



CHREAA
ANNUAL
REPORT
2019





CHREAA

VISION

CHREAA envisions Malawian society that upholds human rights, justice and the rule of law.

MISSION

To promote and protect human rights by assisting the vulnerable and marginalised people in Malawi to access justice through civic education, advocacy, legal advice and assistance.

With support from these generous partners:



**OPEN SOCIETY
FOUNDATIONS**

**SOUTHERN AFRICA
LITIGATION CENTRE**

FOREWORD



Over the past 19 years, the Centre for Human Rights Education Advice and Assistance (CHREAA) has assisted vulnerable groups in the area of access to justice, human rights education, human rights litigation and advocacy. During that period, the institution has assisted vulnerable groups such as women, prisoners, sex workers and several more.

Through the year under review, CHREAA has implemented several human rights projects, such as a damning preliminary report on Police

extra-judicial killing of ex-inmates upon their release from prison after completing their custodial sentences.

The report highlighted shortfalls that Malawi Police have in terms of handling both suspects and ex-convicts.

CHREAA also continued the campaign in decriminalising vagrancy offences.

The organisation is currently challenging the idle and disorderly offences which are minor offences for which the punishment, as prescribed by law, is to pay a fine of K1,000 and prison term of not exceeding three months for first offenders and for subsequent offences, a fine of K3,000 and imprisonment for three months.

CHREAA noted that the offences that criminalise petty offences are open to abuse and affect vulnerable groups such as sex workers who are subjected to gross human rights violations.

We are pleased that the campaign is yielding the intended results although we still have to witness attitude change within the Police as some officers are refusing to change.

A handwritten signature in black ink, appearing to read 'Victor Chagunyuka Mhango'.

Victor Chagunyuka Mhango



PROMOTING THE RIGHTS OF SEX WORKERS THROUGH ACCESS OF JUSTICE

Through this project, CHREAA managed to conduct Street outreach in Mwanza, Dedza and Blantyre districts.

In Blantyre alone, CHREAA visited various hotspots, including Kachere, Machinjiri, Kamba, Bangwe and Zingwangwa where we were able to reach out to 150 sex workers, while in Mwanza, CHREAA managed to visit several hotspots like Zalewa, Nthache and Mwanza border where we visited several bars and managed to reach out to 90 sex workers.

CHREAA also conducted activities called the Creative Space and Happy Hour where CHREAA staff has an interaction with the sex workers, especially those who are peer educators as well as other stakeholders such as the police, court staff and health personnel.

In these interactions, CHREAA

brought together the Police and health personnel to discuss issues of human rights violations concerning sex workers and how best the problem could be solved.

In Blantyre CHREAA managed to reach out 50 sex workers and several health officers in the two meetings because of the complaints that CHREAA received from the sex workers about the abuse and ill-treatment they receive from the hospitals when they seek to access health services.

While in Mwanza, CHREAA managed to reach out 50 sex workers and several police officers who aim was to ease the tension that exists between the police and the sex workers.

They were several concerns that were raised in both of the meeting, concerns which the police have to address. At

the end of meetings, CHREAA, the Police and sex workers agreed to work together so that violations, abuse and discrimination can be dealt with.

The project also managed to increase awareness of sex workers rights using the media, through the radio, TV and newspapers, even social media.

TOLL FREE LINE (331)

With the toll-free line, CHREAA attended to more than 300 calls from sex workers from across the country. CHREAA managed to educate, advise and assist the sex workers through the help line.

Through the help line, CHREAA also referred some cases the Police's Victim Support Unit in cases where the sex workers were abused by their clients or even when they had been abused by the police.

As a result of our intervention, the sex workers were well assisted and some perpetrators of the violence were arrested.

CHREAA managed to facilitate more than 30 police bails in various Police stations where sex workers were arrested on suspicion of being Idle and Disorderly.

CHREAA managed to create an effective network with stakeholders, especially the police, courts and Pakachere where CHREAA works with the outreach workers and peer educators/navigators.

The coordination with the stakeholders has enabled CHREAA to trace some of the problems that sex workers go through and this has given CHREAA a platform to solve those problems.

OFFICE COMPLAINTS

CHREAA received more than 30 complaints at the CHREAA offices and the sex workers were well assisted and CHREAA managed to refer those looking for referrals to the relevant authorities.



Other activities under the sex workers project

POLICE OFFICERS TRAINING AND SEX WORKERS RIGHTS AWARENESS CAMPAIGN IN DEDZA

CHREAA organised a workshop on updates and overview of the case of Pempho Banda and 18 others. The case was based on the current management of petty offences,

especially in Promoting and Protecting the Rights of Sex workers from the abuse they face either from the Police and community.

The meeting also aimed at checking if the service providers like the Police are adhering to the Pempho Banda judgement and are able to use right technics and mechanisms when dealing with the issues of sex workers.

CHREAA involved several Police departments, especially the Victim Support Unit, the court and the sex workers to discuss if there is a change when dealing with the sex workers after the Pempho Banda Judgement. The meeting was facilitated by Her Lordship Justice Zione Ntaba.



SHARED EXPERIENCE OF SEX WORKERS AND STAKEHOLDERS

Following the judgement of Pempho Banda and 18 others vs Republic, there has been slight improvements in terms of registering of nuisance-related offences at the police and

court. Nevertheless, sex workers raised their challenges as follows;

- Sex workers are abused by their clients whom they sleep with and not being paid and sometimes they are beaten after sleeping with them.
- Some clients remove condoms during sex and later end up transmitting sexually transmitted infections (STIs).
- Sex workers also complained about some Police and hospital personnel not helping them in times of need as soon as they disclose their profession, the police quickly judge them that they are responsible for the spread of STIs.

However, the sex workers raised an observation that there is a continuing reduction of arrests comparing to the experience before the rogue and vagabond was abolished and before the Pempho Banda case was successfully reviewed.

Some of the improvements are that the police the court and hospital personnel now respect them and treat them with respect. As such, they are now free to report to police any violation.

LESSONS LEARNT

Police has started arresting the sex workers using the Idle and Disorderly after the Rogue and Vagabond law was declared unconstitutional.

There is a need to conduct more awareness so that there is continuity and a need of follow up on the progress of the sex workers how they are applying their rights.

CHREAA LEADS SANITARY HEALTH BUDGET REVIEW

In the year under review, CHREAA, with funding from Amplify Change, lobbied and advocated for the inclusion of menstrual hygiene packages in the Malawi Prison health budget for women and girls in detention.

Prison facilities hold about 300 female inmates at any given time. Many of these inmates cannot afford to buy sanitary pads, not only because they are expensive, but also because the inmates have no source of income and the restrictions that are in place restrict inmates from going outside prison walls.

As such, they bleed through small pieces of clothes or old pieces of blankets which are a health hazard

and result in most inmates contracting chlamydia.

The management of these pieces of clothes is also compromised due to the fact that most of these inmates lack soap which makes these health hazards more compounded.

CHREAA realised that the provision of menstrual hygiene packages to female inmates as a health right and it was unfortunate that maintaining the well-being and dignity of the female inmates was a challenge because the prison health budget did not cater for menstrual hygiene packages for these female inmates due to underfunding.

This then prompted CHREAA to lobby



for the inclusion of menstrual packages for the female inmates which was a great success.

KEY ACHIEVEMENTS

- An increase of K30 million in the prison health budget to cater for menstrual hygiene products for female inmates.
- Donations of female hygiene products from charity organisations such as Root Charity.
- Increased awareness about the plight of women prisoners.

VOTE OF THANKS

CHREAA would like to thank the following for their endless effort and support in lobbying for the increment of prison funds so as to cater for menstrual hygiene products for female inmates:

- Women Caucus Committee of Parliament
- Social Community Affairs Committee of Parliament
- The Speaker and Deputy Speaker of Parliament
- Ministry of Finance
- Office of the Budget Director
- Malawi Prison Inspectorate
- Chichiri and Zomba Prisons



CHREAA LITIGATION CASES UNDER REVIEW

In the year under review, CHREAA undertook some bold cases such as representing the Rastafari community who were fighting for their children's right to education. Below are some of the cases that were concluded and some that are still under on-going.

The right to education for Rastafari children

In 2017, a Rastafari child was refused registration at a school on the basis of a policy that all learners have short, combed hair. More children have since joined the case, supported by SALC, CHREAA and the Women Lawyers Association. The case is set down for hearing on 14 July 2020.

Challenging sweeping exercises

SALC and CHREAA are supporting 3

applicants who were arrested during a police sweeping exercise. The applicants are arguing that their arrest was unlawful and that the police's indiscriminate arrests violated their rights to dignity, liberty movement and the freedom from cruel, inhuman and degrading treatment. The hearing is scheduled for 11 May 2020.

Malawi: MDR-TB in prison

The applicant was diagnosed with MDR-TB whilst serving a prison term at Maula Prison in Lilongwe. Supported by SALC and CHREAA, he filed a constitutional application in which he argues that the detention of MDR-TB patients in current prison conditions violates their right to life, dignity and freedom from cruel, inhuman and degrading punishment and treatment.





MALAWI BAIL PROJECT

The Malawi Bail Project (MBP) is a project that was designed with an aim of empowering poor people arrested of minor offences by imparting basic legal knowledge on how to apply for bail so as to enable them successfully apply and secure it on their own without hiring a lawyer. Further, the project aims at increasing the amount of granted bail applications and consequently reduces the number of people unlawfully imprisoned in prolonged pre-trial detention in the mostly overcrowded prisons across Malawi.

Since 2018, CHREAA has been implementing the Malawi Bail Project at

less-cost and, at times, zero-cost basis because its regular funding elapsed in the 2017-2018 financial year.

But instead of completely closing down the project, CHREAA maintained a number of activities using the little resources which its headquarters in Malawi Bail Project-UK managed to source.

The reason of maintaining the MBP was because of the significance of the service the project renders particularly to the poor people who cannot afford a lawyer but are caught in conflict with the lawyer.

Successes

Bail audio message sound system:

In the year 2019, CHREAA managed to maintain and monitor the running of the bail audio message sound system installed at numerous police stations and at selected withholding cells at courts in the southern region.

Through the bail audio message sound system CHREAA reached out to 1,378 arrestees at the courts and police stations. Out the 1,378 arrestees reached with the audio bail messages, 1,147 managed to apply for bail while 792 were successfully granted bail and released.

Booklets distribution: during the reported period at hand, CHREAA managed to distribute 1,250 booklets. 752 detainees managed to apply for bail and 505 detainees successfully had bail granted.

Camp Courts: Due to inadequate funds, MBP managed to conduct 7 camp courts which saw a total 158 prisoners released.

Community Sensitisation: MBP, in partnership with Nkhokwe Arts, managed to conduct 6 theatrical performances communities on the right to bail. The theatrical performances attracted an audience of about 1,750 plus people in attendance.

Toll free line: During this period, MBP also managed to offer advice on the right to bail and other criminal justice matters to a total number of

123 complainants that called through the toll-free line seeking advice.

Fundraising documentary: Due to financial constraints, MBP was also involved in a documentary shooting aimed at fundraising for the MBP. The documentary demonstrates MBP's activities in detail and how important the project is particularly when it comes to assisting poor people caught in conflict with the law. Shooting of the video was done in Blantyre and Mwanza districts. The shooting of the documentary also helped facilitate release of 15 more suspects under the project through a camp court that was shot live during the documentary filming at Chichiri Prison in Blantyre.





CHREAA REPORT EXPOSES POLICE EXTRA-JUDICIAL KILLINGS

A study by CHREAA into operations of the Malawi Police Services has revealed that at least 28 people were victim of police extra-judicial killings.

A report titled “Operation Elimination: An Investigation Into Police Extra-judicial Killings in Malawi”, highlights damning allegations of police brutality targeting suspects and released hardcore criminals.

The report says information of the targeted extra-judicial killings were first heard of in August 2018 after former prisoners said the Malawi Police Service were extrajudicially executing former prisoners, on their release from prison, particularly those who have served a sentence of armed robbery.

Initial information received by the Centre for Human Rights Education, Advice and Assistance (CHREAA) suggests the police had executed at least 43 former prisoners.

The authorities reportedly failed to conduct investigations/ inquests in accordance with the requirements of the Inquest Act and the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 1989 (particularly principles 9 to 17).

The report hints the alleged extra-judicial are shrouded in so much secret so much so that even families are frequently unaware of the fate of their loved ones.

The report relies on purported evidence of the police killings has emerged from a number of sources including a prisoner released from jail on murder charges, who narrowly escaped being killed and another who was shot by the police but survived, receiving 4 bullets to the stomach and two to the leg.

The police are alleged to have killed 6 persons on 20 July 2018 in Njamba

Park, Blantyre, says the report.

Furthermore, a police officer, who has been in service for over 12 years, speaking on condition of anonymity, confirmed that police are killing armed robbers, confirming where such executions are being conducted in Blantyre.

He reportedly confided in the researchers that the victims are arrested, handcuffed and taken in a police vehicle at night.

“Once the police reach the place of execution, they take the victims out of the vehicle and whilst still handcuffed they tell them to run and start shooting at them until they kill them,” the report attributes to the unnamed police officer. The unnamed officer further claimed that many dangerous criminals were shot in such a manner in the year 2017.

He attributed the alleged decrease of cases of armed robbery in Malawi to the so-called ‘elimination’ operation.

According to the report, the police source recalled how the courts acquit armed robbers because the courts feel there is insufficient evidence, which was apparently cited as an alleged justification for the police extrajudicial killings.

The report also weaves into the media narrative, highlighting a report published in The Nation newspaper quoting a mortuary attendant at Queen Elizabeth Hospital who spoke on condition of anonymity.

According to the article, some 4

suspects that were killed in Blantyre were brought to the mortuary with bullets riddled bodies.

“The bodies will be brought with explanations that range from ‘there was a gun fire exchange with armed robbers’ or ‘the suspects were trying to escape’,” reads part of the report.

According to the study, out of the 43 names that were provided only 22 were identified and 19 were confirmed dead.

The other 21 remain unidentified. During the study, 26 more cases were identified and only 12 were investigated.

The study found that 28 alleged victims were confirmed to have been shot by the police and died in very suspicious circumstances, 3 of which were alleged to have died in a road accident but they also had gunshot wounds.

One alleged victim was found alive. The study team, however, failed to investigate 14 of the new case that were identified during the study due to limitation of resources.

CHREAA deputy director Chikondi Chijozi said the report had been handed over to the Ombudsman Martha Chizuma for urgent action.

“The findings of the research are quite alarming to us,” Chijozi said. “We thought it would be important to submit it to the office of the Ombudsman so that they do a thorough investigation to find out what happened to the 28 people that died under very suspicious circumstances.”

VAGRANCY LAWS – A CASE STUDY

There is no greater agony than bearing an untold story inside you.

27 March 2018 started off as a normal day for us but little did we know we would end up in the hands of the law.

Night time fast approached and coincidentally, we were both at American Bar and Bottle Store in Kasungu. I was working as the club DJ, he was selling his fish kebabs and he was just at the bar having a few drinks.

The night was going great when suddenly at around 11pm, Police officers stormed the bar and randomly

arrested us and 20 other people who were in the bar.

We were not told why we were being arrested even after demanding an explanation from the police officers as the law states under Section 42(2)(f) (ii) of the Constitution that a detained person has the right to be informed with sufficient particularity of their charge. We tried to reason with the police officers in regards to this but to no avail.

They dragged us outside to the car where we were put at the back of the police van. We were taken to the



police station and thrown into the cells without still being told why we were being detained.

It was a long night of trying to piece together why and how we found ourselves there but still, the pieces did not complete the puzzle as nothing made sense.

Finally, it was morning and the wait was over. Cold feet, hunger and most of all still confused, we were then told of our charges and told that we were being charged and convicted for the offence of Rogue and Vagabond contrary to Section 184(1)(b).

We were threatened by the police officers to either plead guilty to the charges or face being detained in prison on remand. We were then taken to court where we were charged and convicted over Rogue and Vagabond charges on our own guilty pleas with fear of the police officers.

With rage and anger over what the police did to us, we commenced with a Judicial Review with assistance from CHREAA so that the court could review some of the decisions which were made by the police.

In the case of Henry Banda, Ishmael Mwale and Sikweya Supiyani vs The State and the Officer in Charge Kasungu Police Station and The Inspector General of Police being Judicial Review Case Number 28 of 2018, we filed for a review over:

- The indiscriminate sweeping exercise and arrest of the Applicants;
- The failure to promptly give reasons for the Applicants arrest and detention; and
- Coercing the Applicants to plead guilty to the offence of being Rogue and Vagabond.

CHREAA is currently challenging the practice of conducting mass arrests (sweeping exercise) as a way of crime prevention with the aforementioned case. Vagrancy laws were put in place during the colonial period because the colonial masters wanted to bring the local population under criminal justice control so that their quality of labour is not compromised because if they are under the system, then they can be used as cheap labour.

Furthermore, these laws were also put in place to limit the movement of black people because the masters did not want the black people being exposed to alcohol as they believed it would undermine the quality of their labour.

CHREAA and Southern Africa Litigation Centre (SALC) challenged Section 184 (1) (c) which the court declared that it was unconstitutional through Masauko Gwanda's case on 10th January 2017. Despite this, police officers are still arresting people using other vagrancy provisions which as an organisation we find are problematic as they also violate the rights of people especially the vulnerable groups.



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