to Police records, the suspect has been reporting to Chileka Police as one of his bail conditions. Records indicated that after being granted police bail on 22nd June 2021, the suspect reported at Chileka Police on 23rd June, 2021 and on 5th July, 2021 respectively. Records further indicated that was again expected to report to Chileka Police on 16th July, 2021.

8.2.6.4. According to Mr. Ndala, no student was brought to Chileka Police at any point on allegations of child sexual abuse or attempted sexual abuse.

8.2.6.5. Chileka Police also confirmed allegations of attempted sexual abuse at the same school by a former teacher for the school who wanted to sexually abuse a female student. The teacher was later dismissed by the school.

8.2.7. SUMMARY OF FACTS FROM THE MINISTRY OF EDUCATION

8.2.7.1 On 27th August and 31st August 2021, the Commission held a meeting with the Ministry of Education in order to appreciate what the Ministry had done to address allegations of corporal punishment and sexual abuse at Kalibu Academy.

8.2.7.2 The first meeting held on 27th August 2021, was done virtually. Ms. Lindiwe Chide, Mr. John Msawyo, Mr. Jekings Kayira, Mr. Chikondi Chimala, Ms. Joyce Saukira-MoE, and Mr. Chaku Matabalanda represented the Ministry of Education. Further, Mr. Christopher Ziba and Mr. James Kayira-Dedrick Sitowe represented the Ministry during a physical meeting held on 31st August 2021 at the MHRC head office in Lilongwe.

8.2.7.3 According to the Ministry, upon receiving reports of attempted sexual abuse by a teacher at Kalibu Academy, the Ministry followed up on the matter in order to obtain facts. The follow-up was done by South West Education Division. The team managed to interview two people; the chief security officer Mr. Mulingo and Andrew Mhango, the School
Inspector. The team also scrutinized some documents that the school shared with them. The Ministry however was not able to speak to the child or the teacher in question.

8.2.7.4 The Ministry established that a student who was in form 3C was the one who reported to her mother when the mother went to pick her up after the school closed on 2\textsuperscript{nd} July 2021. The Ministry further established that the school was not aware of this case and that the student in question never reported to the school administration.

8.2.7.5 The Ministry however established that the school dismissed the teacher on allegations that he was making nasty comments about female students at Kalibu Academy during lessons.

8.2.7.6 The school dismissed the teacher after the disciplinary committee met upon the reception of the complaints from a group of students on 16\textsuperscript{th} June 2021 before allegations of attempted sexual abuse concerning a student and her teacher. The school was formerly dismissed on 22\textsuperscript{nd} June 2020.

8.2.7.7 The Ministry further established that the matter was also reported to Chileka police and that the teacher in question was serving bail conditions.

8.2.7.8 According to the Ministry, therefore, their investigation did not find any evidence of the alleged attempted sexual abuse allegations involving a student and a teacher. The Ministry however found that the teacher’s dismissal was based on verbal abuse complaints and the use of vernacular language when delivering lessons that were contrary to school rules.

8.2.7.9 On allegations of Corporal punishment and other humiliating treatment, the ministry informed the Commission that a total of five parents had complained to the Ministry that the school uses corporal punishment and as parents, they were failing to voice out their concerns to the school because there was no Parents Teachers Association at the School (PTA).

8.2.7.10 As Ministry, they have conducted several inspections at the school through the Department of Quality Assurance in the Ministry of Education. Inspections were conducted in 2016, 2019, and 2020 respectively. The main objective of the inspections was to evaluate the quality of education provided by the school. The school performed well in areas such as; Learning and Teaching, planning, assessment, students behaviour
and involvement, and staff deployment and management. In all these areas, the school exceeded the minimum required standards.

8.2.7.11 The Ministry however stated that the school, the relationship between the school and community, and the management of students’ behaviour were below minimum standards.

8.2.7.12 The inspections established that some teachers at the school were mistreating students through canning, and spanking, forcing them to kneel or stand in an uncomfortable position during lessons. Other forms of punishment that the inspections uncovered included; watering flowers, and students being told to sit in the hall for two hours.

8.2.7.13 Following the findings, the Ministry recommended that the school should stop administering corporal punishment. However, according to the Ministry, the school has done very little to address its recommendations.

9 ANALYSIS OF LAW TO FACTS AND EVIDENCE

9.1 ISSUES

9.1.1. Whether Kalibu Academy administers corporal punishment as a form of punishment?

9.1.2. Whether Kalibu Academy administers hard labour as a form of punishment to students?

9.1.3. Whether the school infringed the religious rights of students?

9.1.4. Whether there was sexual abuse taking place at the school?

9.1.1. Whether Kalibu Academy administers corporal punishment as a form of punishment?

9.1.1.1. Corporal punishment is any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Mostly it involves hitting (“smacking”, “slapping”, and “spanking”) children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking, or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding, or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices).²

9.1.1.2. According to the facts and evidence, Kalibu Academy administers corporal punishment on students as an appropriate disciplinary measure for unruly behaviours. These punishments are in a form of canning or whipping, hard labour (watering gardens during class), kneeling for a significant period (approximately one or two

² UN Committee on the Rights of the Child (CRC), General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19, 28, Para. 2; and 37, inter alia), 2 March 2007, CRC/C/GC/8
hours\}, standing in the same position for a long time, being detained in class or external rooms, suspension from attending classes for 1 or 2 weeks, positioning students in uncomfortable and painful positions. Some former students and teachers from Kalibu Academy attested to this, even some current students also confirmed. The totality of the evidence presented to the Commission proved that corporal punishment is administered at the school. Some parents, whose children are also victims of corporal punishment also confirmed that the school administers corporal punishment. However, five of the witnesses for Kalibu Academy refuted this.

9.1.1.3. Facts and evidence further revealed that canning and whipping take place at Kalibu Academy. Although Kalibu Academy refuted this, one witness for Kalibu Academy, Ms. Konocono confirmed that canning takes place. Students get canned for various reasons as a disciplinary measure on their part. The disciplinary issues book where the school records all disciplinary matters is another piece of evidence. In this book, the school records the type of punishment to be administered to students who have misbehaved. Whipping and canning were noted as some of the measures for punishing the students. Parents sign, consenting that their children can be whipped or canned. Students were also being made to donkey stand as a way of punishing them. The offences range from bullying, smoking, being found in possession of Indian hemp, purchasing and taking alcohol, and sneaking home. This is evidence that the school administers corporal punishment.

9.1.1.4. The evidence gathered points to the following members of staff as being the ones who administer corporal punishment to students:
- Michael Howard (the Director)
- Paisley Mavutula (the headmaster)
- Norma Kanono (Deputy Head)
- Andrew Mhango (the Examination Officer)
- Gilbert Nyanjaya (Inspector)
- Mai Masuku
- Manford Nhlane (Sub-school Inspector)
- Silibaziso Chibvongodzi (Former Superintendent)

9.1.1.5. It was also established that school prefects also administer corporal punishment to fellow students. The prefects derive powers from the administration to administer corporal punishment and at times they use their hands. When this occurs and there is a backlash, the administration would defend that student. A reference would be the case of A, who was a Prefect some years ago. His abuse of other students was reported to his parents and the parents wanted to physically handle him themselves.
9.1.1.6. Several provisions of the law namely section 19(1) and 23 of the Constitution prohibit conduct that can amount to corporal punishment in any setting as a form of punishment. Facts gathered during the investigations indicated that students were and are still subjected to canning, whipping, and other humiliating forms of punishment which provide evidence of corporal punishment.

9.1.1.7. Section 23(1) & (5) of the Constitution explicitly states that all children are to be protected from any treatment or punishment that is likely to be hazardous, interfere with their education, or be harmful to their health or their physical, mental or spiritual or social development. This is also reflected in section 80 of the CCPJ Act where no child should be subjected to a social or customary practice harmful to their health. Furthermore, the court in Likongolo v Attorney General stated that punishment being imposed should be proportional to an offence and when it comes to serious punishment, a student must be offered a fair hearing first by the inflictor. Thus, the facts gathered in the investigation indicate that the punishments conducted by Kalibu violated the physical and mental health of students, nor were students afforded a proportional punishment or a fair hearing. *(Refer to witness statements KAS002, KAS003, and KAS004).*

9.1.1.8. With regards to corporal punishment, Section 3(1)(b)(i) and (1)(b)(ii) of the Child Care, Protection and Justice Act places a duty on parents to protect their children from various forms of abuse, exploitation, and exposure to physical, mental, social and moral hazards amongst others. The investigations which were carried out indicate that some parents consented by way of signing to exposing their children to abuse, physical, mental, social, and moral hazards by way of allowing the school to carry out corporal punishment on their children. *(Refer to the Black book)*

9.1.1.9. Further, the evidence has shown that there was a room at the school that was referred to as a prison located close to the cafeteria, where students would be kept for multiple hours and would not be allowed to leave until the prescribed time is over. This meant students would not be able to take bathroom breaks.

9.1.1.10. The Constitution in section 18 states that every person has a right to personal liberty. Section 19 upholds one’s dignity by providing that the dignity of all persons shall be inviolable. Moreover, section 23(5) prohibits punishment that will affect the physical and mental health of a child along with a child’s social development.

9.1.1.11. Article 37 of the United Nations Convention on the Rights of the Child also states that “no child shall be subjected to torture or other cruel, inhuman or degrading
treatment or punishment and no child shall be deprived of his or her liberty unlawfully or arbitrarily."

9.1.1.12. The conduct by Kalibu in confining students in “prison” was an arbitrary infringement of a student’s liberty and it was a degrading form of punishment thus, violating the dignity of students and negatively affecting their physical health in that the students would be restricted from performing important bodily functions such as the release of bodily fluids. This also infringed on the students’ mental health and social development in that, solitary confinement affects the social life and eventually social development of a child and can lead to anxiety.

9.1.1.13. There are also notable inconsistencies in the information given by some witnesses for Kalibu Academy between what they told the Commission during one-on-one interviews at the Commencement of the investigation and what they have presented in their witness statements. For instance, at first, as presented in the facts and evidence, Ms. Konono admitted that students are sometimes subjected to caning when the parent asks the school to discipline their child on their behalf. She further admitted that the only people allowed to do the canning were the headteacher Pastor paisley, the Director pastor Michael Howard, Ms. Siphiwe Masuku who was the Superintendent for the girls, and Mr. Michael Saiiti who was the superintendent for boys. She further admitted that there was also a consent book that both students and parents as evidence that a parent consented for his or her child to be punished. In her sworn statement, however, she denies all allegations of corporal punishment, and hard labour and makes no mention of a black book. This shows some level of dishonesty in her sworn statement.

9.1.1.1. Likewise, Mr. Michael Saiti also initially admitted that there were times when parents asked him to cane their children as a disciplinary measure and he did it once in the presence of the parents. He was however not included as one of the witnesses for Kalibu Academy during the public hearing.

9.1.1.2. Pastor Mavutula on the other hand refuted all allegations of corporal punishment during the initial investigation in 2021. However, in his sworn statement in 2022, he indicates that he is aware that occasionally some parents are invited to the school in relation to disciplinary issues of their wards and try to administer corporal punishment on the wards right in front of the Head Teacher (Pastor Mavutula or the Director (Michael Howard) though the school discourages it. This confirms that corporal punishment is administered by parents but in the presence of Pastor Mavutula and pastor Howard. It also echoes Ms. Konono’s (Deputy headteacher) statement’s initial
statement that corporal punishment is administered by or in the presence of either the head Teacher; Pastor Mavutula or the Director; Pastor Howard.

9.1.1.3. It was observed that some notable changes occurred in the school rules at Kalibu Academy since the commencement of the investigation by the Commission in 2021. For example; when it came to spanking, paragraph 9.5 of Pastor Paisley’s sworn statement cites (PM 5) student rules that clearly state that teasing and bullying are prohibited and unacceptable at Kalibu Academy. The rules further provide that orders of the prefects must be deemed as orders by members of staff. However, our review of student rules which the Academy shared with the Commission during an initial fact-finding mission under Rule 10 states that “the Academy will administer spanking to students who persistently violate rules”. This shows that there has been an alteration to the student rules between August 2021 and September 2022.

9.1.1.14. In terms of manual labour, in Pastor Mavutula’s statement under paragraph 12, he states that the school had other forms of punishment such as manual labour and detention punishments that were taking place before 2015. However, the PM5 document that the school shared with the Commission in 2021 during the fact-finding mission under Rule 12 states that “Once again, DETENTION AND MANUAL LABOUR PUNISHMENTS will be enforced at Kalibu Academy”. This again shows that there has been a review/alteration of PM 5 between August 2021 to 6th September 2022. This quote however does not appear in the PM5 as submitted by Pastor Paisley.

9.1.1.15. Pastor Mavutula further states in paragraph 25 of his sworn statement, stated that school rules explicitly prohibit prefects from slapping, punching, pinching, or caning fellow students. He provided Evidence of Prefects under PM8a-c that were expelled in 2019 because of caning fellow students. However, In the original documents that Kalibu Academy shared with MHRC in 2021, PM5 under “Student Prefects” states that “Prefects have a right to punish erring students as well as having privileges as presented by the Academy. This statement however does not appear in the PM5 submitted by Pastor Paisley in 2022. This again is an indication that PM5 has undergone a review by the school.

9.1.1.16. Another notable change is that in Pastor Mavutula’s statement, there is no mention of the culture of secrecy. He mentions nothing about the culture of secrecy. However, one of the documents which the Academy shared with the Commission in 2021 during the fact-finding visit titled “RESPONSE TO ON-GOING INTERFERENCE IN KALIBU ACADEMY BY PARENTS”. The school requires parents to sign a document which agrees to not join in any form of criticism of Kalibu Academy. Other
evidence that the commission gathered indicates that many parents were not free to speak up against Kalibu because they were gagged under this policy.

9.1.4. These findings show that at the time of the commencement of the investigation according to the school rules, corporal punishment was allowed, manual labour was a form of punishment, prefects were given powers to punish fellow students and a culture of secrecy existed at the institution. However, regarding the changes in the governing documents of the school, the motive for these changes is unknown. Perhaps they were made to mask the reality on the ground. This may be particularly so because the changes were made after the investigation was in progress. To make it worse, the witnesses for Kalibu Academy failed to acknowledge the changes/ alterations in their sworn statements.

9.1.5. These alterations or amendments raise several questions to the Commission. Were they done in good faith or as a reaction to the investigation? Were they done to mask the reality on the ground? Or were they done for the public eye? If the alterations were done in good faith, the Commission would have been given notice. However, the fact that the changes were not acknowledged by Kalibu Academy’s witnesses to the Commission gives room to assume that the alterations were not done in good faith.

9.1.6. It should be noted that administering corporal punishment in any setting as a form of punishment is unacceptable and inconsistent with the rights and fundamental values of human dignity. In matters relating to children, the starting point is an affirmation of the principle of the best interests of the child. Section 23(1) of the Constitution provides that “All children, regardless of the circumstances of their birth, are entitled to equal treatment before the law, and the best interests and welfare of children shall be a primary consideration in all decisions affecting them.” This provision echoes the provisions of article 3(1) of the UN Convention on the Rights of the Child (CRC) which provides that: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” It follows therefore that all decisions and all actions taken regarding children must be taken primarily in the best interests of the child. Such actions or decisions include those on matters of discipline. The acts of the school in this case, therefore, are a violation of the above-stated provisions.

9.1.7. Further to this, the constitutional requirement in section 23(5) of the Constitution does not proscribe disciplining of children. All it says is that any form of discipline on children must not be hazardous, must not interfere with the child’s education, and must not be harmful to the child’s health or his or her physical, mental, spiritual, or social
development. The presumption presented by the Commission is that corporal punishment, which entails the deliberate and punitive use of force to cause some degree of pain, discomfort, or humiliation on the child, violates these constitutional imperatives. In addition, the forms of treatment or conduct envisaged in article 19(1) of the CRC clearly implicate the administration of corporal punishment to school children. Corporal punishment certainly constitutes “physical violence”, and it may give rise to “injury” or constitute “abuse” or “maltreatment” among others.

9.1.1.8. It should further be noted that corporal punishment amounts to a breach of human dignity because “not only does it violate the physical integrity of the person, it also dehumanises him or her. Article 28(2) of the Convention on the Rights of the Child provides that “State Parties [should] take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the…Convention.” In this regard, the Committee on the Rights of the Child (CRC) has stated that “[e]ducation must also be provided in a way that respects the strict limits on discipline reflected in article 28 (2) and promotes non-violence in school,” and it has “repeatedly made clear in its concluding observations that the use of corporal punishment does not respect the inherent dignity of the child nor the strict limits on school discipline …”.3 Connected with the right to human dignity under section 19(1), are the prohibitions of “torture of any kind or “cruel, inhuman or degrading treatment or punishment”,4 as well as the subjection of any person “to corporal punishment in connexion with any judicial proceedings or any other proceedings before any organ of the State.”5 These provisions make it clear, that corporal punishment, in all settings, is constitutionally prohibited in Malawi.

9.1.1.9. Section 25 (1) of the Constitution provides that all persons are entitled to education. From the investigations and information gathered, it was established that some victims of corporal punishment were scared of going back to Kalibu Academy because of the aggravated forms of corporal punishment that are administered and others dropped out of school thereby prohibiting learning and violating their right to education. The administration of corporal punishment in schools creates an environment of fear, inhibiting learning and leading to a low level of educational achievement. Some students are so afraid of facing corporal punishment that they refuse to return to school and, in some cases, they even drop out. The Commission received testimonies from parents whose children refused to go back to the school on account of fear of aggravated corporal punishment administered at the school. Even for those who continued with the same school, corporal punishment created an environment of fear

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3 Committee on the Rights of the Child, general comment No. 1, The aims of education, 17 April 2001, CRC/GC/2001/1, para. 8
4 Sec. 19(3)
5 Sec. 19(4)
for them, as a result, they had difficulties with concentration thereby promoting low levels of education as well as poor performance by the students. The Society for Adolescent Medicine has found that student victims of corporal punishment often develop "… difficulty with concentration, lowered school achievement, antisocial behavior, intense dislike of authority, somatic complaints, a tendency for school avoidance and school drop-out, and other evidence of negative high-risk adolescent behaviour." Human Rights Watch reports that corporal punishment does not only affect the victims themselves, but other students who witness the punishment: ‘the prevalent use of physical violence against students creates an overall threatening school atmosphere that impacts students' ability to perform academically.’ Based on these facts, it is clear that administering corporal punishment at school is a violation of the student’s right to education.

9.1.1.10. The Commission has further established that some victims of corporal punishment had sustained injuries from these degrading treatments. The Commission also heard numerous testimonies from students who suffered serious injuries as a result of corporal punishment and others who are psychologically affected. For instance, three male students who were canned at the school reported that they were severely injured and when they went home for a holiday they were taken to the hospital for treatment by their parents. The Commission also established that corporal punishment has also psychologically affected some students in the sense that some go and seek counselling services from those that provide such services. As Ashley Montague states "Any form of corporal punishment or 'spanking' is a violent attack upon another human being's integrity. The effect remains with the victim forever and becomes an unforgiving part of his or her personality—a massive frustration resulting in hostility which will seek expression in later life in violent acts towards others. The child, especially, learns to become the kind of human being that he or she has experienced". Research has also shown that the effects of corporal punishment, include cases of depression among child learners and that it generally induces a sense of fear rather than an understanding of the wrong done and the essential purpose of the disciplinary measure. Corporal punishment denudes the affected learners of their human dignity as it is humiliating. Administering corporal punishment in schools, in addition to the humiliation, loss of dignity, harm, and damage that it causes to the learner; is simply unconstitutional and generally unlawful both under domestic law and international law.

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9.1.1.11. Evidence gathered revealed that Kalibu Academy has primitive and oppressive rules for both teachers and students including parents. The Commission established that parents, teachers, and students are intimidated by some of the documentation they sign and the policies by which they abide. These documents include the student school rules which state that “The Academy will administer **SPANKING** to students who persistently violate rules and regulations behaving in the most undesirable way that will bring disgrace to the Academy.” It should be noted that these students become enslaved by these binding documents. In addition, some parents, teachers, and students are also verbally threatened by the senior members of staff. With these, most parents live in fear in the name of respecting school rules and discipline.

9.1.1.12. It was also established that there is a culture of secrecy at the school where parents are mandated to sign that they will not participate in any criticism of Kalibu Academy on any forums failing which the Academy will have the right to suspend or expel their child. This is signed on a form titled “RESPONSE TO ON-GOING INTERFERENCE IN KALIBU ACADEMY BY PARENTS”. The Commission established that some of the students who experience physical abuse at the hands of teachers at Kalibu Academy do not report such cases to their parents or any other authorities and the students suffer in silence. Worse still, some parents who have received reports of cases of physical abuse on their children, also do not report such incidences and opt to handle such matters on their own. This might create room for further abuse in the sense that no further action will be taken against the perpetrators and as a result, they continue abusing the children. Based on human rights frameworks as they relate to the protection of children from any form of abuse, it is clear that the rules and policies at Kalibu Academy are not only in line with Malawi government policy but also international human rights instruments.

9.1.1.13. The Commission also established that when recruiting new teachers, the Director would ask the teachers if they are tough. The definition of tough borders on cruelty and torture is contrary to Section 19 of the Constitution which states that: **No person shall be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment.** The conduct of the school administration in this instance also lays bare the point made by Ms. Noma Konono that teachers and staff at the school have never received adequate training on positive, child-friendly disciplinary techniques, and child protection.

9.1.2. **Whether Kalibu Academy administers hard labour as a form of punishment to students?**
9.1.2.1. Hard labour is the use of heavy manual work as punishment.\textsuperscript{8} Whilst child labour is Child labour refers to work done by children that puts their health, safety, development, and education at risk. The UN Convention on the Rights of the Child (CRC) stipulates that “children have the right to be protected from work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

9.1.2.2. Witnesses against Kalibu Academy mentioned the existence of a prison at the school which was a small room next to the cafeteria, where students would be locked up for hours at the discretion of the person administering the punishment which would include the Director, the Headmaster, the Deputy Headmistress, Teachers and Prefects. Students would be sent to prison for multiple offenses such as misbehaving, speaking of Chichewa, and being late for class amongst others. However, the headmaster denies this and alleges that this was a well-ventilated room used for plumbing. There was a time when a student chose to study in this room therefore, he coined the term prison as the name of this room.

9.1.2.3. The evidence presented under the facts and evidence shows that students at Kalibu are subjected to heavy labour such as the digging of sand by the river and carrying it up the fields in wheelbarrows, carrying rocks, and digging a swimming pool amongst others. Additionally, this work would at times take place during class time. For instance, in digging the swimming pool whose work amounted to hard labour, although all the witnesses deny the existence of any plan or project to construct a swimming pool at the school, a simple search on YouTube videos shared by Kalibu Academy itself in 2015 shows a teacher who was the Athletic Director admitting that the Director (Mr. Michael Howard) had promised to build a swimming pool. The video length is between 7:50 and 8:00 minutes and can be found https://youtu.be/zIPnWtpwYQc. Not only this but a simple search on the internet on google Maps shows that there is a big hole which former students would be assigned to dig as punishment and they were told it was a swimming pool. The picture below shows the location of the big hole which students were made to dig;

\footnotesize{\textsuperscript{8} Oxford English Dictionary}
9.1.2.4. This evidence points to the fact that the interest by witnesses for Kalibu Academy was merely directed at refuting allegations of administration of hard labour at the school to mask the truth but not necessarily presenting the facts on the ground.

9.1.2.5. In the legal provisions previously alluded to, namely section 23 of the Constitution, work that interferes with children’s/student’s education, is harmful to their physical health and social development is prohibited. This is in line with section 80 of the CCPJ Act which prohibits subjecting children to a social or customary practice that is harmful to their health or general development. These provisions are also a reflection of Article 32 of the United Nations Convention on the Rights of the Child and Article 15 of the African Charter on the Rights and Welfare of the Child. The heavy labour that students at Kalibu were exposed to not only interfered with their education by its taking place during class time but as witness KAT001 provided, the students were young and not built for such work, therefore, their health, social and general development was affected.

9.1.3. Whether the school infringed the religious rights of students?

9.1.3.1. Freedom of religion is the right one has to choose the religion that one will follow and worship without interference.⁹

9.1.3.2. Witnesses who testified against Kalibu Academy stated that it is mandatory to congregate at the church under Kalibu Ministries. Witnesses further allege they were forced to get baptized and speak in tongues. Although Pastor Howard’s statement tries to refute this, document PM5 where under the heading of “Dress Code”, Rule I states “Personal interpretations of the dress and appearance code cannot be accepted based

⁹ Merriam Webster Dictionary
on any religious beliefs or social customs whatsoever. If you cannot comply with this code then Kalibu Academy is not the Academic Institution for your child. No rules will be changed, amended or set aside because of any student’s religious or cultural standing”. Rule J under the same heading also states “Nobody’s personal religious affiliations or social customs will be tolerated at the Academy, and students will be required to attend and participate in all functions at the Academy whether spiritual or otherwise”.

9.1.3.3. Section 33 of the Constitution provides a right to freedom of conscience which includes the provision for every person in Malawi to have the freedom to practice any religion. This right was deemed by the High Court to be one that cannot be deviated from even if a state of emergency is declared in Kathumba v President of Malawi. The fact that Kalibu does not give students the freedom to practice their religion, shows that the school is in contravention of section 33.

9.1.3.4. Furthermore, section 5 of the Constitution provides that “any law or provision in contravention with any Constitutional provisions will be invalid to the extent of its inconsistency.” Therefore, Kalibu’s rules and regulations on religion are invalid as they are in breach of section 33 of the Constitution.

9.1.4. Whether there was sexual abuse taking place at the school?

9.1.4.1. Facts and evidence gathered indicate that the alleged teacher was not teaching the girl’s class and had never taught the alleged victim. This was verified with the school timetable and the teacher’s timetable. Efforts to verify the alleged victim’s timetable proved futile as she failed to bring forward her timetable to the Commission for verification. This was also verified during interviews that were conducted with one of her fellow students who were in the same class as the alleged victim, and teachers from the school. The alleged victim did not tell the truth when she stated that she was in Form 3B. The truth is that she was in Form 3C1.

9.1.4.2. There was also conflicting information provided by the alleged victim, the school, and the alleged perpetrator regarding the location of the classes the alleged perpetrator was teaching and his movement to the alleged victim’s class to teach. Facts and evidence established that the alleged teacher has a disability and the school allocated him a class close to the administration block to ease his movements. As such all his students followed him to that classroom for lessons. Additionally, the distance between the classes where the victim used to be and where the alleged perpetrator used to teach apart from other factors raised above cannot outweigh the possibility of the incident has occurred.

9.1.4.3. The victim alleged that she reported the matter to the administration, however, the investigations established that the matter was not reported to the administration or anyone apart from her mum when she came to pick her up when she went home. This
also raises doubts about the occurrence of the matter considering the gravity of the matter and the fact that in her statement, she indicated that she could not manage to deal with the situation. Further to this, the alleged victim stated that the Director of the school apologized to her at the assembly and the matter was later handled by the Chief Security Officer. It was established that the apology by the Director at the assembly was for a different matter and the Chief Security Officer handled a different matter and not the one in question.

9.1.4.4. The alleged victim informed the Commission that the perpetrator was arrested and she was taken to Police where she saw the perpetrator in a cell. The investigations established that perpetrator was not arrested as she alleged since no records of the same were found at Chileka Police. On the same, the victim did not visit the perpetrator at Chileka Police contrary to her allegations. Her story specifically at the police cell contradicts the actual evidence on the ground about the location of the cells at Chileka Police. Looking at the location of the cells and the distance between the cell and the counter, there is no other way one can see the inmates in the cell.

9.1.4.5. However, from the public notice and submission from the parents, teachers, and students, there were reported cases of child sexual abuse from members of staff including the Director himself. Though the school denied having child sexual abuse reports, the Commission recorded two cases of child sexual abuse which the school handled and disciplinary measures were taken against the teachers. According to the police, some parents and former students, two Mathematics teachers were dismissed on the grounds of child sexual abuse in 2020 and 2021.

9.1.4.6. The Commission established that the school takes disciplinary measures on all cases of child sexual abuse reported to the authorities.

9 KEY FINDINGS

The following are the key findings in relation to the objectives and other emerging issues with regard to the allegations:

10.1. Alleged Corporal Punishment

10.1.1. Kalibu Academy administers corporal punishment on students as an appropriate disciplinary measure for unruly behaviour. Corporal punishment was carried out through canning, spanking, donkey standing, standing in the same position for a long time, detention and prison.

10.1.2. Canning is the type of punishment that is mostly administered at the school. The school’s disciplinary issues book where the school records all disciplinary matters indicates that canning is mostly used as a measure for punishing and disciplining students.

10.1.3. Students at Kalibu Academy are forcibly subjected to undertake hard labour as a form of punishment. This includes digging a swimming pool, digging and carrying sand in a
wheelbarrow, cutting grass, carrying rocks and carrying bricks, watering flowers and plants, digging manures and applying them in the gardens, and cleaning toilets during learning hours. The physical labour would often be undertaken without any protective garments and would sometimes last for hours or even extend to days until the task is completed to the teacher’s satisfaction.

10.1.4. Students are subjected to corporal punishment for breaking school rules and unruly behaviours. These include smoking and being found in possession of Indian hemp, taking alcohol, being late to class or dining room, not doing homework, being rude to a teacher, and sneaking home.

10.1.5. Members of staff are responsible for administering the punishments. The notable members of staff are:

   (i) Pastor Michael Howard
   (ii) Pastor Paisley Mavutula
   (iii) Norma Konono
   (iv) Andrew Mhango
   (v) Sphiwe Masuku
   (vi) Silibaziso Chibvongodzi
   (vii) Manford Nhlane (now Deceased)
   (viii) Gilbert Nyanjaya.

10.1.6. School prefects also administer corporal punishment on fellow students. The prefects derive powers from the administration and when this occurs the administration defends them.

10.1.7. Some parents sign in the disciplinary issue book consenting or encouraging the school to administer corporal punishment to their children as a disciplinary measure.

10.1.8. At least one student was seriously injured as a result of corporal punishment. Moreover, Corporal punishment psychologically affected students some of whom sought psychosocial services in various facilities in the country including in Lilongwe.

10.1.9. There is a culture of secrecy at the school where parents are mandated to sign that they will not participate in any criticism of Kalibu Academy on any issue failure which, the Academy will have the right to suspend or expel their child.
10.1.10. There are notable inconsistencies in the information given by some witnesses for Kalibu Academy between what they told the Commission during one-on-one interviews at the commencement of the investigation and what they presented in their witness statements. It is in the Commission’s considered view that these inconsistencies came about in an attempt to mask the truth.

10.1.11. Kalibu Academy served the Commission with two sets of school rules and regulations. The first set of the school rules and regulations which the Commission obtained during the initial investigation had clauses permitting the administration of corporal punishment, Manual labour, and a culture of secrecy. However, the second set which was attached to Pastor Paisley’s witness statement had the clauses permitting corporal punishment, manual labour, absolute powers to school prefects, and a culture of secrecy removed.

10.1.12. In relation to 10.1.11 above, Kalibu Academy made some notable changes or amendments to its School Rules and Regulations without notifying the Commission or acknowledging it in their witness statements. The Commission is of the view that these changes, alterations, or amendments were not done in good faith.

10.1.13. There are reports on the school inspections conducted by the Ministry of Education (MoE) in 2016, 2019, and 2020 which established that students from Kalibu Academy school were subjected to corporal punishment as a disciplinary measure. Following these findings, the MOE recommended that management should abolish the administration of corporal punishments and other degrading treatments. However, the school continues administering corporal punishment.

10.1.14. Kalibu Academy restricts students from freely practicing their religion. This includes those practicing Christianity but of different denominations than that of Kalibu Academy.

10.1.15. Kalibu Academy does not have child-friendly reporting mechanisms such as Parents Teachers Association (PTA), Child Safeguarding Policy, and Student Council.

10.1.16. Teachers at Kalibu Academy lack knowledge of effective non-violent disciplinary measures. As a result, they use corporal punishment as an easy option for maintaining control and order for the students and forcing a confession.

10.1.17. Some claims in the sworn statements by witnesses for Kalibu Academy were exclusively absorbed in rebutting allegations of administration of corporal punishment and hard labour at the school and masking the truth but not necessarily presenting the facts on the ground regarding the administration of corporal punishment, Hard labour, right to religion and a
culture of secrecy. Thus, the totality of the evidence against Kalibu Academy attests to this fact.

10.1.18. Kalibu Academy’s conduct infringed the rights of students enshrined in the Constitution namely to personal liberty (section 18), human dignity (section 19), and the best interests of the child by administering punishment harmful to their physical, mental and social development (section 23), right to education (section 25) and right to freedom of conscience (section 33).

10.2. Alleged Child Sexual Abuse
10.2.1. The totality of the evidence presented to the Commission did not establish that child sexual abuse occurred at the school as alleged by the girl and her mother.

10.2.2. Even though there were allegations of sexual abuse at the school, evidence gathered failed to prove allegations of sexual abuse at the school as none of the witnesses testified on these allegations.

10.2.3. However, there were other reported cases of child sexual abuse at the school, the case of a teacher who was dismissed on grounds of holding a girl in the waist and wanting to kiss her, and another case of child sexual abuse which was reported by female learners at the school involving the teacher in question and the teacher was dismissed.

10.2.4. The school takes action once a case of sexual abuse has been reported to the authorities.

11.0 RECOMMENDATIONS
Pursuant to the powers conferred on it by section 130 of the Constitution, section 22 of the Human Rights Commission Act, the Commission makes the following recommendations:

11.1 KALIBU ACADEMY
11.1.1 Immediately and completely abolish the administration of corporal punishment.
11.1.2 Review the school rules, regulations, and policies to remove clauses permitting the administration of corporal punishment within 6 months of the release of this report.
11.1.3 Develop, implement and enforce a safeguarding policy that should adopt child-friendly reporting structures where students are empowered to freely voice out their concerns.
11.1.4 Adopt non-violent methods of disciplining all students to ensure that the classroom remains a safe and protective learning environment for the students.
11.1.5 Reinstate the previously dissolved Parent Teachers Association (PTA) and establish the Students Council within three months of the release of this report.
11.1.6 The school should ensure that members of staff are trained on child protection, positive
discipline techniques, and Anti sexual harassment within six months of the release of this report.

11.2 MINISTRY OF EDUCATION
11.2.1 Must Monitor compliance with recommendations made to Kalibu Academy
11.2.2 Must ensure that the National Teachers Council actively enforces the professional conduct of all teachers as provided for in the Education Act.
11.2.3 Must implement the recommendation in Article 19 of the Convention of the Rights of the Child and expedite the amendment of the Education Act of 2013 and other policies in order to explicitly prohibit administration of corporal punishment in all primary and secondary educational institutions, private and public as is the case in Zambia and South Africa who have completely prohibited corporal punishment in schools
11.2.4 Must ensure that all schools public or private have child safeguarding policies.

11.3 COMMITMENTS BY THE COMMISSION
The Commission commits to performing the following:
11.3.1 Train and sensitisie the school staff, teachers, and learners on child rights and child protection, including issues of corporal punishment and good governance. This should target all private schools.
11.3.2 Monitor the implementation of the recommendations made to both Kalibu Academy and the Ministry of Education
11.3.3 Monitor the implementation of the UPR recommendations on corporal punishment, and UNCRC and ACERWC 2017 and 2018 concluding observations which urges the Malawi Government to review relevant laws and expressly prohibit corporal punishment in all settings.
11.3.4 Advocate for the prohibition of corporal punishment in the laws as is the case to regional trends in Zambia and South Africa who have completely banned corporal punishment in Schools and other settings.

12.0 CONCLUSION
The Commission acknowledges that Kalibu Academy has already taken steps to address some of the recommendations that have been made by the Commission by reviewing its School Policies that provided for corporal punishment. This was discovered through the evidence that was provided by Kalibu Academy in its response to the allegations of corporal punishment. The Commission expects that such reforms shall be sustained beyond these investigations and that Kalibu Academy shall comply with human rights standards in the administration of discipline at
the school. The Commission will monitor all recommendations made to various stakeholders to ensure full protection of the rights of the child and that the best interests of the child is upheld in all decisions concerning children in Malawi.