2022 ANNUAL REPORT

CENTRE FOR HUMAN RIGHTS
EDUCATION ADVICE AND ASSISTANCE

CONTENTS

EXECUTIVE DIRECTOR STATEMENT

Dear colleagues, stakeholders, and supporters,

As we come to the end of another year, I would like to express my deepest gratitude to each and every one of you for your commitment and dedication to our organization's mission. This year has been filled with challenges, but together we have persevered and made progress towards ensuring that the rights of those who are incarcerated are respected and protected.

To our staff, I want to thank you for your tireless efforts to support our clients and advance our advocacy work. Your hard work, creativity, and passion have been essential to our success, and I am proud to lead such a dedicated team.

To our stakeholders, including our donors, volunteers, partner organizations, and allies in government, I want to express my gratitude for your ongoing support. Your contributions have enabled us to expand our reach and impact, and we look forward to continuing to work with you in the year ahead.

Looking forward, I am excited about the opportunities and challenges that the new year will bring. We have ambitious goals for advancing prison reform, including reducing mass incarceration, improving conditions of confinement, and promoting alternatives to incarceration. I am confident that with your continued commitment and collaboration, we can make significant progress towards these goals.

As we come to the end of another year, I want to take a moment to reflect on all that we have accomplished together. CHREAA has continued to make strides in advocating for the humane treatment of incarcerated individuals, and none of this would have been possible without the dedication and commitment of everyone involved.

Our staff members have worked tirelessly to support our programs and initiatives, and I am continually impressed by their passion and expertise. Each and every one of you has contributed to our successes this year, and I am grateful for the hard work and dedication that you have shown.

In addition to our staff, I want to extend my gratitude to our stakeholders. Our partners in government, other NGOs, and the broader community have been instrumental in supporting our efforts. Whether it be through funding, collaboration on initiatives, or simply lending a listening ear, we have been able to achieve so much more together than we ever could have on our own.

As we move forward into the year ahead, I am excited to continue building on the progress that we have made. There is still much work to be done to ensure that incarcerated individuals are treated with the dignity and respect that they deserve, and I am confident that we can achieve even more through continued collaboration and dedication.

So, once again, I want to thank each and every one of you for your hard work and commitment to our mission. Together, we can make a real difference in the lives of those who are most vulnerable, and I am honored to be part of this team.

VICTOR MHANGO
EXECUTIVE DIRECTOR

ELIMINATING TORTURE AND OTHER CRUEL TREATMENT

nhuman or degrading treatment or punishment connected to the use of the death penalty in Malawi's criminal justice system

CHREAA and Reprieve have partnered to implement a project in Malawi's Criminal Justice System, "Eliminating Torture and Other Cruel Inhuman Degrading Treatment or Punishment Connected to the Use of the Death Penalty." The primary objective of this project is to abolish capital punishment and eradicate torture in all detention facilities, including police stations and prisons.

Unfortunately, Malawi's Criminal Justice System, particularly its detention centers, exposes individuals to the risk of torture. Those who find themselves in conflict with the law face potential torture both in police stations and prisons.

The current conditions exacerbate the problem by subjecting

people to cruel, inhuman, and degrading treatment, which effectively amounts to torture. This situation arises from significant shortcomings in the existing law. Specifically, Section 176 of the Criminal Procedure and Evidence Code contributes to the high prevalence of torture cases by allowing confessions obtained under torture as admissible evidence. Consequently, the police resort to torture as a means to extract confessions from detainees. This provision violates international laws that Malawi has ratified and incentivizes police officers to employ torture.

Moreover, due to the insufficient funding of the Malawi Prison Service, incarcerated individuals suffer from cruel, inhuman, and degrading treatment caused by overcrowded prison cells, inadequate hygiene, and poor diets.

In light of these issues, CHREAA and Reprieve are working together to achieve the project's ultimate goal of eliminating capital punishment and eradicating torture within Malawi's Criminal Justice System.

Activities And Achievements Under the Project

Nomination for World Congress: CHREAA was nominated for the World Congress by Reprieve as an organization working towards the abolition of the death penalty in Malawi and making strides in the country on the same.

Legal Affairs meeting in Lilongwe and Mzuzu: CHREAA attended the legal affairs meeting on the death penalty which took place in Lilongwe and Mzuzu. The Parliamentary Legal Affairs Committee membership were working on the final report on the death penalty which was to be submitted to Parliament in the upcoming sessions with hopes to adopt the report.

World Day Against the Death Penalty: On 10 October, the World Coalition against the Death Penalty and Abolitionist Organizations around the world commemorate the day against the death penalty and in 2022 year, the event took place at Maula prison in Lilongwe. The function was graced by the Minister of Justice, Hon. Titus Mvalo, the Deputy Director of the Malawi Human Rights Commission (MHRC), the Legal Aid, Paralegal Advisory Service Institute (PASI), ex- prisoners who benefited from the Kafantayeni project, officers from the Malawi Prison Service (MPS), reprieve fellows who are based in Malawi, the media and the inmates from Maula prison.

Litigation: CHREAA found a potential case that may qualify to be used to challenge Section 176 of the Criminal Procedure and Evidence Code. The case involves a man suspected to have misappropriated some funds and was badly tortured during interrogation at the police cell to the extent that he lost his sense of hearing in his left ear. The matter was reported to CHREAA in May 2022 and investigations commenced then. The case is still on going.

STATISTICS FOR TORTURE

Since 2021, the Center for Human Rights Education, Advice and Assistance (CHREAA) has been actively engaged in the implementation of the 'Combating Torture in Places of Detention Project.' This initiative has received support from the United Nations Voluntary Funds for Victims of Torture.

Throughout the 2022 implementation period, CHREAA successfully received and assessed approximately 242 individuals who had been subjected to various forms of torture within police stations and prisons. These victims were provided with comprehensive assistance, encompassing psychosocial counseling, medical support, and legal aid.

To date, CHREAA has conducted a total of 68 psychosocial sessions for the beneficiaries, enabling them to address and cope with the psychological impact of their traumatic experiences. Additionally, four victims have been provided with much-needed medical assistance, while five cases are currently being litigated in court. Moreover, six cases have been referred to the Independent Commission Complaints (ICC) for further investigation and action.

Through its commitment and efforts, CHREAA continues to make significant strides in combating torture, providing critical support to victims, and advocating for justice and accountability in detention facilities.

CLOSING THE JUSTICE GAP

Critiquing legal empowerment approaches to address Police abuse in Malawi

The Southern Africa Litigation Centre (SALC) and the Centre for Human Rights Education, Advice and Assistance (CHREAA) have been granted funding for a collaborative qualitative research project. The aim of the project is to explore legal empowerment approaches that can address the issue of police abuse against marginalized groups in Malawi.

The project intends to investigate how grassroots initiatives to combat police abuse can be translated into broader improvements in laws, policies, and institutional practices. It will also examine the potential of expanding legal empowerment approaches, along with legal organizing and collective action, to combat the problem of impunity for police abuse. Through this project, SALC and CHREAA aim to critically evaluate and engage with local communities to assess the effectiveness of legal empowerment approaches and strive to bridge the justice gap.

A key aspect of the project involves capacity strengthening. It will bring together researchers, research participants, and leaders from civil society organizations (CSOs) focused on legal empowerment, as well as representatives from relevant State institutions responsible for promoting access to justice. Moreover, paralegals from community-based organizations, who have previously collaborated with SALC and CHREAA, will receive training in participatory action research, focusing on innovative strategies for promoting rights-based policing.

The project places a significant emphasis on using legal empowerment approaches to foster democratic, inclusive, and rights-based policing, with the ultimate goal of strengthening the rule of law in the long term. Additionally, the project will engage in advocacy efforts to facilitate transformation and empower marginalized groups in society to take bottom-up actions.

Activities and achievements under the project

Parade on international day in support of victims of torture: The UN General Assembly proclaimed 26 June the United Nations 'International Day in Support of Victims of Torture' and to commemorate this day, CHREAA organized a parade on 27 June 2022 which took place in the streets of Blantyre to speak out on the different forms of abuse people are subjected to in places of detention and advocate against the death penalty.

The function was graced with the Commissioner for the Independents Complaints Commission (ICC) which is an institution that oversees how the police work. They have the powers to investigate complaints from the public against the police including torture as well as deaths resulting from police abuse. Victims were given an opportunity to engage with the media to voice out their concerns.

Litigation: Female street-connected children: During a focus group discussion with female street connected children, eight children alleged that they were defiled and sexually assaulted by a police officer known to them as 'Uncle Manze'. Through the legal empowerment project, they expressed that they would like to take legal action against the police officer.

The Community Based Organization that looks after the children, Hope for the Heart, with assistance from CHREAA and SALC facilitated the matter and took the children to One-Stop Centre for medical examination.

Since the true identity of 'Uncle Manze' was not known, the police proposed they conduct an Identity Parade at the South-West Region Headquarters where all the children that were involved pointed at one police officer, Emmanuel Phalavi as the man known as 'Uncle Manze'. The police officer has since been arrested and is appearing before court. He was charged with defilement and indecent assault. The children are being held at a shelter.

Times 360 Malawi
52 mins ·

#Times360News

Police in Blantyre have arrested one of their own, Emmanuel Phalavi, an officer based at Blantyre Police Station for allegedly defiling and sexually assaulting six street connected children.

South West Region Police Public relations officer Ramsey Mushani says paperwork on the allegations levelled against the officer is underway.

Phalavi's arrest follows an identification parade which happened yesterday, following revelations that resurfaced from a focus group discussion which the Centre for Human Rights Education, Advice and Assistance had with the street connected children.

Reported by Thomas Kachere.

Mwanza cross-boarder sex workers and LGBTIQ & Dedza Female Sex Workers Alliance meeting with the Police: Sex workers and the LGBTIQ community from Mwanza and sex workers from Dedza held meetings with police officers in efforts to strengthen and build a cordial relationship. The communities complained that the police do not assist them when they lodge complaints, and that they are further victimized by the police officers, which trickles down to other members of the community who take advantage of this. The Police officers during both meetings advised the communities to report any ill-treatment or abuse that they face from the police officers whether on duty or in the communities. The senior officers further advised and assured the communities that they will have meetings with the rest of their officers back at their stations to ensure that they are not discriminated when accessing justice.

Mwanza meeting

Dedza meeting

Informal traders' stream: The informal traders for the first time registered their organization under the Blantyre City Council and they now have a secretariat. The secretariat is responsible for mobilizing the rest of the team and they had their first meeting on 18 August 2022. They intend to request the city council to build a market within the district of Blantyre because the one that is currently there is fully occupied. The informal traders further requested to shoot a documentary which was aired on national television and published in the local newspaper on the problems that they are facing within the streets of Blantyre.

FRIDAY SHAKER

Economic right activity in check in Malawi

Due to economic challenges the country is sailing through, some people have resorted to doing business at a small-scale to earn a living. However, those that are doing business through vending are sometimes entangled between the rock of poverty and the blue sea of city by-laws. THOMAS KACHERE writes:

As enshrined in the Constitution of the Republic of Malawi, every person has a right to engage in economic activity to achieve self-sufficiency.

However, for Malawians that want to engage in small-scale business in the streets of cities, running battles with city rangers have become a recurring theme.

This does not always end well as, sometimes, vendors end up losing merchandise they have spent a fortune on and, in other cases, injuries are sustained.

On their part, some vendors do not leave things lying down and are known to pelt stones at city rangers' vehicles, which cover the length and breadth of city boundaries during patrols.

It is alleged that city officers sometimes confiscate goods and sometimes beat up vendors once they are found vending in undesignated places.

Mary Matope, a female vendor from Ndirande Township, bemoaned growing acrimony between city rangers and vendors.

MATOPE—We suffer

BWANALI—I was almost stripped naked

The mother of four depends on proceeds of trade to pay school fees and feed her children.

Matope, whosells merchandise in the streets of Blantyre City, said she sells goods in the streets because she cannot to secure her own place in designated markets.

Matope, whose two children are in secondary school, claimed that she was assaulted in the street by city officers in Blantyre when she was transporting a basin of tomatoes to her home, Ndirande.

"I was in the company of a man I had hired to ferry tomatoes to my house. At that time, I was not selling anything but taking my goods to Ndirande but, upon reaching Nandoz, I just saw a city vehicle stopping and some men jumping out of it.

"They started whipping me with a sjambok. They took my wrapper and money I received from our women's group. The man who was carrying my basin of tomatoes escaped and that is how I lost everything.

"They went away with my goods, whipped me mercilessly and stole my money. This also brought challenges to my house because, for a while, I struggled to feed my children," she said.

According to Matope, women are sometimes asked to pay city officers money once they are caught selling merchandise in undesignated places.

Or else, she said, the city rangers threaten that they will take the women to police.

She added that some of the men that manage markets demand sex from business women in exchange for space in markets.

Esnath Bwanali, who sells vegetables, said she was ambushed by city officers the moment she dropped off at Kwacha Round-about.

"They jumped off their car and started wrestling with me as I clung to my goods. At that time, I didn't know who they were until I heard loud voices nearby, as others started warning those that had merchandise to run away with their goods.

"But, then, being a woman, I

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was powerless at the hands of those hungry men who almost stripped me naked during the tussle. I wish the law could also take its course on city rangers [who overstep their boundary]," she said.

One of the human rights lawyers at Centre for Human Rights Education Advice and Assistance, Ruth Kaima, said their organisation has been receiving complaints from vendors, who decry the treatment they are accorded by city rangers.

"We, as an organisation, have great concerns because we know that, when enforcing a law, that law has to be enforced within the prescription of the law itself.

"So, we have noted that most of these vendors are brutally treated when they are being arrested, which is against laws and regulations that prescribe how a lawful arrest should be done. The same applies to city council officials who have city by-laws but, most of the time, go beyond their mandate," Kaima said.

Kaima called for fair treatment of citizens.

FRIDAY SHAKER

MKWEZALAMBA—The by-laws need a review

KAIMA—We are receiving a lot of complaints

Cities in law enforcement quandary

"Actually, we have introduced initiatives, in the form of meetings, with police officers to know why they engage in such acts and, at the same time, finding solutions to the problem. We are also planning to engage the city council on the issue. We also plan to have discussions with police, city council officials and the vendors," Kaima said.

Blantyre City Council spokesperson Debra Luka said they are on the ground to ensure that they stop illegal vending in the streets.

"Those people are allowed to claim their goods at our offices and we always return the goods when they come to claim [them]," Luka said.

Meanwhile, Chairperson for Malawi Black Economic Empowerment Movement, Robert Mkwezalamba, has called on stakeholders to enforce laws with grace.

He also said, if laws were infringing on people's rights, there was a need to review them.

"We have a responsibility to review laws if they are impinging on people's rights. We are aware that the country's Constitution provides for the right to economic activity. This means everyone has a right to reside or settle anywhere in this country.

"As for city councils, and other authorities that formulate and enforce by-laws, they have to ensure that the by-laws do not impinge upon the rights of Malawians," Mkwezalamba said.

United Nations Sustainable Development Goal number 1 urges countries to end hunger in all forms by the year 2030, which is also in line with the Malawi 2063 agenda.

However, this can only be achieved if the government creates a favourable environment for people to do business freely. People, on the other hand, have to operate within the precincts of the law, thereby creating a win-win situation.

Meetings with complaints mechanisms: On 17 March 2022, CHREAA and SALC and Community Based Organisations (CBO) representatives (sex workers, informal traders, children connected to the street and the LGBTIQ community) met with the Independent Complaints Commission (ICC) Commissioner Mr Christopher Tukula. The meeting was aimed at establishing a relationship and cordial platform between the ICC and the targeted communities through their CBO representatives. The CBO representatives learnt about the role that the ICC plays regarding complaints against the conduct of police officers. The representatives were also oriented on how to lodge complaints and how complaints are handled. The Commissioner encouraged the CBO representatives to lodge complaints to his institution. He, however, indicated that the ICC is not fully operational as they are yet to recruit more personnel to operate efficiently. The meeting was very interactive as CBO representatives were free to engage the Commissioner and suggest ways they feel they could be assisted. (e.g., to ensure that the ICC is easily accessible to the grassroots communities).

Meeting with the Independent Complaints Commission

CHREAA, SALC and the CBO representatives met with the team from Malawi Human Rights Commission comprising of the Director of Civil and Political Rights and his deputy, Director of research, Director of disability and elderly rights and one of its lawyers. The MHRC team briefed the participants of the meeting on their mandate and role in promoting human rights. The Commission acknowledged that it works with all target groups involved but bemoaned that they receive very few complaints from sex workers, LGBT, and informal traders. It transpired that almost all the representatives present were not very familiar with the work that MHRC did and promised to utilise it. The CBOs were further encouraged to use their Regional Offices for easy accessibility. MHRC team expressed interest to work with the CBOs during community meetings to ensure that the Commission reaches the grassroot communities sensitising them on the role and mandate of the Commission.

Meeting with the Malawi Human Rights Commission

CHREAA and the CBO representatives met with the Chief Investigations and Research Officer from the Ombudsman. The Officer oriented the CBO paralegals on how they can reach them and further briefed them of their mandate and the nature of cases that they handle. The Ombudsman indicated that the only investigate on injustices by government offices or civil servants which are as a result of abuse of power and the office or the institution. The Officer encouraged the CBO representatives to lodge complaints to them only after they have exhausted other remedies and they have nowhere else to go. The meeting was very interactive and fruitful as the CBO representatives had a lot to ask and inquire from the Officer and they indicated that they did not know the role of the Ombudsman even though they hear about it which resulted into them not reporting cases to them. The officer expressed interest to work with the team and assured them that during their next community outreach activities, they will visit the districts that the CBO paralegals are based and working in.

Meeting with the Ombudsman

COUNTER MISINFORMATION AND DISINFORMATION ABOUT COVID-19 AND ITS VACCINES IN MALAWI

In 2022, CHREAA undertook a project supported by the Open Society for Southern Africa (OSISA) to raise awareness and promote acceptance of COVID-19 vaccines in the southern region of Malawi. The project aimed to sensitize communities by delivering positive messages about the vaccines and encouraging their uptake.

To achieve this, the project collaborated with various stakeholders, including community radio stations, traditional and religious leaders, and health officers. These partners played a crucial role in disseminating information and educating the communities about the importance and benefits of COVID-19 vaccination.

Furthermore, the project established mobile vaccine centers in rural communities, making the vaccines more accessible to individuals living in remote areas. By bringing the vaccination services closer to the people, the project aimed to overcome barriers such as distance and transportation, thereby facilitating greater vaccine uptake in these underserved communities.

Overall, the project's objective was to address vaccine hesitancy and enhance the acceptance and uptake of COVID-19 vaccines through community engagement, information dissemination, and accessible vaccination services.

Achievements:

- CHREAA successfully facilitated 18 mobile vaccine centres in the rural communities resulting in more than 670 people receiving Covid-19 vaccines who made their choice after getting sensitised.
- CHREAA noted that there is an increased level of Covid-19 vaccine intake in the target communities. The members of the communities are now able to make informed choices through the project. They are able to understand the importance of the Covid -19 preventative measures as well as its vaccines.
- The project through the mobile vaccine centres has reached out to people living in clustered communities who could not manage to travel to hospitals to get the vaccine.
- The project has also assisted the elderly and people with disabilities to access the vaccine.
- The project has sensitised the communities with positive messages that dispel disinformation and misinformation on COVID-19 vaccine.
- There has been increased media awareness in rural areas on the importance of COVID-19 vaccines through community radio stations.

STRENGTHENING COMMUNITY JUSTICE IN RURAL MALAWI

CHREAA, with funding from the Mott Foundation, is currently implementing a project that aims to enhance access to justice and improve its delivery in local communities. The project focuses on empowering communities and bridging the gap between the informal justice system and the formal justice system.

The targeted communities for this project are Chikwawa, Chiradzulu, Dedza, and Mwanza districts. These communities face significant challenges in accessing justice due to high levels of illiteracy and limited accessibility to the formal justice system. As a result, the formal justice system is often disconnected from the local communities, leaving them with limited recourse and reliance on the informal justice system, which has its own set of challenges. Furthermore, there is a lack of knowledge among community members regarding laws that protect their rights, leading to a reluctance to seek redress.

To address these issues, the project utilizes Community Court Users Committee meetings and mobile legal clinics. These initiatives empower individuals who interact with both the formal and informal justice systems, enabling them to understand and assert their rights while demanding accountability from the justice systems.

The project's overall objective is to empower communities, improve access to justice, and bridge the gap between formal and informal justice systems. By providing information, support, and tools, CHREAA aims to enable local community members to navigate the justice system more effectively and seek justice when their rights have been violated.

A mobile legal clinic in Mwanza District.

A mobile legal clinic in Chiradzulu District

Achievements

1. There is an increased awareness of human rights through mobile legal clinics
2. There is increased access to justice through community paralegals
3. Improved relationship between the traditional leaders, community members and the formal justice system.
4. There has been an improvement in terms of how informal justice systems handle matters, i.e. a reduction in "chabwalo" by some chiefs in Mwanza district.B2

PRISON EDUCATION PROJECT (PEP)

CHREAA, in partnership with DVV International and the Malawi Prison Service, is currently implementing an impactful project at Zomba Central Prison. The primary objective of the project is to provide education and training opportunities to prisoners through tailored vocational programs, including Barbering, Carpentry and Joinery, and Tailoring.

The project specifically targets prisoners who express interest in acquiring vocational skills education, possess basic literacy skills, have committed minor offences, and are approaching the completion of their sentences. The first cohort, consisting of 28 inmates, successfully graduated in December 2021. The second cohort, from 2022, is scheduled to graduate later this year in 2023. The acquired skills are expected to equip the inmates with the means to engage in income-generating activities once they are released, promoting self-sustainability.

Additionally, the project recognizes the importance of addressing the psychosocial well-being of the inmates as part of their reformation and successful reintegration into the community. Consequently, psychosocial counselling services are offered to the inmates, acknowledging their complex needs. The counselling sessions play a crucial role in facilitating mindset changes and are anticipated to contribute to a reduction in the rate of recidivism among the inmates.

Through this project, CHREAA, DVV International, and the Malawi Prison Service are making commendable efforts to provide educational opportunities and vocational training to prisoners, fostering their rehabilitation and increasing their chances of leading productive lives upon release.

DECRIMINALISATION OF VAGRANCY AND PROMOTION & PROTECTION OF RIGHTS OF SEX WORKERS IN MALAWI

Since 2014, CHREAA has been actively involved in the implementation of projects focused on two key objectives: decriminalizing vagrancy offenses and promoting and protecting the rights of sex workers. These efforts have been made possible through the generous support of the Open Society Foundations (OSF), Open Society Initiative for Southern Africa (OSISA), and Southern African Litigation Centre (SALC).

The overarching goal of these initiatives is to strengthen the protection of rights for marginalized communities and vulnerable groups, ultimately working towards the decriminalization or declassification of minor nuisance-related offenses in Malawi and the broader region. By advocating for legal reforms and raising awareness about the rights and needs of these communities, CHREAA aims to address the systemic barriers they face and foster a more inclusive and just society.

Through strategic partnerships with funding organizations and a comprehensive approach that includes research, legal advocacy, and community engagement, CHREAA strives to create meaningful change. The ultimate aim is to ensure that the rights of marginalized communities and vulnerable groups are respected, protected, and upheld, contributing to a more equitable and progressive legal framework in Malawi and beyond.

Achievements

The above efforts facilitated the achievement of the following;

1. The 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).

2. Development and Launch of Public Prosecutions Guidelines on Nuisance Related Offences Guidelines. 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.

3. Review of section 146 of the Penal Code in the case of Republic and Pempho Banda and 18 others (Review Case No.58 of 2016) in Zomba. 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.

4. Review of police sweeping exercise. 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 were challenging the police practice of conducting mass arrests (sweeping exercises) as one way of crime prevention. The case was 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. High Court Judge Zione Ntaba declared the sweeping exercises conducted by police unlawful. The court has also ordered that police should develop proper procedures for conducting mass arrests and that the three should be compensated for violation of their rights.

SOUTHERN AFRICA
LITIGATION CENTRE
CHREAA
Investigate
before arrest

SOUTHERN AFRICA
LITIGATION CENTRE
CHREAA
Human Rights for All
SHOT ON MI 9T PRO
AI TRIPLE CAMERA

THE STOP TB IN PRISONS PROJECT

A rights-based approach to end TB in prisons

The current prison conditions in Malawi are a breeding ground for the spread of TB including drug-resistant TB. These conditions include severe overcrowding and poor ventilation in the prisons, lack of adequate food, sanitation and hygiene facilities, and the absence of isolation facilities to accommodate the inmates while undergoing lengthy and toxic treatment.

To address these challenges, in 2022 CHREAA and SALC joined hands and collaborated in the fight against the spread of TB in prisons by introducing a uniquely designed rights-based approach project named, Stop TB in Prisons in Malawi.

To achieve the goal which is defeating high prevalence of TB in prison facilities, CHREAA and SALC worked with focus groups and worked towards the following objectives:

(a) Transforming the TB response to become rights-based, gender transformative, and people-centered.
(b) Mobilizing and empowering the prison communities on TB.
(c) Updating the relevant TB policies on prisons in line with the international recommendations and;
(d) Ensuring that TB is adequately screened, diagnosed, prevented, treated and managed in all the prison stations.

The project had diverse designed activities which generally focused on increasing the awareness of TB in prisons. However, the project further exposed the poor prison conditions which drew attention for redress. As a result, CHREAA and SALC developed a training manual on TB and HIV management for the prisons officers and prisoners' usage, conducted strategic litigation and advocacy on ending TB in the prisons, mobilized and empowered the prison communities on ending TB in the prison facilities.

Among its key strategic activities which were conducted and produced incredible results, the project conducted; training of TB survivors, including former prisoners to enable their participation and input in the fight against TB and amplify their awareness on and against TB. The project also produced a documentary demonstrating the plight of prisoners who are TB patients, conducted an advocacy meeting with the Health and Legal Committees of Parliament and engaged with the Malawi Human Rights Commission on the existing poor living conditions of prisoners and the TB policy.

A female prisoner asking a question during a training for TB survivors, prisoners and prison officers focused at building the capacity on the fight against TB

CHREAA, also attended the 2022 TB summit in Thailand. This is an International TB Summit which grants Civil Society Organizations (CSO'S) implementing projects against TB the opportunity to present their projects globally. The summit also further provided an opportunity to the CSO's including CHREAA and SALC to prepare for the coming United Nations High Level Meeting (UNHLM) scheduled in 2023.

The project is funded by The Stop the TB Facility. Because of the success rate of the project, the funder has offered another lifeline to the project by extending it with one more year, which means it will run until the end of December 2023.

A prisoner expresses his observations on what prisoners with TB experiences at Maula Prison experiences due to the facility's poor conditions

THE MALAWI BAIL PROJECT

Basic bail education

The Malawi Bail Project (MBP) is a remarkable initiative that seeks to empower individuals from impoverished and marginalized backgrounds who have been arrested for minor offenses. Its primary objective is to enable them to apply for bail at police stations or courts without the need for legal representation. This initiative is specifically designed to address the unfortunate reality that many people find themselves imprisoned simply because they cannot afford a lawyer to represent them.

To achieve its goal of reducing imprisonment for petty offenses and alleviating overcrowding in detention facilities, the project coordinators employ various strategies. One such strategy involves the distribution of informative booklets and posters titled "An Understanding of the Right to Bail" to arrestees at magistrate courts and police stations. Additionally, audio speaker systems are installed in police and court holding cells, broadcasting recorded messages that provide guidance on bail application procedures. The project also offers a toll-free helpline that arrestees and their family members can call to receive advice on applying for bail.

During the 2022 financial year, the Malawi Bail Project made significant strides in raising awareness and educating individuals. A total of 3,081 people were educated on bail application techniques, court procedures, and their basic rights at police stations and courts. Impressively, out of these individuals, 2,641 successfully requested bail, with 2,257 of them being granted bail. These figures serve as a testament to the project's effectiveness and the positive impact it has had on the lives of those involved.

The Malawi Bail Project is undoubtedly a successful initiative, working diligently to empower individuals with knowledge and resources to navigate the bail application process independently. By providing information, support, and access to legal advice, the project not only aims to secure the release of those unfairly detained but also strives to address the issue of overcrowding in detention centers and promote a more equitable justice system.

Police and Magistrates trainings

Between January-March, 2022, CHREAA through the Malawi Bail Project with funding from the UKAID, A4ID, and ROLE UK organized a series of four trainings for magistrates and police officers at Amaryllis hotel in Blantyre. The trainings were conducted following an observation by the general public and CHREAA itself that, many poor, vulnerable and old people face a lot of difficulties in applying and securing bail when arrested, even on petty offences.

The key notable topics which were presented during the trainings to address the challenges included making bail more accessible to poor, vulnerable and other people who cannot afford a lawyer; common hurdles the poor and vulnerable face when applying for bail, corruption amongst some magistrates and police officers when handling bail applications particularly for poor and vulnerable groups.

Malawi Bail Project success stories

1. ROLENT KAPINDA
   Rolent was arrested by Lunzu Police on 13th November 2022 on the offence of theft by servant. He applied for bail at the police, but he was not successful. He was later taken to Chinsenjere Magistrates Court where he was formally charged. During his first appearance in court, Rolent applied for bail, but he was denied, and he was remanded at Chichiri Prison. At this point that his wife Glory Kapinda alerted a CHREAA paralegal through the toll-free line about her husband's case. The paralegal visited the accused person at Chichiri Prison where she interacted with him to establish what the issue was in order to offer a PLC. Upon interacting with him, the paralegal noted that the accused person was not able to provide the court with good and valid grounds for him to be granted bail.
   The paralegal proceeded to offer Rolent a PLC on how to ask for bail with valid reasons. Rolent appeared before court on 2nd December 2022 and he successfully applied for bail. He was granted bail and was released on the same day. Rolent and his wife came to CHREAA's office express their gratitude for the assistance rendered to Rolent.

2. Alinafe Khumbanyiwa
   Alinafe Khumbanyiwa was arrested by Ndirande Police on the allegation that he committed the offence of House breaking and theft. A CHREAA paralegal, visited Ndirande Police on 19th October 2022 where he met Alinafe after he had spent 6 days in police custody. The paralegal conducted a PLC to him together with other suspects who were in the custody.
   After the PLC, Alinafe narrated how he applied for bail but was denied on the reason that investigations

were still under way. The paralegal encouraged the suspect to re-apply for bail, explaining to him that 48 hours had already passed, and ongoing investigations are not an excuse for him not to be released on bail.

Soon after the PLC, the suspect re-applied for bail, and was successfully granted bail on the 27th October 2022. Alinafe later called the paralegal to express his gratitude to CHREAA for the bail project, stating that he would have remained in custody if CHREAA had not been offering the interventions.

Chisomo Magwejani; a paralegal conducting PLC to female suspects in custody at Limbe Police while an Officer looks on

Participants paying attention to a presentation during the Magistrates Training on bail application.

LITIGATION

Major cases under litigation in 2022

1. The State vs The Inspector General of Police and Attorney General exparte Stanford Siliro Shaba on behalf of T.S (minor) and A.J.A (minor) Constitutional Case number 4 and 5 of 2021

CHREAA, in conjunction with Southern Africa Litigation Centre, is challenging the constitutionality of the offence of defilement under section 138(1) as it applies to consensual sexual relations between adolescent children, which only penalises the boy child. The matter started as a criminal review before Justice Nyakaunda Kamanga in July 2021 in which the matter was referred to the Chief Justice for Certification of which was granted. A hearing for directions (Scheduling Conference) was heard on 15th December 2021.The matter was consolidated with another similar case that was being challenged by Gender Justice Unit through Counsel Felisa Kilembe.

The matter was certified as a Constitutional matter and full hearing commenced on 15th February 2022. The Applicants stated their case before court. The Respondents (DPP and AG) however had made applications, one challenging the admission of Amicus Curiae without consulting the Attorney General, and Secondly, applied for extension of time to file their skeletal arguments.

Both of these were dismissed by the court hence the Respondents obtained a stay pending Appeal before the Supreme Court of Malawi. Hearing of the application for continued stay of the proceedings in the constitutional court pending appeal took place on 29th March 2022 and judgement was pronounced on 2nd December 2022 where the Appellant court granted the order for stay pending the hearing for an application/appeal to set aside the admission of amicus Curie.

Applicants Legal Team at Court

2. Jan Willem Ackister and Jana Gonani (Constitutional Referral Case no. 2 of 2022)

CHREAA is an Amicus Curie in this case where the Applicant is challenging the Constitutionality of sections 153(a), 154 and 156 of the Penal Code. The matter was later consolidated with another constitutional matter of Jana Gonani v The State where the Applicant wishes the Constitutional Court to declare that section 153(c) of the Penal Code is unconstitutional as it violates sections 18,19,20,21 and 42 of the Constitution. The matter is now at hearing stage. The fundamental tenant of the Amicus Curie submission is that it is necessary to distinguish between acts of anal penetration of a consensual nature and acts of anal penetration where consent was absent.

3. R v Mussa John (Criminal Review 9 of 2022) [2022] MWHCCrim 105 (1 September 2022)

CHREAA's Litigation Officer Ruth Kaima together with Chikondi Chijozi and Luntha Chimbwete of SALC and Alexious kamangira challenged the conviction and sentence of John Mussa a 19-year-old who had been sentenced to 8 years imprisonment for being found in possession of Chamba. The Court upheld his conviction but reduced his sentence of 8 years to 3 years.

4. Republic v Francis Masonga Criminal Case Number 721 of 2021

This is a matter where a police officer is being tried of the offence of abduction and defilement. The matter commenced

in May 2022 before Senior Resident Magistrate Court in Lilongwe. The matter is currently awaiting a ruling of whether there is a case to answer or not.

5. Republic vs John Kachikwanje Criminal Case no. 52 of 2020

CHREAA's Litigation Officer successfully prosecuted a defilement matter where a man tried for the offences of abducting and defiling a 13-year-old girl, who was then a Standard 8 girl at one of the primary schools in Mpemba Township, Blantyre District. The accused was convicted and sentenced to 16 years imprisonment for defilement and 6 months for abduction.

6. Republic vs Lazarus Msukwa Criminal Case Number 123 of 2021

CHREAA's litigation officer together with Police Prosecutor Chabvinda of Ndirande police is prosecuting a matter where a 28-year-old man is being accused of sexually assaulting a 10-year-old boy through anal sex. Hearing of the prosecution's case commenced on 5th May 2021. The matter is still in progress before Senior Resident Magistrate Worship Nazombe Moyo at Blantyre Central Magistrate Court.

7. The State vs the Officer in-Charge exparte Henry Banda and two others (Judicial Review Case Number 28 of 2018)

On 9th November 2022, the High Court in Zomba, in its judgement, declared that the police's indiscriminate practice of sweeping exercises is unlawful and in violation of various constitutional rights and international human rights standards. The court stated that the actions violated the Applicants 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 respectively.

CHREAA and SALC challenged the sweeping exercise practice that is undertaken by the police in a quest deemed to sweep the streets off all criminals. Justice Zione Ntaba presided over the matter and further ordered that the Malawi Police Services to develop proper guidelines for arrests. The Court set aside the Applicants' convictions and ordered compensation for the rights violations they suffered. Finally, the Court ordered the Ministry of Home Affairs and the Inspector General of Police to review its training curriculum for police officers and to develop standard operating procedures binding on all police officers on the parameters of police arrest practices.

COURT OUTLAWS SWEEPING ARRESTS

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