



2018

ANNUAL REPORT



**CENTER FOR HUMAN RIGHTS
EDUCATION, ADVICE AND ASSISTANCE
(C.H.R.E.A.A)**



CHREAA

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EXECUTIVE DIRECTOR'S MESSAGE

The quest to ensure an equilibrium in the provision of human rights to all, without regard to social or economic status is the anchor on which CHREAA is founded.

As such, as an organization, we can only celebrate victory when access to legal representation is rendered to all and sundry, especially the vulnerable.

Scenarios where victims are unable to access justice, or at the least, gain legal representation, are some of the recent tragedies that we continue to face as a nation.

Which is why, as CHREAA, we have spent the last few years ensuring that justice is not only done, but that is seen to be done.

Our programmes have deliberately been targeted towards ensuring that citizens who would normally find it difficult to access justice.

We have also doubled on our efforts of raising awareness about legal rights among the underprivileged masses. This is to ensure that justice does not remain an enclave of the elite few, but of every Malawian citizen.

In the same vein, we have embarked on projects aimed at delegislation of laws that infringe upon basic human rights. And over the past years, we have scored success with the Rogue and Vagabond law which was deemed illegal after we filed an application via newspaper vendor Mayeso Gwanda.

The success of this case is being used as case study across the continent with several countries using it to mount their own challenges against unjust laws.

But, although this is the most prominent of our successes, we must also take a moment to celebrate the success of other projects too, such as the Malawi Bail Project which has achieved more than it set out to, thereby becoming a central point of the Malawi legal system.

The General Complaints too has registered considerable success since it was launched.

The objective of this project is that CHREAA receives complaints from clients who come to the office to seek legal advice and assistance after which CHREAA makes follow ups, mediates, and refers cases received to the relevant authorities for assistance.

This is integral part of the conflict-resolution mechanism as it accords justice to victims who cannot afford the formal legal system.



Victor Chagunyuka Mhangou

MALAWI BAIL PROJECT 2018-2019 ANNUAL REPORT HIGHLIGHTS

In 2012 CHREAA conducted research to understand why inmates that had committed minor/petty offences could not be released on bail. The findings of the research indicated that 75% of prisoners interviewed were not aware of the right to bail and had not been informed of the opportunity to apply for bail either at the police station or during their first court appearance at the magistrates' court. The findings further revealed that out of the remaining 25% of prisoners who were aware about their right to bail, 69% had applied for it but only 18% were successful. What was striking, was that that 82% of the offenders interviewed were either first time offenders, or had committed non-violent crimes and would therefore seemingly be, good candidates for bail.

The research clearly highlighted that understanding the court process, and the right to bail, in particular, can increase the accused's participation in the court process, and can result in more bail applications be made and granted. This legal empowerment of accused persons can in turn, tackle the issue of overcrowding in prisons. Prisons are exceeding capacity, at a disturbing level, which means the already limited prison budget cannot provide adequate nutrition, sanitation or health care for inmates, which contributes to the spread of infectious disease and in many cases death.

In order to help address the challenges stated, in 2014, CHREAA implemented a project called Malawi Bail Project (MBP). MBP has been running continually ever since. MBP was designed with an aim to empower poor people arrested of minor offences to apply for bail by using basic skills acquired through reading an easy to read bail guide booklet or from listening a bail application guide audio messages. The booklet and audio messages were designed to increase the amount of bail applications made and granted at the first court appearance/ police station prior to detention and consequently reduce the number of people unlawfully imprisoned in prolonged pre-trial detention in overcrowded prisons and police stations, across Malawi.



MPB COORDINATOR HANDING OVER BAIL APPLICATION BOOKLETS TO COURT CLERKS FOR ACCUSED PERSONS USE AT ONE OF THE COURTS' IN BLANTYRE



AN INTERNAL AND EXTERNAL SIDES ILLUSTRATION OF THE MALAWI BAIL PROJECT BAIL GUIDELINE BOOKLET

During 2017 to 2018 CHREAA fiscal year, the Malawi Bail Project registered a record of success by surpassing the MBP legal assistance target projections particularly on bail applications made and succeeded. In the year 17/18, the MBP reached out to a total of 31,102 detainees through the bail guide booklets and the bail guide audio messages. Out of the 31,102 detainees the MBP had reached 24,632 detainees were released through bail applications they had made on their own after either reading the bail guide booklet or listening to the installed bail audio message sound systems. It is important to note that the success could be attributed to availability of a stable funding the MBP had in period stated.

In the year 2018 to 2019 financial year, the MBP regular funding had elapsed. This meant CHREAA had to implement the MBP at a no-cost basis meaning it had to scale down with the project's activities instead of completely closing down the activity operations because of its significance. During the period at hand, the MBP reached out to a total of 3,716 detainees through the bail guide booklet, bail audio message systems and through provision of various forms of legal assistances. Out of a total of 3,716 detainees the MBP had reached, the project successfully facilitated releases of 1,891 detainees that had read the bail guide booklets, listened to the audio messages systems and underwent trials through camp courts the MBP project had facilitated with little resources it had mobilized.



PRISONERS IN RELAXING MOOD AT CHICHIRI PRISON IN BLANTYRE

ACCESS TO PARALEGAL AID SERVICES AT ONE STOP CENTRE

BACKGROUND

The One Stop Centre (OSC) provides services to children, women and men who are survivors of physical and sexual violence. It is a government initiative based at Queen Elizabeth Central Hospital in Blantyre, Malawi. The centre consists of four service departments: medical, police, paralegal and social welfare.

Children can go to the centre as victims on their own or in the company of their guardians. They are also referred to the centre when they attend the hospital exhibiting signs of physical/sexual abuse.

When children arrive at the centre, they receive a medical check-up and afterwards their cases are referred to the police department available at the same centre for further action.

Between January and December 2016, the centre dealt with 396 cases of which only 5 percent of cases which were reported to the Police resulted in trial. Disappointingly, the numbers of children seen through OSC has been increasing on an annual basis. For example, in 2017, OSC dealt with 446 cases while the OSC dealt with 540 cases in 2018.

Sadly, over 90% of these cases are discontinued by the police due to lack of proper investigation, lack tangible evidence gathered for successful prosecution or are withdrawn by family members who do not wish to testify against other family members.

JUSTIFICATION

In 2018, owing to a high prevalence rate of sexual violence offences and lack of trial progress on the sexual violence cases against children, CHREAA in collaboration with partners at OSC (social welfare, police, QECH) designed a project with interventions that aimed at combating the increasing cases of sexual violence offences in Blantyre, particularly against children.

Apart from aiming to end the increasing cases of child sexual abuse, the project was also designed to address challenges victimised children of sexual violence face when they are or about to access justice and health services when sexually assaulted.

MAIN GOAL

Protection of children and delivery of justice to victims of sexual abuse in particular children.

ACTIVITIES

Police Officers training on effective investigation in sexual and gender based violence offences.



POLICE OFFICERS AND CHILD PROTECTION OFFICERS STANDING FOR A GROUP PHOTO DURING THEIR TRAINING OF FORENSIC EVIDENCE IN GENDER AND SEXUAL OFFENCES AGAINST CHILDREN



POLICE OFFICERS AND CHILD PROTECTION OFFICERS LISTENING TO A PRESENTATION DURING A TRAINING ON FORENSIC EVIDENCE IN GENDER AND SEXUAL OFFENCES AGAINST CHILDREN

- Social welfare officers' trainings in sexual and gender based violence offences



A CROSS SECTION OF CHILD PROTECTION OFFICERS ATTENDING A TRAINING ON EFFECTIVE PROTECTION OF VULNERABLE CHILDREN AGAINST SEXUAL ABUSE

- Theatrical performances in public school and communities against sexual violence offences against children.



A SOCIAL WELFARE OFFICER EMPHASIZING A POINT ON DIFFERENT FORMS OF SEXUAL ABUSE AGAINST CHILDREN AT NAMATAPA PRIMARY SCHOOL DURING A THEATRICAL PERFORMANCE ON CHILD RIGHTS BY NKHOKWE ARTS



IN ACTION: NKHOKWE ARTS SENSITIZING PUPILS AT CATHOLIC INSTITUTE PRIMARY SCHOOL IN BLANTYRE ON THE IMPORTANCE OF REPORTING SEXUAL VIOLENCE OFFENCES AGAINST THEM



A GROUP PHOTOGRAPH BY COMMUNITY AND RELIGIOUS LEADERS IN NDIRANDE TOWNSHIP DURING A JOINT STAKEHOLDERS MEETING WITH CHREAA ON PROTECTING CHILDREN FROM SEXUAL VIOLENCE OFFENCES IN THE TOWNSHIP

- Toll free line to easy linkages by victims of sexual violence offences with CHREAA and other service providers at One Stop Centre
- Magistrates training on effective investigation in sexual and gender based violence offences.
- Production of IEC materials (poster, booklets etc.) against sexual violence offences against children

KEY SUCCESSSES

The following are key successes the project has achieved during the 2017-2019 project implementation period;

- A total of 540 cases of sexual violence offences against children were reported and victims were assisted by medical, police, paralegal and social welfare as service providers at One Stop Centre. This represents a 17% high increase of reported cases at OSC against total number of reported cases (446) in the previous year, an indicator that people are now embracing a culture by the project campaign to report cases of sexual violence offences against children for prosecution.
- An 8% increase in total number of secured convictions against offenders of sexual violence cases has been registered in the reported period. That's 53 cases of secured convictions against 10 in the previous year.
- 30.1 % reduction of withdraws on cases of sexual violence against children during trial. That is a decrease of withdrawals from 46.5% previous year to 6.4% in the past year. This could largely be attributed to the enhanced civic education by the project towards the general public on the demerits and dangers of withdrawing cases of sexual violence against children.

In summary, as a long term activity, CHREAA is pleased with the impact the project has had in influencing change of attitude among most Malawians to one that has embraced a culture that has an interest in ending cases of sexual violence against children through vigilant safeguarding children from the same and consistent reporting of such cases for prosecution.

GENERAL COMPLAINTS

The Centre for Human Rights Education Advice and Assistance (CHREAA) receives complaints from clients who comes to the office to seek legal advice and assistance.

As an organisation, CHREAA has capacity to make follow ups, mediate, and refer cases received to the relevant authorities for assistance.

CHREAA has been receiving almost all kinds of complaints, both civil as well as criminal.

Below is the list of cases and how CHREAA has been intervening.

1. LABOUR ISSUES

This category is dealt with by referring the cases to the Labour Office because the Labour Office has the mandate to handle the same. Once a case has been referred to the labour office, CHREAA only makes follow ups where necessary. In instances where the client has reported that the labour office is not properly assisting them, they are advised to ask a referral from the labour office to the Industrial Relations Court. CHREAA managed to receive and assist **47** cases and they were helped accordingly.

2. FAMILY DISPUTES

CHREAA also receives issues concerning family disputes which includes child maintenance, property distribution, child custody and divorce. All cases to do with children are referred to the child justice court and on the other hand all other cases are also referred to the relevant courts. CHREAA through the paralegals follow up the case up to the end of the trial. We received 31 cases to do with the same and they were assisted without facing any challenge.

3. LAND DISPUTES

CHREAA has also been receiving and helping matters pertaining to land disputes. When the aggrieved party present its complaint, we summon the other party for mediation and if there seem to be no cooperation between the parties, the matters were referred to Land and Housing Offices. As a mediator, CHREAA does follow-ups with the relevant authorities and where there are delays, a referral letter to take the matter to court was asked. Below are some of the complainants that came to seek help at our organisation. 12 cases

4. GENOCIDE ACCUSATIONS

Complaints under the above sub-heading were also presented to CHREAA for help. The accused were advised to go back to their homes as they were at large so that the matter should be sorted out between them and their relatives amicably with help from their village chiefs since they were being threatened to be killed by relatives for the alleged crimes. CHREAA therefore made sure that the accused got referred to the relevant authorities for mediation. In this respect CHREAA received 12 cases to do with the same, and the only challenge we face with this issue is lack of enough funds for court proceedings since genocide matters can only be tried by the high court.

5. MATTER OF (victim of road accident)

CHREAA also has a capacity of helping victims of above mentioned matter. When clients come, CHREAA provides legal advice, then we help them with referral letters to the relevant authorities for assistance. CHREAA has assisted 8 cases without facing any challenge.

6. Police abuse (Rogue and Vagabond)

CHREAA has also been receiving complaints from victims of police sweeping exercises. Despite that section 184(1) (c) of the Penal Code was declared invalid in the case of Mayeso Gwanda police are using other sections like being idle and disorderly...in conducting sweeping exercises.

The pictures below show how brutally some people were injured by the police.



The matter of the picture above was reported to the media to expose the acts done by the police.

GENERAL COMPLAINTS RECEIVED THROUGH CHREAA TOLL FREE MOBILE CELPHONE

CHREAA bough has two toll free mobile phones for those who cannot afford to come to CHREAA offices due to long distances. The toll free lines help in a way that we still reach people who cannot afford to come directly to our offices. The toll free lines are also used by those that need legal assistance after CHREAA working hours, i.e. when they are in the hands of the police. CHREAA has so far managed to help about 89 clients on toll free lines.

These clients complain about the same complaints listed above. The use of the toll free gadgets only depicts the effectiveness of the toll free lines because we receive complaints from country wide.

The toll free mobile phones are basically used for helping the clients with legal knowledge when in conflict with the law, reporting cases to CHREAA and on the other hand clients use the same for giving feedback back to CHREAA on their cases after being assisted.

The total number of clients assisted by CHREAA in 2018 got up to 199. These were assisted successfully without facing any challenge apart from that of lack of enough funds for court processes. Nevertheless, we managed to assist with our legal knowledge on how to go about their complaint.

DECRIMINALISATION OF VAGRANCY AND PROMOTION AND PROTECTION OF RIGHTS OF SEX WORKERS

With funding from the Open Society Foundation (OSF), Open Society Initiative for Southern Africa (OSISA) and in partnership with Southern African Litigation Centre (SALC), CHREAA is implementing the Decriminalisation of Vagrancy Offences and Promotion and Protection of Rights of Sex Workers in Malawi project.

The goal of the project is to provide law reform initiatives aimed at the decriminalisation/declassification of minor nuisance-related offences in Malawi and the region and reduction in human rights violations by law enforcement agencies and health service providers.

The decriminalisation of vagrancy laws campaign focuses on advocacy with government to consider law reforms, engagement of all stakeholders in consultation meetings with communities in all the regions in Malawi, media campaigns, litigation and trainings.

The Malawi Penal Code provides for various nuisance-related offences, including common nuisances (s168); gaming and betting offences (s169-177); idle and disorderly persons (s180); conduct likely to cause breach of the peace (s181); use of insulting language (s182); nuisances by drunken persons (s183); and rogue and vagabonds (s184).

Many of these offences reflect fundamental defects of vagueness, over breadth, disproportionality, and arbitrariness in application.

Some create a reverse onus, forcing the accused to prove their innocence, while others define an offence based upon the status of a person instead of upon their actions.

These offences are sometimes used indiscriminately to arrest persons, contributing to overcrowding in police cells and placing a strain on resources in the criminal justice system.

These laws tend to give law enforcement officials a wide discretion in application, which increases the vulnerability of persons living in poverty to violence and harassment.

Arrests under these vagrancy laws have been effected in most cases in what are called sweeping exercises by the police, which are believed to reduce crime and target would be offenders.

CHREAA is currently challenging the police's practice of conducting mass arrests (sweeping exercises) as one way of crime prevention in the case of *The State v Officer In-charge, Kasungu Police Station and Inspector General of Police. Ex parte Henry Banda and 2 others* (Judicial Review Case No.28 of 2018 at Zomba District Registry).

KEY ACHIEVEMENTS

Declaration of section 184(1) (c) of the Penal Code as unconstitutional.

In the case of *Mayeso Gwanda v Republic* Miscellaneous Application No. 5 of 2015 (Being Criminal Case No. 444 of 2015 at Blantyre Magistrate Court).

The applicant in this case challenged the constitutionality of the offence of rogue and vagabond as provided under section 184 (1) (c) of the Penal Code.

The applicant contended that section 184(1) (c) in itself and in its effect violated his constitutional rights to dignity, freedom from inhuman and

degrading treatment and punishment: freedom and security of person; freedom from discrimination and equal protection of the law; privacy and freedom of movement.

In addition to this the applicant also contended that the section was broad as such it gave too much discretion to police officers when deciding who to arrest. The court ruled in favor of the applicant and declared the offence unconstitutional.

Development and launch of Public Prosecutions Guidelines on Nuisance Related Offences Guidelines

CHREAA and the office of the Director of Public Prosecutions developed and launched Public Prosecutions Guidelines on Nuisance Related Offences.

The guidelines are meant to reduce human rights violations by law enforcement agencies when enforcing minor nuisance-related offences.

These guidelines were issued by the Director of Public Prosecutions under section 76 (2) of the Criminal Procedure and Evidence Code to guide all prosecutors in the prosecution of such nuisance-related cases.

The guidelines provide for the specific elements, specific guidelines and specific charge sheets for the following offences; Common Nuisance (section

168), Conduct Likely to Cause a Breach of Peace (sections 181 and 182), Idle and Disorderly Persons (section 180), Rogues and Vagabonds (section 184).



In the case of Republic and Pempho Banda and 18 others (Review Case No.58 of 2016) in Zomba.

The applicants in the case were convicted by a Magistrate's Court sitting at Dedza of the offence of living on earnings of prostitution and they were ordered to pay a fine of K7,000 each.

The applicants, among other things, called upon the High Court to interpret section 146 of the Penal Code which deals with living on the earnings of prostitution.

The applicants argued that the offence does not target sex workers but those people who exploit sex workers.

The High Court found in favour of the Applicants and held that section 146 of the Penal Code is intended to protect sex workers from abuse.

The court also went further to comment on how sex workers always fall victim of police abuse when they are arrested during the sweeping exercises and in most cases their male counterparts are left out.

The court was of the opinion that the arrest of sex workers in this particular case, was just to embarrass and harass them, which is unconstitutional.

Toll Free Line (331)

CHREAA, through its toll free line, has been able to educate, provide advice and assistance to sex workers from all over the country. CHREAA received a total of 300 calls and some cases were referred to police the police more especially at the Victim Support Unit.

Increased sex workers' rights awareness

CHREAA has managed to increase awareness on the rights of sex workers among the police, health workers and the general public. This has resulted in the reduction of violations of the rights of sex workers.

TB SCREENING, PREVENTION AND CONTROL IN MALAWI PRISONS AND REFORMATORY CENTRES CAMPAIGN – CHIKWAWA PRISON

CHREAA with funding from the AIDS and Rights Alliance for Southern Africa (ARASA) implemented a project on 'TB screening, prevention and control in Malawi prisons and reformatory centres.'

The goal of the project was to advocate for TB screening upon entry into prison as well as routine screening, prevention and control measures in prison. The project was designed to increase awareness of the TB-related risks facing prisoners and also to increase advocacy for TB screening and quality health services by prisoners and CSOs.



BACKGROUND

Malawi prisons are congested with inadequate ventilation, provide inmates with an inadequate diet which frequently results in malnutrition, and have a higher prevalence of HIV than the surrounding communities.

As a consequence, these prisons are a high prevalence setting for tuberculosis (TB).

Due to a lack of resources, discrimination and stigma, Malawi prisoners are a neglected and vulnerable population and have limited access to basic healthcare. This places the prison population at higher risk of complications

and mortality from TB due to delays in diagnosis and treatment.

TB in prisons affects the general population through transmission that occurs when prisoners are moved (upon being released or transferred to another facility) and via prison staff and visitors.

Prison staff and visitors should be considered part of the prison population with respect to the transmission of infectious diseases.

Consequently, analysts recognise that public health strategies to curb TB should be uniform and comprehensive to include prisons, since they are communities that have higher TB prevalence and incidence rates.

In addition to this, in the year 2018, several cases of Multi-Drug Resistant (MDR) TB emerged at Maula and Mzimba prisons.

PROJECT ACTIVITIES

In order to increase awareness of TB-related risks facing prisoners among key influencers and decision makers, CHREAA conducted an open day campaign at Chikwawa Prison and Bvumbwe Reformatory Centre.



VICTOR MHANGO ADDRESSING PART OF THE AUDIENCE DURING THE AWARENESS RAISING EVENT.

CHREAA also increased advocacy for TB and quality health services by prisoners and CSOs through the establishment of Prison Health Groups at Chikwawa Prison, media advocacy campaign and prison open day campaign at Chikwawa Prison.



PART OF THE AUDIENCE DURING THE PRISON OPEN DAY CAMPAIGN AT CHIKWAWA PRISON.

ESTABLISHING ACCESS TO PSYCHOSOCIAL COUNSELING AND SUPPORT SERVICES FOR INMATES PROJECT

BACKGROUND

Just like most countries in the region, Malawi still arrests people with mental and psychosocial conditions who are alleged to have committed an offence.

This form of incarceration has been decried as one of the harshest forms of incarceration as people who are imprisoned under such a system barely have opportunities or legal capacity of eventually accessing legal redress.

This holds true for even minor offences where a person may have pelted windows with stones. Often times, they are forgotten by the system thereby being condemned to perpetual arrest.

Already, the main prison facilities in Malawi in particular Chichiri, Zomba and Bvumbwe Prisons are 250% over capacity. For example, Chichiri Prison was designed to accommodate not more than 800 prisoners but on average at present it accommodates 1900 plus prisoners.

Further, most health experts further contend that being in prison, particularly those that are congested or with appalling conditions, exposes one to various mental and psychosocial challenges. A project implemented by MSF in 2015 on prisoners' mental health in Bvumbwe and Chichiri prisons confirmed that due to appalling prisons environment in Malawi, a lot of people also develop mental health challenges while in prison.

JUSTIFICATION

With no clear government plans in the near future to rehabilitate or expand prisons, both social workers and health experts kept recommending the introduction of psychosocial counselling/therapies and support services in the prisons citing them as the only effective system to assist prisoners with mental challenges but also as a mechanism that can reduce recidivism through offering of psycho social counselling to prisoners that are close to finish their sentences to avoid reoffending.

PROJECT GOAL

Rehabilitate prisoners through provision of psychosocial counselling and support services and ensure that prisoners with mental health problems are not committed to prisons.

ACTIVITIES

- Psychosocial counselling sessions at Chichiri, Zomba and Bvumbwe Prisons for inmates suspected to have mental challenges and those pending to finish serving their prison sentences



MRS PRISCA KAIMA A PSYCHOSOCIAL COUNSELLING EXPERT FROM MILLENIUM UNIVERSITY CONDUCTING A COUNSELLING SESSION FOR YOUNG OFFENDERS WHO WERE DUE FOR RELEASE AT BVUMBWE PRISON. BELOW MRS KAIMA CONDUCTING A SIMILAR SESSION AT ZOMBA PRISON



- Screening sessions for prisoners on mental health, conveyance of prisoners with mental health disorders to mental health hospitals

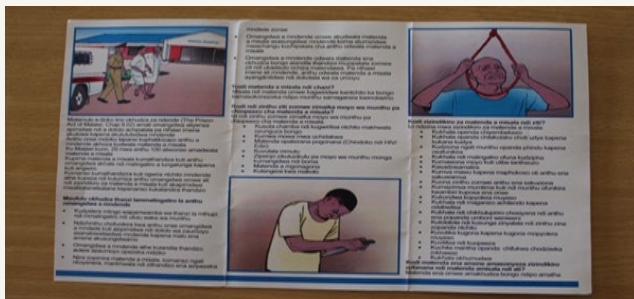


PRISONERS READY TO BE SCREENED BY NURSES DURING A MASS HEALTH SCREENING EXERCISE AT BVUMBWE PRISON

- Advocacy; production of IEC materials i.e. posters, brochures etc.



A FRONT PAGE ILLUSTRATION OF A BROCHURE ON HEALTH RIGHTS FOR PRISONERS WITH MENTAL DISORDERS. *BELOW: INSIDE COVER OF THE BROCHURE*



- Production and hosting of radio adverts and programmes in advocacy for inclusion of a care provision in the mental health policy for prisoners with mental health challenges.



VICTOR MHANGO, CHREAA EXECUTIVE DIRECTOR STRESSING A POINT ON PRISONERS MENTAL HEALTH ON TIMES TELEVISION

SPECIFIC OBJECTIVES

- To initiate psychosocial counselling/therapies and support services for all prisoners in Chichiri, Bvumbwe and Zomba Prison in Malawi with an intention of reforming them into valuable citizens before reintegrating into the society.
- To initiate mental screening and detection systems aimed at removing prisoners with mental disorders from the criminal justice system and litigate for their release or where possible facilitate their transfer to mental hospital
- To train criminal justice agencies i.e. magistrates, police and prison officers on mental health issues which have a bearing on prisoners
- To advocate for an inclusion of a care provision for persons suspected/certified with mental disorders and adoption of the mental health policy in Malawi.
- To advocate African Commission's member states domesticate laws that end imprisonment of prisoners suspected or certified with mental disorders in their respective countries.

GRANT PERIOD AND FUNDER

The project was implemented from March 2018 to February 2019, and it was funded by Open Society Initiative for Southern Africa (OSISA).

KEY SUCCESSES

The following are key successes the project has achieved after the one-year project implementation period;

- A total of 508 prisoners due for releases underwent respective intensive counselling sessions aimed at preparing their minds' not to reoffend when released but reforming them into valuable citizens before reintegrating into the society.
- A record total of 3686 prisoners were successfully screened on the state of their mental health at Chichiri, Zomba and Bvumbwe Prisons of which;
- 156 prisoners were referred for diagnostic assessments for being suspected to have mental challenges or disorders,
- 44 prisoners were certified to have different forms of mental challenges and were immediately put on treatment,
- 41 prisoners were put on intensive counselling sessions since their assessments indicated they risked no serious threats of plunging into mental health disorders but required psychosocial counselling.

Overall, the project achieved its main goal of rehabilitating prisoners through provision of psychosocial counselling and support services and ensure that prisoners with mental health problems are not committed to prisons.

Beyond the goal, the project further unprecedentedly established an opportunity for prisoners with mental health challenges to be regularly attended, counselled and treated by qualified mental health clinicians and professional psychosocial counsellors right in prisons.

CASE SUMMARY OF ONGOING COURT CASES

The State v Officer In-charge, Kasungu Police Station and Inspector General of Police Exparte Henry Banda and 2 Others (Judicial Review Case No.28 of 2018 at Zomba District Registry).

The Applicants in this case are Henry Banda, Ishmael Mwale and Sikweya Supiyani who were arrested in Kasungu District at around 11 pm on 27 March 2018 after a Malawi police a sweeping exercise in the District. At the time of their arrest, Banda was working as a DJ at a local bar, Mwale was having a drink at a club, and Supiyani was selling Kanyenya (fish kebabs) at a bar. They were not informed of the reasons of their arrest, despite specifically demanding this information from the police. After spending a night in police cells, they were taken to court, charged and convicted of the offence of being a rogue and vagabond contrary to section 184(1)(b) of the Penal Code upon their own guilty plea. Through CHREAA they brought Judicial Review Proceedings challenging the police indiscriminate arrest (sweeping exercise), the failure by the police to promptly give reasons for their arrest and detention and the police conduct in forcing them to plead guilty to the offence of rogue and vagabond. They argue that They argue that They have launched a separate case challenging the constitutionality of section 184(1)(b) of the Penal Code which provides that “every suspected person or reputed thief who has no visible means of subsistence and cannot give a good account of himself” shall be deemed a rogue and vagabond. The Applicants argue that the police indiscriminate sweeping exercise and or arrest is unconstitutional in that it violated their right to freedom of movement, right to dignity, the right to personal liberty and the right to economic activity as provided and guaranteed under sections 39, 19, 18 and 29 of the Constitution of the Republic of Malawi. They further argue that the police indiscriminate sweeping exercise and arrest contravenes its duty to protect human rights under sections 15(1) and 153(1) of the Constitution of the Republic of Malawi. They also argue that the failure by the police to promptly inform them of the charges against them at the time of arrest and detention is unconstitutional and unlawful in that it violated the right to fair trial provided and guaranteed under section 42(1)(a) of the Constitution of the Republic of Malawi and that the conduct of the police in forcing them at the police station to plead guilty to the offence of rogue and vagabond and threatening them of possible detention in prison if they failed to do so is unconstitutional and unlawful in that it violated their right to fair trial as provided and guaranteed under section 42(2) (c) of the Constitution of the Republic of Malawi. They seek inter alia, a declaration that the police indiscriminate sweeping exercise and or arrest is unconstitutional, unlawful and contrary to sections 39, 19, 18 and 29 of the Constitution of the Republic of Malawi.

HENRY BANDA AND 7 OTHERS –VS–THE STATE

In this case, the same applicants in the matter sweeping exercise case brought an application for criminal review of the court's decision to convict them of the offence of rogue and vagabond under section 184(1) (b) of the Penal Code. The Applicants argue inter alia that the offence of being a rogue and vagabond as contained in section 184(1)(b) of the Penal Code is unconstitutional as it is in itself vague and ambiguous and therefore arbitrary in application. They also argue that the offence of being a rogue and vagabond as contained in section 184(1)(b) of the Penal Code in itself and in its general application violates one or more of the rights enshrined in the Constitution of the Republic of Malawi, including sections 18, 19(1), .the Chief Justice for certification as a Constitutional matter.

RICHARD BANDA & OTHERS –VS- THE ATTORNEY GENERAL AND OTHERS CIVIL CAUSE NO. 120 OF 2018

The Claimants in this case are 6 MDR-TB patients who were prisoners at the time of filing the application. They are challenging their detention in prison whilst they are undergoing treatment for MDR-TB. They applied for an order of injunction before Justice Kapindu restraining the prisons and the hospitals in which they were receiving treatment, from releasing them back into prison whilst they are undergoing treatment. They argued inter alia that the conditions of detention in prison are wholly inadequate to provide for their humane and dignified detention of and other persons living with MDR-TB and for their safe and dignified treatment and recovery. When released back into prison will be subjected to one monotonous meal a day comprising of nsima and beans or pigeon peas, which is not sufficient nutrition in their condition. They also argued that their detention in prison while undergoing treatment for multi-drug resistant tuberculosis is a violation of their constitutional rights as well as the rights of all inmates and persons working in the prisons to life, human dignity, freedom from cruel, inhuman and degrading treatment, and their rights as detained persons to be held under conditions consistent with human dignity in terms of sections 16, 19, and 42 of the Constitution. At the time of the application of the order of injunction, the Claimants were being chained and handcuffed to their hospital beds. The claimants further sought an order restraining the defendants from using handcuffs, chains or shackles on the Claimants, whilst they are undergoing treatment at the hospital as it amounts to torture, cruel, inhuman and degrading treatment. The Court granted the order of injunction restraining the defendants from handcuffing and chaining the Claimants to their beds and further restrained the hospital and the prisons from releasing the Claimants from the hospital until the order of the court. The Claimants but one have been released back to their homes by other courts who sat in review

of their conviction and sentences. They were released on medical grounds and that their medical condition was a public health issue, however, the case before Justice Kapindu is still pending.

THE STATE –VS- MR KAYEMBE, THE OFFICER IN-CHARGE CHISEPO POLICE UNIT, THE INSPECTOR GENERAL OF POLICE AND THE ATTORNEY GENERAL EX-PARTE: B.S (A MINOR THROUGH HER MOTHER AND NEXT FRIEND M.K)

Judicial Review No. 5 of 2019

In this case a minor, 14 years old, was allegedly sexually assaulted in police custody by a police officer when she was arrested and detained in police custody for allegedly insulting an elderly man. The minor brought a judicial review application through her mother challenging the arrest and detention. She argues that the arrest was unlawful as it was contrary to section 23(1) of the Constitution and section 89 of the child care protection and justice Act. She further argues that the arrest and detention was unlawful as it violated sections 23(5)(c), and 42 (2)(g)(vi) of the constitution and therefore violated her right to dignity, liberty and freedom from torture inhuman and degrading treatment or punishment contrary to sections 18, 19(1) and 19(3) of the Constitution. She also argues that the sexual assault was as a result of failure and neglect of duty by the Respondents under sections 15 and 153 of the Constitution and failure to comply with the provisions of section 23 of the constitution and sections 89 and 95 and 96 of the Child Care Protection and Justice Act. She seeks from the court, inter alia a declaration that the decision to arrest and detain her was unlawful as it violated her right to dignity, liberty and freedom from torture, cruel, inhuman and degrading treatment which is contrary to sections 18, 19(1) and 19(3) of the Constitution, a declaration that the decision to arrest the her was unlawful as it did not take into account the best interests of a child which is contrary to the provisions of section 23(1) of the Constitution and Section 89 of the Child Care Protection and Justice Act, a declaration that the decision to detain the Applicant in a police cell was unlawful as it did not comply with sections 95 and 96 of the Child Care Protection and Justice Act, a declaration that the Respondents failed or neglected their duty under sections 15 and 153 of the Constitution when the she was sexually assaulted in their custody; a declaration that the failure or neglect of duty by the Respondents resulted in the sexual assault on the Applicant which violated her right to dignity and freedom from torture, cruel, inhuman and degrading treatment and punishment under section 18 and 19(3) of the Constitution respectively and an order of compensation for violation of her rights and neglect of d

THE STATE V WILLIAS DAUDI

The Applicant was convicted of the offence of robbery contrary to section 301 of

the Penal Code. The particulars of the offence averred that the Applicant on the night of the 25th February, 2015 at around 2200 hours robbed Rajan Prashant one Samsung laptop, Ipad, Ipad, wallet containing MK20, 000 cash, card, Nokia cell phone, all valued at Mk600, 000 at or immediately before or immediately after the time of the said robber used or threatened to use actual violence to the said Rajan Prashant in order to obtain the things stolen. The Applicant pleaded not guilty to the charges whereupon the State called witnesses and the convict was convicted after a full trial and he was sentenced to 9 imprisonment with hard labour. He brought criminal review proceedings arguing that the lower court erred in law in failing to inform him of his right to legal representation as required under the Constitution. He argues further that the lower court erred in failing to advise him to seek legal representation as he was facing a capital charge. He also argued that his trial without legal representation even at the expense of the State was a violation of his right to equality as persons charged with manslaughter which is a lesser serious charge than robbery are provided legal representation by the State. The trial was generally unfair and violated his right to a fair trial enshrined in the Malawi Constitution. The matter was certified as a Constitutional case by the Chief Justice.

SUCCESSFUL CASES

R V CHILDREN IN DETENTION AT BVUMBWE AND KACHERE PRISONS (Review Case No. 21 of 2017) [2018] MWHC 792 (05 June 2018)

In February 2018, CHREAA brought a case challenging the incarceration of children in prison. The application was argued by Fostino Maele and supported by the Centre for Human Rights Education, Advice and Assistance, Youth Watch Society and the Southern Africa Litigation Centre. The application and judgment was premised on the constitutional provision which says that children in conflict with the law should be imprisoned only as last resort, should be separated from adults, and should be treated in a manner that is consistent with their dignity and best interests. The court ordered that all children detained at Kachere and Bvumbwe prisons pending trial should be transferred to safety homes within 30 days and that those children who were found liable by a competent court be transferred to a reformatory home within 30 days. In the absence of designated safety homes, children were released into the custody of their parents.

The Child Care, Protection and Justice Act of 2010 provides that only in exceptional circumstances should a child be detained before a finding of responsibility for commission of an offence. Under exceptional circumstances a child can be detained in a safety home or reformatory centre. The Act further states that no child shall be imprisoned for any offence. The court accordingly affirmed that it was illegal to detain or remand a child in a prison. The law further

specifically provides that children in conflict with the law should be brought before designated Child Justice Centres and not ordinary magistrates' courts.

The application related specifically to the detention of children in Kachere and Bvumbwe prisons. The Inspectorate of Prisons in its 2016 report to Parliament noted that Kachere prison "is a health disaster in waiting". The report noted several concerns including a severe shortage of food including days where inmates receive no food, the risk of disease outbreak, the risk of the building collapsing, and a shortage of blankets. Regarding Bvumbwe prison, the Inspectorate of Prisons' report noted that cells were poorly ventilated and toilets inside cells were without running water.



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