



**REPORT ON THE PUBLIC INQUIRY INTO
CHALLENGES CONTRIBUTING TO THE
INEFFICIENCY AND INEFFECTIVENESS
OF JUDICIAL INSTITUTIONS IN LIMITING
ACCESS TO JUSTICE IN MALAWI**

(AUGUST 2025)

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- University of Livingstonia
- University of Malawi – Faculty of Law
- Women Lawyers Association
- Malawi Council of Churches

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- Centre for Human Rights Education, Advice and Assistance (CHREAA)
 - Catholic Commission for Justice and Peace (CCJP)
 - Malawi Law Society
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TABLE OF CONTENTS

EXECUTIVE SUMMARY	7
Addressing challenges in accessing justice	7
Addressing Corruption and Abuse of Power	8
Addressing Structural Challenges	9
Operationalise Customary Land Tribunal	9
Availability of Legal Aid Services to Vulnerable Groups	10
Legal and Administrative Procedures for Ensuring Accountability and Professionalism	10
Reform Laws and Policies Governing Appointment of Judicial Officers	10
1.0. INTRODUCTION	11
2.0. PROBLEM STATEMENT	12
3.0. RATIONALE OF THE INQUIRY	14
4.0. OBJECTIVES, METHODOLOGY AND LIMITATIONS	16
4.2 Methodology	17
4.2.1 Call for submissions from the general public	17
4.2.2 Literature Review	18
4.2.3 Public hearings	18
4.3 Limitations	18
5.0 ANALYSIS OF LAWS GOVERNING JUDICIAL ACCOUNTABILITY	19
5.1 Legal and Administrative Framework for Ensuring Judicial Accountability and Professionalism	19
5.2 Supremacy of the Constitution	21
5.3 Mandate of the Judiciary in the protection and promotion of human rights	23
5.4 Laws and Policies Governing the Appointment and Disciplining of Judicial Officers	24
5.4.1 The Constitution	24
5.4.2 Judicial Service Administration Act, No. 4 of 2025	24
5.4.3 The Judicial Code of Ethics	25
6.0 EVIDENCE FROM SUBMISSIONS AND PUBLIC HEARINGS	26
6.2 Delays in Accessing Justice	26
6.5 Cost of Accessing Justice	33
6.6 Neglected Rights of Victims in Criminal Cases	35
6.7 Political Interference in appointment of judges	37
6.8 Structural Challenges Within the Justice System	37
6.9 Poor Coordination within the Justice System	38
6.10 Lack of Awareness of the Justice System to the General Population	38

6.11	Societal and Cultural Barriers	39
6.12	Underutilization of Mobile and Camp Courts	39
6.13	Delay in Operationalization of Land Tribunals	39
7.0	COMMISSION’S FINDINGS	41
7.1	Challenges in Accessing Justice	41
	Delays in accessing justice	41
7.2	Corruption and abuse of authority	42
7.3	Political Interference in appointment of judges	42
7.4	Structural Challenges Within the Justice System	42
7.5	Poor Coordination within the Justice System	42
7.6	Inadequate Awareness of the Justice System	42
7.7	Cultural Barriers	43
7.8	Delay in Operationalization of Customary Land Tribunals	43
7.9	Rights of Victims in Criminal Cases	43
7.10	Costs of accessing justice	43
7.12	Underutilization of Mobile and Camp Courts	43
7.13	Current legal and administrative procedures for ensuring judicial accountability and professionalism.	44
7.14	Laws and Policies Governing the Appointment and Conduct of Judicial Officers.	44
8.0	RECOMMENDATIONS	44
8.1	Addressing challenges in accessing justice:	44
8.2	Addressing Corruption and Abuse of Power	45
8.3	Addressing Structural Challenges	45
8.5	Operationalise Customary Land Tribunal	46
8.6	Availability of Legal Aid Services to Vulnerable Groups	46
8.7	Legal and Administrative Procedures for Ensuring Accountability and Professionalism	47
8.8	Reform Laws and Policies Governing Appointment of Judicial Officers	47
9.0	CONCLUSION	48

List of Acronyms

ACB	Anti-Corruption Bureau
ADR	Alternative Dispute Resolution
CSO	Civil Society Organisations
GEA	Gender Equality Act
ICC	Independent Complaints Commission
ICCPR	International Covenant on Civil and Political Rights
IESCR	International Covenant on Economic, Social and Cultural Rights
JICC	Judicial Independent Complaints Commission
LAB	Legal Aid Bureau
MHRC	Malawi Human Rights Commission (the Commission)
MLS	Malawi Law Society
NHRI	National Human Rights Institution
OHCHR	The United Nations Office of the High Commissioner for Human Rights
SDG	Sustainable Development Goal
WLA	Women Lawyers Association

EXECUTIVE SUMMARY

Pursuant to its Constitutional and statutory mandates, the Malawi Human Rights Commission (the Commission) conducted a public inquiry into access to justice in Malawi, focusing on the challenges that affect the efficiency, fairness, and inclusiveness of the justice system. The inquiry was conducted from October to March 2025 and included several related activities, including a Call for Submissions from the general public, a review of the submissions, the collection of witness evidence, and public hearings held in Mangochi, Lilongwe, and Mzimba.

As a National Human Rights Institution (NHRI), the Commission has the legal mandate to commence investigations into any allegation of human rights violation on its own volition. Over the years, the Commission has observed growing public dissatisfaction with the way the judiciary handles matters.

The Commission conducted public hearings in three districts—Mzimba, Lilongwe, and Mangochi. These sessions aimed to identify, analyse, and document challenges faced by people in accessing justice; examine the current costs associated with accessing justice services and securing legal representation; and assess the impact of these costs on access to and the quality of justice. Furthermore, the inquiry assessed the legal and administrative procedures in place to ensure judicial accountability and professionalism. It examined the laws and policies governing the appointment and discipline of judicial officers.

Based on the findings of the inquiry, the Commission has developed the following recommendations:

Addressing challenges in accessing justice

- a) The Judiciary must embrace a people-centered approach to justice delivery. The people-centred approach takes into consideration the needs of the marginalised and disadvantaged groups in the society such as expectant women, children, persons with disabilities, the elderly, asylum seekers and the ultra-poor. This implies taking deliberate steps to ensure that people with special needs are given priority when handling cases.
- b) The Judiciary must enforce timelines for the delivery of judgements and this information must be made known to the public. There is disregard to the 90 days period for delivery of judgments for concluded cases.

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- c) The Judiciary must improve the case management system to ensure smooth and seamless handling of cases especially when a judicial officer has been transferred or promoted. This includes the embracing use of women, digital technologies in case management.
 - d) The Judiciary must recruit, train and deploy more magistrates and judges across the country.
 - e) The Judiciary should decentralize court services and construct more court structures in the rural areas.
 - f) The Judiciary must expedite the operationalization of the Independent Judicial Complaints Committee to enhance accountability of judicial officers.
 - g) Government should adequately fund the Legal Aid Bureau to recruit more lawyers and open more offices to increase legal representation.
 - h) Malawi Police Service should train more prosecutors and investigators to expedite the prosecution of cases.
 - i) Malawi Police Service must observe timelines for taking suspects to court.¹
 - j) The Malawi Law Society and the Attorney General should intensify disciplining of errant lawyers as per the Legal Education and Legal Practitioners Act.

Addressing Corruption and Abuse of Power

- a) Members of the general public who have evidence about corruption in the justice system must promptly report to the Anti-Corruption Bureau or Malawi Police Service.
- b) The Judiciary and the Malawi Police Service should take necessary measures to prevent corruption and abuse including the following: -
 - a) Enhancing integrity in the justice system by providing regular ethics and human rights training for judicial officers and police, and enforcing strict penalties against corruption and misconduct.
 - b) ACB and the Police ICC should investigate all allegations of corruption against the judiciary and the abuse of power by the police respectively.
 - c) Increase awareness on prevention and reporting of corruption against the judiciary and the Malawi Police Service to the public.

¹ Refer to Criminal Procedure and Evidence Code, Cap 8:01 of the Laws of Malawi (Section 161 D, 161 F, and 161 G)

Addressing Structural Challenges

- a) The judiciary should increase availability of courts in the rural areas.
- b) The judiciary and other actors should strengthen the use of community service as a form of punishment for some cases.
- c) There is need to consider legal reforms aimed at reinstating jurisdiction of magistrate courts over land and chieftaincy matters.
- d) The judiciary should open up to the public in terms of accessing information about their processes and operations.
- e) The Treasury should increase allocation and timely release of funding to LAB to reduce over reliance on donor funding.
- f) LAB should increase its coverage to all parts of the country by recruiting more lawyers and opening more offices.
- g) The judiciary should include sign language and other disability friendly formats in case handling.
- h) The judiciary and other institutions must take measures for ensuring that rights of the victims in criminal cases are taken into full consideration and that court users with special needs and vulnerable persons are assisted appropriately.

Coordination and Awareness Within the Justice System

- a) Court users should enhance coordination for effective and efficient handling of cases.
- b) The judiciary and other relevant actors should improve the case management system to prevent loss of files and improve referrals.
- c) The judiciary should introduce innovative ways of hearing cases, such as use of virtual platforms as a way of reducing on case adjournments.
- d) The judiciary and Malawi Police Service should standardise case handover procedures during staff transfers and promotions to ensure continuity.
- e) The judiciary should intensify civic education and legal literacy campaigns using radio, community meetings and mobile and social media platforms.
- f) The informal justice system should be regulated to ensure fairness on appearance fees, fines and penalties.

Operationalise Customary Land Tribunal

- a) The Ministry of Lands should expedite the operationalisation of Land Tribunals across the country to reduce the burden of the High Courts presiding over land matters.

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- b) The Ministry of Lands should intensify awareness about the existence of Land Tribunals and the procedures involved in handling land matters.

Availability of Legal Aid Services to Vulnerable Groups

- a) LAB should increase availability of their legal services to the poor and rural areas, including waiver of fees in some instances.
- b) The Ministry of Justice should expedite the enactment of the Traditional Court Bill to give powers to chiefs to preside over some cases.
- c) Court users should intensify the use of mobile and camp courts to expedite cases.

Legal and Administrative Procedures for Ensuring Accountability and Professionalism

- a) The judiciary must publicize available mechanisms for receiving and handing complaints against judicial officers. There is limited awareness among members of the general public about the internal mechanisms that have been put in place by the judiciary, including the Complaints Boxes that have been placed in the court premises.
- b) The judiciary should conduct regular monitoring and appraisal of judicial officers.
- c) Members of the general public are encouraged to utilise the newly established Judicial Complaints Committee to raise any issues of concerns about the performance of judicial officers.

Reform Laws and Policies Governing Appointment of Judicial Officers

Parliament must review and amend laws on appointment of judges of the High Court and Supreme Court to ensure political neutrality. This will be complimented by the expanded composition of the Judicial Service Commission under the new law that has already been enacted.



Chikondi Chijozi

Chairperson

1.0. INTRODUCTION

The Malawi Human Rights Commission (the Commission) is a National Human Rights Institution (NHRI) established under Section 129 of the Constitution of the Republic of Malawi. The Commission has the legal mandate to investigate cases of human rights violations and ensure the protection of rights of all people in the country. Furthermore, the Commission has the duty under section 13(c) and (d) of the Human Rights Commission Act (HRC Act) to promote the rights of vulnerable groups, such as children, women, illiterate persons, persons with disabilities, and the elderly; and to make recommendations regarding any human rights issues, on its own volition or as may be referred to it by the Government.²

In fulfilling its mandate, the Commission periodically conducts public inquiries into systemic human rights issues across various sectors. These inquiries aim to deepen both the Commission's and the public's understanding of the challenges at hand, while also generating informed recommendations for relevant stakeholders to take appropriate action.³ For this reason, the Commission conducted a public inquiry into the challenges contributing to the inefficiency and ineffectiveness of access to justice in Malawi from October 2024 to March 2025.

Besides acting on its own motion, the Commission was also moved by a request from the Legal Affairs Committee of Parliament which asked the Commission to act on allegations of corruption levelled against Justice Ken Manda of the High Court and the Judiciary in general. However, it must be stated that when the Commission issued a call for submissions from members of the general public, no one came up with any such accusations against Justice Manda. Considering the situation at hand, the Commission asked Parliament to furnish it with more information on the matter but did not receive any response.

Recognizing the multifaceted nature of the concept of “access to justice,” the inquiry focused on several key areas: the ease with which individuals can access the courts, the timeliness of remedies for rights violations, the costs of accessing justice, the efficiency and effectiveness of judicial officers in handling cases, the adequacy of infrastructure

² Section 129, *Constitution of the Republic of Malawi* (1994); as read with section 12 of the Human Rights Commission Act (Cap 3:08) of the Laws of Malawi.

³ See JM Aliro Omara, *Public Hearings in Persons with Disabilities*, UHRC (2000).

and resources within the judiciary, and the levels of judicial accountability and transparency in case management.

Access to justice is an indispensable feature of a democratic society committed to fair and equal treatment of all its citizens regardless of their background. Therefore, the inquiry was guided by several principles and human rights norms including:

- 1) fair and equal access to justice for all, regardless of means, gender, age, or community background,
- 2) effective and affordable access to justice and legal aid systems,
- 3) promotion of early dispute resolution,
- 4) Avoidance of delays in rulings and judgments,
- 5) protection of fundamental freedoms and human rights,
- 6) ability of individuals to assert or defend their rights, particularly against public authorities and economically powerful actors,
- 7) transparent, safe, and fair mechanisms for avoiding or resolving disputes,
- 8) professionalism in the appointment of judges: and
- 9) mechanisms for maintaining the professional integrity of judicial officers.

Through this inquiry, the Commission gathered information from various sections within the society, including those directly and indirectly affected. This information will help the Commission develop appropriate recommendations to relevant authorities, including Parliament, the Executive, and the Judiciary.

2.0. PROBLEM STATEMENT

It is an undeniable fact that formal justice institutions are deemed complex, alien, remote, and inaccessible to certain groups of people in the world. Malawi is not exempted from this phenomenon. In the context of Malawi, some of the challenges prevalent in limiting people's access to justice include delays in accessing justice, corruption and abuse of authority, cost of accessing justice, rights of victims in criminal cases, political interference, structural challenges within the justice system, poor coordination within the justice system, lack of awareness of the general justice system among the populace, cultural barriers and delays in operationalisation of the land tribunals. These problems result in delays in concluding matters and contributing to a huge backlog of outstanding rulings and judgements.

As is often said, justice delayed is justice denied. Cases in the courts of Malawi take too long to be concluded. In some instances, there are delays associated with the actual trial taking long to conclude and at times it is a question of delayed judgments in matters that have already been heard and concluded. Delays in concluding cases have serious human rights consequences. Judgments that are delivered late are usually ineffective as the remedies that they offer are sometimes provided when they are least required. In worst scenarios, some judgements have been delivered when the claimants have passed on.

Meanwhile, with regard to criminal matters, delays in concluding trials mean that remandees stay too long on remand. In the worst cases, people have been on remand for over five years. For such people, their right to be presumed innocent until proven guilty is practically taken away as they are punished by the long duration of remand in prison. Again, on the part of the prosecution, evidence can be lost when matters take too long to be processed in court. There are inmates in prison without any knowledge of how their cases are progressing. There are also instances where judges have heard cases and left the institution without delivering judgments. Some judges have been elevated from the High Court to the Supreme Court and have left cases in the lower court without proper handovers. The Commission has a case that was commenced over twenty-five years ago and was already heard by the High Court but it cannot proceed because the judge that heard the matter retired some five years ago.

All the above bottlenecks in the judiciary make people lose trust in the whole judicial system. This is compounded by the abuse of the concept of judicial independence. This concept has taken to the level whereby judicial officers cannot be questioned for their conduct. Doing so is interpreted as trespassing into the terrain of judicial independence. To make matters worse, there is limited public awareness on laid down procedures for raising complaints against judicial officers.

One of the necessary conditions for ensuring access to justice is that a system must be adequately resourced and organized. It has been observed that there are no proper court structures and a general inadequacy of human resources in the judiciary which is contributing to the backlog of cases. In this regard, the inquiry aimed to assess the extent to which the judiciary is equipped with resources and if its infrastructure is of sound quality.

Another dimension that the inquiry aimed to unpack is the ease of access to justice among the poor and those living in rural areas of the country. The Constitution demands that people should

be given unimpeded access to courts and this right is basic. However, access to formal courts is not always easy in Malawi especially among the poor. The above stipulated challenges hinder people from accessing the courts with ease.

Most of the remote courts operate at the pleasure of the magistrate, who is in most cases hardly there to hear cases. The main obstacle to access to the ‘formal’ system is physical inaccessibility. Magistrate courts in most districts are sparsely located and poorly staffed and equipped. Usually, such courts are run by district-based magistrates who periodically visit the community courts from mainly the district headquarters. As a result, poor people have to travel long distances to access courts. Sometimes, even those with courts within their vicinity have to travel long distances to district centres to access courts with ample jurisdiction. This is the case because most of the lower magistrate courts have limited jurisdiction over matters, such as land.

Another challenge is that there are restrictions on which matters they can hear and this leads to congestion in the upper courts. Yet, there are some well-trained professional magistrates (Senior Resident Magistrates) who can ably handle matters such as land disputes and even homicide. It is also common knowledge that magistrate courts handle more cases and are more accessible to most local people in the country, unlike higher courts that are mostly found in urban areas. Magistrate courts are easy to access because they are close to the people and there are generally no legal fees for them to be accessed. For these reasons, there is a need for a review of subordinate court’s jurisdiction. The review should consider possibilities for Senior Resident Magistrate courts to handle other matters such as land disputes and homicide.

It is on this basis that the Commission undertook an Access to Justice Inquiry on the effectiveness and efficiency of judicial institutions in Malawi. The exercise aimed at identifying the challenges that hinder the full realization and enjoyment of the right to access to justice and making relevant suggestions and recommendations.

3.0. RATIONALE OF THE INQUIRY

The Bill of Rights under Chapter IV of the Constitution has outlined a list of rights that citizens have and how these must be protected. Section 15 of the Constitution requires all the three branches of Government to respect and uphold human rights. Section 15(2) provides that any person with sufficient interest in the promotion and protection of human rights as enshrined in the Constitution is entitled to the assistance of the courts, the Ombudsman, human rights

Commission and other organs of Government to ensure the promotion, protection and enforcement of those rights and the redress of grievances in respect of those rights.

In addition to the above provisions, Section 43 of the Constitution provides for the right to lawful, procedurally fair administrative action, which is justifiable in relation to reasons given where such rights or legitimate expectations are affected or threatened.

It is generally recognized that there is a direct link between access to justice, good governance, and rule of law. According to UNDP

“There are strong links between establishing democratic governance, reducing poverty and securing access to justice. Democratic governance is undermined where access to justice for all citizens (irrespective of gender, race, religion, age, class or creed) is absent. Access to justice is also closely linked to poverty reduction since being poor and marginalized means being deprived of choices, opportunities, access to basic resources and a voice in decision-making. Lack of access to justice limits the effectiveness of poverty reduction and democratic governance programmes by limiting participation, transparency and accountability.”⁴

In line with the Sustainable Development Goal (SDG) 16.3, the international community has committed to work towards the promotion of the rule of law at the national and international levels and to ensure equal access to justice for all by 2030. As some have noted, improved access to justice is a clear enabler for many SDGs. Access to justice is associated with economic growth and investment as well as equity and social justice. It has also been noted that globally, poor people consider access to justice as one of their top priorities. There is further an assertion that the opposite of poverty is justice because constraints in accessing justice disempower individuals and communities from claiming their rights and defending themselves from injustice. The International Covenant on Civil and Political Rights – equality of all before courts and tribunals and the right to legal assistance in criminal matters (Article 14).

Access to justice and commitment to the rule of law are intricately related to protecting the individual from the arbitrary use of power by the executive branch of government and the

⁴ Access to Justice – A UNDP Practical Note

economically powerful, and ensuring that all are equal before the law. This has particular salience in criminal and administrative law but is applicable in all fields.

The Commission, therefore, identified this as revealing possible systemic violations of the rights of people in Malawi in accessing justice. Specifically, the Commission's focus was drawn on the increased concern from the public on challenges including limited institutional capacity in the judiciary, inefficiencies, corruption, shortage of skills, lack of social accountability of the justice system and limited access to formal courts.

The Commission was of the view that a well-functioning justice system should provide timely and affordable justice. This means delivering fair and equitable outcomes as efficiently as possible and resolving disputes early, expeditiously, and at the most appropriate level. A justice system that effectively excludes a sizable portion of society from adequate redress risks considerable economic and social costs.

The positionality and legal obligation of the Commission justified the need to undertake the inquiry and compelled the Commission to guide the nation at this time by providing necessary information regarding the increase in the public's concern in inefficiency and ineffectiveness in judicial institutions.

4.0. OBJECTIVES, METHODOLOGY AND LIMITATIONS

4.1 The overall goal of the inquiry was to assess challenges contributing to the inefficiency and ineffectiveness of judicial institutions in limiting access to justice in Malawi and their impact on the enjoyment of human rights.

Specifically, the objectives of the exercise were to:

- a) identify, analyse and document challenges faced by people in Malawi in accessing justice;
- b) examine the current costs of accessing justice services and securing legal representation, and the impact of these costs on access to, and quality of justice;
- c) assess the current legal and administrative procedures for ensuring judicial accountability and professionalism; and
- d) examine the laws and policies governing the appointment and disciplining of judicial officers.

4.2 Methodology

The Commission employed a holistic approach to the inquiry. The multifaceted methodology provided the Commission with multiple sources of data and analysis. The following methods were used:

4.2.1 Call for submissions from the general public

The Commission invited submissions from members of the general public to share their experiences with accessing justice and provide details of their experiences. The Commission received and documented submissions from 43 people from across the country. One submission was withdrawn because it was just a referral on the same matter, where concerned parties made direct submissions. One applicant decided not to appear before the Commission because their matter was still in court, and they did not want it to be compromised. Another applicant was deemed to have made an application that did not fall within the Terms of Reference. Thus, the Commission remained with 40 submissions. Outlined below is the summary of the submissions received.

Number	Category	Number of Submissions
1.	Alleged corruption by judicial officers	14
2.	Denial of a copy of the judgment, leading to failure to appeal	1
3.	Denial access to court records	2
4.	Delays in the conclusion of cases and the submission of judgments	21
5.	Complaints from the Insurance Association of Malawi	1
6.	Complaint of interference by Attorney General	1
7.	TOTAL	40

Following the receipt of these submissions, the Commission wrote acknowledgement letters and provided advice to some of them, mostly advising them to appeal against court judgements that they were not satisfied with. The Commission also wrote the courts to get status reports on the cases that were in the courts. Finally, the Commission summoned 13 applicants to make detailed presentations to the Commission. Two of them declined to come while 11 availed themselves before the Commission. They all testified under oath.

4.2.2 Literature Review

The Commission undertook a literature review on the subject matter to inform its conclusions and recommendations. The review included the international human rights standards, current reports, and jurisprudence in Malawi and other countries. Comparative analysis helped to appreciate how similar issues in other countries were addressed. Besides literature review, the Commission did an in-depth analysis of Laws Governing Judicial Accountability in Malawi. This analysis looked at laws, policies, reports, and other publications. Both the literature and analysis helped in identifying current gaps and areas of focus for purposes of the inquiry.

4.2.3 Public hearings

Public hearings were conducted in Lilongwe, Mzimba, and Mangochi Districts. These districts were selected randomly to provide an opportunity to get diverse views. The public hearings were attended by people from diverse backgrounds, including members of the civil society, religious leaders, and traditional leaders, representatives from the academia, youth groups, community-based organisations, media, the business community, and public institutions working in the justice system such as the Ministry of Justice, Malawi Prison Service, Malawi Police Service, the Legal Aid Bureau, Malawi Law Society among other members. In total 187 people (148 men and 39 women) participated during the hearings.

The panellists, who were drawn from justice actors, academia, religious leaders and civil society organisations provided expert knowledge on the subject matter. Besides presentations, the panellists were engaged in a plenary discussion with the audience. Information from these sessions was documented and recorded.

The Commission prepared guiding questions and outsourced moderators that led the discussions which were highly participatory. Panellists led in responding to the questions and then participants contributed through plenary discussions.

4.3 Limitations

The Commission had initially planned to conduct public hearings in at least two districts per region, but due to limited resources, only three districts were reached. However, the Commission is happy to note that submissions from members of the general public were received beyond these three districts. It also made a deliberate strategy to ensure that participation at the public hearings comprise a cross section of stakeholders, including the following: -

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- Representatives of relevant government agencies, such as Office of the Ombudsman and Legal Aid Bureau
 - Malawi Police Service
 - Malawi Prison Service
 - Faith based organisations
 - Traditional leaders
 - Civil Society Organisations
 - Members from the Business Community
 - Women groups
 - The Youth
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5.0 ANALYSIS OF LAWS GOVERNING JUDICIAL ACCOUNTABILITY

5.1 Legal and Administrative Framework for Ensuring Judicial Accountability and Professionalism

Access to justice is the individual empowerment and enforcement component of the rule of law, which depends upon individual's knowledge of their rights and access to tools to enforce those rights effectively and affordably⁵. The key word in the definition is the *rule of law*. This concept of rule of law is buttressed in Section 4 of the Constitution which states that the Constitution shall bind all executive, legislative and judicial organs of government at all levels of government and the people of Malawi are entitled to the equal protection of this Constitution and laws made under it.

Access to justice does not come about in a vacuum, it branches from the rule of law which other quarters have defined as a principle of governance in which all persons, institutions and entities, public and private, including the state itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with

⁵ Sabatino C.P. How Access to justice shapes and challenges civil lives of older adults. Journal of the American Society on aging. 2019-20 (6)

international human rights norms and standards⁶. In the absence of justice, people are unable to have their voices heard, or hold decision makers accountable.⁷

From the foregoing, it is crystal clear that there is a direct-link between access to justice and the use of judicial institutions. Judicial institutions play a major role in the upholding of the rule of law in all open and democratic societies which in turn facilitate access to justice. A judiciary is a necessity in any Constitutional democracy.⁸ The judiciary acts as a branch of government whose main task is the authoritative adjudication of controversies over application of laws in specific situations.⁹

There are however diverse situations which impede judicial institutions' work limiting the right to access justice. One of the objectives of this exercise was to assess the current legal and administrative procedures for ensuring judicial accountability and professionalism in Malawi. This is mainly because there is an assertion that the judiciary is elite and cannot be policed. Lord Denning stated the following in Sirros v Moore and Others:

“Ever since 1613, if not before, it had been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of the jurisdiction which belongs to him. The words which he speaks are protected by absolute privilege. The orders which he gives and the sentences which he imposes, cannot be made subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance or was activated by envy, hatred and malice and uncharitableness, he is not liable to an action...of course if the judge accepted bribes or been in the elastic degree corrupt or has perverted the course of justice, he can be punished in the criminal courts. That apart, however, a judge is not liable to an action for damages. The reason is not because the judge has any privileges to make mistakes or to do wrong. It is so that he should be able to do his duty with complete independence and free from fear.”¹⁰

These powerful utterances by Lord Denning illuminate the fact that there is nothing like absolute judicial independence.

⁶ United Nations Security Council,2004

⁷ United Nations. Access to Justice and the rule of law. United Nations. 2019

⁸ Shuaib. F. Malasian Judicial Appointment process: an overview of the reform. Journal of applied sciences Research. (2011) 7 (13) 2273-2278

⁹ Encyclopaedia Britannica<<https://www.britannica.com/topic/judiciary>>accessed on 31st March,2025

¹⁰ [1975] Q.B.118

It is imperative to note that judicial independence does not imply impunity on the part of judicial officers. Mkwandawire J (as he then was) in *The State (On the Application of the Human Rights Defenders Coalition and Ors v The President of the Republic of Malawi and Ors*¹¹ stated that, “it must be acknowledged that judicial independence and judicial accountability coexist. The two are not inconsistent. The Judiciary should not treat itself as ungovernable; or elitist. It must be accountable to other branches of government, to itself and the people. Courts exist to serve the public and, to that extent the people have legitimate interest in the administration of justice because, in truth, judicial officers get their power from the people. Judicial accountability is well embedded in our Constitution.”

The next section focuses on the current legal and administrative procedures for ensuring judicial accountability and professionalism.

5.2 Supremacy of the Constitution

In order for the judiciary to fulfil its mandate, a constitution, ordinarily vests exclusive judicial authority in the judiciary¹². Judicial authority is the power to resolve disputes that can be resolved by the application of the law by determining what the law is and how to apply it to a particular instance¹³. The Constitution is the supreme law of the land and this is provided in sections 5, 10, 11, 199, and 200 of the Malawi Constitution.

Section 5 of the Constitution states that “*Any act of government or any law that is inconsistent with the provisions of the provisions of this Constitution shall to the extent of such inconsistency be invalid.*”

The following sections are equally relevant: -

Section 10 (1): “*In the interpretation of all laws and in the resolution of political disputes the provisions of this Constitution shall be regarded as the supreme arbiter and ultimate source of authority.*”

Section 11 (1): “*Appropriate principles of interpretation of this Constitution shall be developed and employed by the courts to reflect the unique character and supreme status of this Constitution.*”

¹¹ Judicial Review Case No. 33 of 2020

¹² Rautenbach I. & Malherbe. E. Constitutional Law. Lexus Nexus. 2004 (217).

¹³ ibid

Section 199: *“The Constitution shall have the status as supreme law and there shall be no legal or political authority save as is provided by or under this Constitution.*

Justice Mkandawire stated that Malawi is a constitutional democracy built on constitutional supremacy.¹⁴ This entails that the Constitution reigns supreme above any other law.¹⁵ Constitutional democracies are premised on the existence of three branches of government and these are the executive¹⁶, the legislature¹⁷ and the judiciary.¹⁸ The judiciary is commonly regarded as the gatekeeper of democracy and constitutionalism.¹⁹ The Constitution is hence the first law that governs the operations of the judiciary and judicial officers. Kanyongolo points out that the Constitution expressly requires courts to base their decisions only on:²⁰

“Relevant facts;²¹ underlying constitutional principles; Constitutional principles of national policy²²; human rights and values which underlie an open and democratic society²³; applicable current norms of public international law; and comparable decisions of foreign courts.”

The foregoing directs the steps that the judiciary should adhere to in its operations. Parties appearing before the court therefore in accordance with these provisions must be treated impartially. Any manifestations of partiality or irrelevant considerations in deciding cases by the judiciary can be challenged based on the relevant Constitutional provisions. In addition, where a person is aggrieved by a decision of a court, the law provides for an appellate process to a higher court. The two scenarios amount to a process of judicial accountability. The judiciary must be accountable to the law, to the Executive, to the Legislature, and to the public

¹⁴ The state (on application of the Human Rights Defenders Coalition), Association of magistrates and Malawi Law Society v The President of the Republic of Malawi, Secretary to the Cabinet & Chief Secretary to the government. Judicial Review Case no. 33 of 2020.

¹⁵ See section 5 and 199 of the Republic of Malawi Constitution

¹⁶ According to Section 7 of the Constitution, the executive shall be responsible for the initiation of policies and legislation and for the implementation of all laws which embody the express wishes of the people of Malawi and which promote the principles of this Constitution.

¹⁷ Section 8 of the Constitution states that the legislature shall be responsible for the enactment of laws and shall ensure that its deliberations reflects the interest of all people of Malawi and that the values expressed or implied in this Constitution are furthered by the laws.

¹⁸ Section 9 of the Constitution states that, the judiciary shall have the responsibility of interpreting, protecting and enforcing this Constitution in an independent and impartial manner with regard only to legally relevant facts and the prescriptions of law.

¹⁹ Nkhata. M.J. spotlight on the Guardians of the Gatekeepers: An assessment of the Judicial Service Commission of Malawi. <https://unisapressjournals.co.za>CILSA> accessed on 1st April, 2025

²⁰ Kanyongolo. E. State of the judiciary report: Malawi 2003. April, 2004 (26)

²¹ See Section of the Constitution

²² See chapter III of the Constitution

²³ See chapter IV of the Constitution

at large. Judicial criticism by the Executive, the Legislature, the public and the press are a recognition that the independence of the judicial officers is not absolute but is subject to certain limitations.²⁴

5.3 Mandate of the Judiciary in the protection and promotion of human rights

The Constitution of 1994 contains a comprehensive Bill of Rights that is enforceable by the courts of law. In interpreting the provisions of the Constitution, the courts are specifically required to make full account of the provisions of the Constitution that relate to human rights.²⁵ Section 15(1) provides for the protection of human rights. It stipulates that, *‘the human rights and freedoms enshrined in this Chapter shall be respected and upheld by the executive, legislature, judiciary and all organs of the Government and its agencies and, where applicable to them, by all natural and legal persons in Malawi and shall be enforceable in the manner prescribed in this Chapter’*. The mere fact that the Bill of Rights is enshrined in the Constitution which is the supreme law, courts are obliged to take them into full regard in deciding matters. The Judiciary, according to section 103(2), shall have jurisdiction over all issues of judicial nature. Additionally, section 41 of the Constitution guarantees a right of access to justice. The aforementioned provision stipulates that every person shall have the right to recognition as a person before the law.²⁶ Needless to say that this provision buttresses the concept of non-discrimination before the law as provided for under Section 20 of the Constitution.

Discrimination has been defined as treating similarly placed individuals differently or treating differently placed individuals alike.²⁷ Distinction based on a person's characteristics attributed to an individual solely on the basis of association with a group will rarely escape the charge of discrimination while those based on an individual's merits and capacities will rarely be so classed.²⁸

Section 46(2)(a) entitles the general populace to enforce their rights through an application to a competent court. There must be a reason why the framers of the Constitution inserted the

²⁴ Sakala. L. CJ. The Accountability of the Judiciary: Accountable to whom? Is there such a mechanism? A Paper presented at Southern African Judges Commission meeting in Windhoek, Namibia. 2005

²⁵ See, Section 11(2)(b) of the Constitution of 1994

²⁶ See Section 41(1) of the Constitution

²⁷ Mwaungulu J in *Sheriff of Malawi and Another v. Universal Kit Suppliers* MSCA Civil Appeal No. 6 of 2017

²⁸ Supreme Court of Canada in *Andrews v. Law Society of British Columbia*, [1989] 1SCR 143

word ‘*competent*’ in that provision. The term competence refers to the legal ability of a court to exert jurisdiction over a person or a thing (property) that is the subject of a suit.²⁹

5.4 Laws and Policies Governing the Appointment and Disciplining of Judicial Officers

5.4.1 The Constitution

The appointment of judicial officers is governed by section 111 of the Constitution. In view of this provision, the Chief Justice is appointed by the President and confirmed by the National Assembly by a majority of two-thirds of the members voting³⁰ whilst all other judges shall be appointed by the President on the recommendation of the Judicial Service Commission.³¹ On the other hand, magistrates and persons holding other judicial offices are appointed by the Chief Justice on the recommendation of the Judicial Service Commission. These officers shall hold office until the age of seventy unless sooner removed by the Chief Justice on the recommendation of the Judicial Service Commission.³²

The amended legislation provides that judges of the High Court and Supreme Court must retire at the age of seventy (70). In addition, a person holding the office of a judge may be removed from office for incompetence in the performance of his or her office or for misbehaviour and shall not be so removed except where the President by an instrument under Public Seal and in consultation with the Judicial Service Commission remove from office any Judge where a motion praying for his or her removal on the ground of incompetence in the performance of his duties or her office has been debated in the National Assembly; passed by a majority of the votes of all members of the Assembly and; submitted to the President as a petition for the removal of the judge concerned.³³

5.4.2 Judicial Service Administration Act, No. 4 of 2025

Unlike the repealed Judicature Administration Act,³⁴ the Judicial Service Administration Act of 2025, is more comprehensive and has elaborate provisions for appointment and removal of judicial officers. The Act has also introduced new offices within the Judiciary such as Deputy Chief Justice,³⁵ the Judge President, Judge In-Charge and the Chief Registrar. Apart from the

²⁹ Encyclopaedia Britannica<[https://www.britannica.com/topic/competence and jurisdiction](https://www.britannica.com/topic/competence-and-jurisdiction)>accessed on 7th April, 2025

³⁰ See Section 111(1)

³¹ See Section 111(2)

³² See Section 111(3)

³³ See Section 119(2)(3) and (4)

³⁴ Cap 3:10 of the Laws of Malawi

³⁵ Section 12

Judicial Service Commission (JSC) which is entrusted with additional powers, the Act has further created the institution of the Independent Complaints Commission of the Judiciary with the power to do or perform all such acts and things as it may be authorized by the Act and any other written law.³⁶

The Judicial Service Commission is mandated to formulate schemes of recruitment of persons in the judicial service; determine terms and conditions of service of persons employed in the judicial Service; exercise oversight, supervisory and disciplinary powers over persons employed in the Judicial Service; appoint, promote and discipline persons employed in the Judicial Service and inquire into, and deal with, complaints made by, or against, any persons employed in the Judicial Service. Under Section 25, the JSC may inquire into the conduct of any person employed in the Judicial Service or employed by the Commission and may impose the following sanctions; a written warning, suspension, demotion, removal from office, or any other appropriate disciplinary sanction as the Commission may determine. However, pursuant to Section 26 of the Act, the Commission has no power to remove a judge.

According to Section 29 of the Act, the Independent Complaints Commission is granted the power to investigate any misconduct against any person employed in the Judicial Service. The power of the body, however, is reduced into making recommendations for a person found liable, including a judge, to be removed from office, to be suspended from office for a specified period or to be subjected to any other punishment prescribed under section 25(2) of the Act. The function of the Independent Complaints Commission, according to section 28 of the Act is to receive and investigate complaints by the public or any authority against any person employed in the Judicial Service. This body is established under Section 27 of the Act

5.4.3 The Judicial Code of Ethics

The judiciary is also directed by a Code of Ethics in the conduct of its duties.³⁷ According to Rule 6 of the violation of the Code of Ethics may attract the following sanctions: (a) Severe reprimand; (b) suspension with pay; (c) dismissal; and (d) such other penalty as the Commission may prescribe in pursuance of Section 118(b) of the Constitution.

³⁶ See Section 27 of the Act

³⁷ The Code of Ethics was adopted on 7th March 1999 at Nkopola Lodge

6.0 EVIDENCE FROM SUBMISSIONS AND PUBLIC HEARINGS

6.1 This section presents evidence that was obtained from the submissions sent directly to the Commission and that which was collected through public hearings that were heard in Lilongwe, Mzimba and Mangochi.

6.2 Delays in Accessing Justice

Delays in delivering judgments were reported as a major issue in all the hearings. In some cases, rulings have been pending for decades. For example, chiefs lamented that chieftaincy cases take years to be concluded in the courts, thereby affecting traditional leadership institutions. This issue was more pronounced in Mangochi where chiefs also proposed that chieftaincy matters should be handled by chiefs themselves or the magistrates should be given the jurisdiction to handle chieftaincy and land matters.

Participants complained of not being aware of timelines in the delivery of judgements thereby, leaving them at the mercy of the magistrates and judges. Furthermore, they stated that inadequate courts and judges results in high caseloads per judge/magistrate contributing to delays in case hearing and overburdening judicial officers.

Many people expressed frustration over unnecessary court adjournments which prolong proceedings. Frequent transfers and promotions of judicial officers have disrupted the timely delivery of judgments, often leading to abandonment or delays in concluding cases. In some instances, judges are reluctant to release judgments and these delays have sometimes been linked to bribery or corruption. One complainant shared their frustrations of having undergone more than fifteen adjournments in their case. To make matters worse, they would wait for hours at the court and only be informed late in the afternoon that the case would not proceed because a judicial officer was not available. They wondered why the court could not have informed them in advance that the matter was not going to proceed.

Malawi Police Service shared their frustration with the issue of shortage of judicial staff and court space, arguing that oftentimes when they go with suspects to court, they return with them to custody with less than half having had their day in court. In most cases, courts are not able to hear all planned cases in a day due to starting court sessions late, something that was also attributed to unprofessional conduct by some judicial officials that come late for work.

A panellist from Gender Justice Unit complained during the Lilongwe public hearing that their clients always express worry that respondents regularly defy court orders and summons without

consequences, reflecting weak enforcement mechanisms. Additionally, CHRR also complained of the missing of court files, hence the difficulty in tracking case progress. It was also felt that the missing of cases is a deliberate ploy by some court users to stall cases. These systemic delays have led to overcrowded prisons where many inmates remain on remand, resulting in inadequate food supply and deteriorating conditions.

A panellist from the University of Livingstonia raised a concern during the public hearing in Mzimba over bureaucratic inefficiencies that prolonged case resolution, which in turn frustrate litigants, particularly those who travel from remote areas. These individuals are often forced to find accommodation near the courts or return home without certainty of coming back for the next appointed date due to financial constraints. This has reportedly contributed to a high attrition rate in cases.

Malawi Prison Service also expressed concern about overcrowding resulting from unnecessary adjournments and prolonged pre-trial detention. A case in point was Mzimba Prison which had 51 inmates on remand for murder and 46 others on general remand, with the oldest case pending for 7 years. They further expressed concerns over expired remand warrants, transferring of prosecutors, transport problems at prisons and police facilities, funding challenges and long distance. For instance, Jenda police station is detaining their remandees at Mzimba Prison and taking them for court is a challenge as the distance from Jenda to Mzimba is about 60 kilometres.

Participants also lamented a general lack of accountability among judicial officers. It was noted that some judges delay pronouncing judgments for years, arrive late for work, or are entirely absent. Above all, it was cited that many people were unaware of where to lodge complaints about such conduct, and those that did report, be it the Malawi Human Rights Commission, the Office of the Ombudsman, or the Anti-Corruption Bureau the response has often been ineffective.

As it has already been stipulated above, the Commission made a call for submissions. 12 of the people who made submissions were asked to come to the commission to provide more information. Some of the people made allegations about delays in accessing justice by stating that their cases are taking forever to end. One woman pointed out that her case began in 2016 and has not ended to date. She stated that there had been a lot of back and forth in her case to the extent that at one point she was told that Malawi does not have jurisdiction to hear her case and should be heard in Portugal instead. Currently, her case has been referred to the supreme

court before the full bench. It is a case of child custody and her former husband is of Portuguese origin.

There is also a case of Mr Urban Mkandawire versus the University of Malawi and the Attorney General which has taken about 25 years in the Courts of Malawi and at every step there were delays within the court system which largely contributed to the prolonging of the case. Currently, the case is continuing at the African Court of Human Rights. As a result of the long duration in resolving the matter, technical issues arose at some point when the matter was in the supreme court and most of the justices of the supreme court were conflicted, having heard the same matter in the lower courts.

Similarly, there is a case of Mr Rodwell Zimba who was arrested and lost his job in the late 1977 following his arrest which was believed to have been politically influenced. He was detained for thirteen months without trial. At the time of his arrest, he was working as Under Secretary in the Ministry of Sports, Youth and Culture. In 1993, he filed a claim in the High Court, claiming salary, salary arrears, leave grant, house allowance and pension. The matter was heard by Justice Mwaungulu and was concluded in February in 1998, pending judgment. Since then, Justice Mwaungulu was promoted to the Supreme Court where he eventually retired without delivering judgment. For 27 Years, Mr Zimba has been waiting for judgment, with no clear end in sight. He has personally written to the Chief Justice on the matter and the Chief Justice promised to follow up. When the Commission contacted the judiciary through the Registrar in 2024, they acknowledged the existence of the matter but indicated that they did not know what to do with the matter since the judge that had handled the matter was no longer with the judiciary. In June 2024 the Commission wrote to the judiciary again and the judiciary has indicated that the file cannot be traced. They therefore requested for more time to retrieve the file.

A participant from Mzuzu shared that their case had stalled at Mzuzu High Court for over ten years with no resolution in sight, and they had failed to get any accountability from the Judiciary.

Case Study #1: Mzimba: In the Matter of X vs Y

On 7th April 2025, the complainant lodged a complaint with the Human Rights Commission (the Commission), alleging abuse of power by Y (Chief). The complainant stated that he had been working as a proprietor under the Mzimba Volunteer Association, which established Mzimba Community Radio in 2007. After the project concluded, the volunteers were expected to elect new board members to manage the station. However, the former board members contested this decision and insisted on retaining control.

When the complainant and other volunteers opposed their continued leadership, the former board members, under the leadership of Y established a new station, Mzimba Heritage Radio (Mthethwa) and allegedly took over the original community radio station by force, integrating it into their new entity.

In 2014, the complainant took the matter to the Mzuzu High Court, which ruled in his favour. However, the case file reportedly went missing multiple times from the court. The case was later escalated to the Supreme Court in 2017, which upheld the High Court's decision. The Supreme Court ordered Y to compensate the complainant with MWK 3.6 million and to return the community radio station. To date, Y has not complied with the ruling. The complainant has made several attempts to return to court for enforcement of the judgment, but these efforts have been unsuccessful.

In a surprising turn of events, during the first week of March 2025, the complainant's relatives were summoned by Y and ordered to pay two cows as a form of punishment, alleging that the complainant had shown disrespect by taking Y to court. The complainant expressed shock at this, noting that he had made several attempts to engage Y for dialogue and had even requested a formal audience, all of which were ignored.

When the matter was reported to Mzimba Police Station, the Officer in Charge reportedly stated that the police do not intervene in traditional affairs. Out of fear of repercussions, the complainant's relatives complied

and delivered two cows, each valued at MWK 900,000, totalling MWK 1.8 million.

The complainant expressed concern that such actions are illustrative of the broader governance issues under Y, who, according to the complainant, routinely disregards the laws and Constitution of Malawi, acting unilaterally and without respect for individual rights.

The judiciary has acknowledged the problem of delays in concluding cases and delivering judgments. They have attributed this mainly to shortage of staff. They are optimistic, however, that the revised Establishment Warrant will help in addressing the problem of shortage of staff.

According to the 2024 Annual Report by the Judiciary, the Commercial Court division received a total of 474 cases and concluded 808 cases, including those from previous years.

Cases handled by the Commercial Court Division in 2024

Registry	New cases Registered	Number of cases concluded
Principal Registry	205	152
Lilongwe	249	646
Mzuzu	20	10
TOTAL	474	808

As it can be seen from the above data, the Principal Registry and Mzuzu did not manage to conclude all the registered cases in 2024 while Lilongwe Registry was able to conclude more cases than those registered in one year.

A different scenario was seen in the Family and Probate Division which received a total of 1126 new cases in 2024 and only concluded 530 cases in that year. A similar case is the Industrial Court which received 2,444 new cases in 2024 but only concluded 528 cases. Only Zomba Registry, which registered 3 new cases, was able to conclude 5 cases in total. The rest of the divisions concluded fewer cases than the number registered in that year.

The magistrate Courts have the highest number of case backlog. From the 2024 Annual Report by the judiciary, the Chief Resident Magistrate Court South received the highest number of

cases, seconded by the Central Region. The South registered 20, 083 new cases and concluded 3, 282 of those cases. The Centre registered 17, 587 new cases and managed to conclude 10, 343 cases.

6.3 Corruption and Abuse of Authority

As indicated in the Methodology section of this report, 17 of the 40 submissions that were received by the Commission made serious allegations of corruption. Although the main issues raised in the submissions were to do with delays in concluding cases as well as unfair judgments being issued by the courts, concerned parties were of the view that such problems were being influenced by corruption. In one case two judges from the High Court were specifically mentioned to be engaging in corruption. Another Senior Magistrate was also mentioned.

From what the Commission gathered, there is a public perception that the justice system is highly corrupt, and this is manifested through unfair court decisions and the manipulation of evidence by destroying it or declaring files to be missing. Some complainants who have cases in the magistrate's court in Lilongwe alleged that some respondents in those matters had been boasting to complainants that their money was doing the work for them. Most of the women that complained about unfair judgement issues by the Child Justice Court in Lilongwe were convinced that the court was highly influenced by corruption in its decisions.

For example, a group of concerned women complained to the Commission that a judicial officer connives with opposing parties and decides cases in their favour based on the favours received by this judicial officer. One of the women also alleged that the same court which sits as the child justice court heard her divorce case at area 3 in Lilongwe. When the judicial officer was transferred to the child justice court, the case file was taken along for no apparent reason. This made the complainant believe that the court was acting on monetary influence from the opposing party or that the court was simply abusing its authority. In another case a man lamented about his lost trust in the judicial system. He made serious allegations that the high court in Lilongwe was compromised in the handling of his case and that in one instance he believed that the court was corrupted by the opposing party. The case is currently in the supreme court at the instance of the complainant.

Since the Commission does not have direct mandate to investigate allegations of corruption, the Commission will advise the complainant to report the cases to the Anti-Corruption Bureau and the Judiciary Complaints Management Committee chaired by Justice Madise of the Supreme Court. Other members of the Committee as of July 2025 were Justice Michael Tembo,

the Chief Registrar, the Chief Courts Administrator. Her Honour Thokozani Soko and her Honour Diana Mangwana.

While acknowledging the public perception that the judiciary is corrupt, the judiciary notes that such allegations must be well founded and evidence based so that the Judiciary can properly investigate. They have also established two important committees, namely the Judiciary Internal Integrity Committee and the Judiciary Complaints Committee which are geared to handle complaints from members of the general public. They encouraged the Commission to refer any matters to these committees for their action.

6.4 Professional Misconduct by judicial officers

Participants in the public inquiry raised serious concerns regarding the professional conduct of legal practitioners. This matter was more pronounced during the Mangochi public hearing where participants complained about lawyers misappropriating client funds or engaging in unethical behaviour such as taking bribes to expedite court processes. A similar concern was raised in Mzimba where participants questioned the role of the police in granting bail to suspects of serious crimes.

In Mangochi, participants wondered whether ethics and morality are emphasized during training for legal practitioners. In response, a representative from the University of Malawi (UNIMA) said that legal ethics is part of the formal curriculum and monitored by the Malawi Law Society. However, adherence to ethical standards is inconsistent. Participants further complained that judges prioritised personal matters over court responsibilities without consequences, such as arriving late to court, adjourning sessions without explanation, and allocating insufficient time to cases. These issues are especially burdensome for individuals who travel long distances. The lack of accountability for such behaviour not only causes frustration but also contributes to court delays and case backlogs.

Additionally, the process for appointing and promoting judicial officers is not transparent, leading to public scepticism about the integrity and fairness of the system. This amplifies the public perception that the judiciary is corrupt. Additionally, the judiciary is not media friendly and is not available when the press seeks clarification on a particular issue.

According to participants in the public inquiry, the Judicial Service Commission is seen as ineffective in disciplining judicial officers. The judiciary is perceived as too powerful, with minimal information made public and a lack of accountability. Participants also raised a

concern that there appears to be no regular performance appraisal for judges and magistrates, which may impact their performance.

It was further noted that job promotions often lead to the abandonment of pending cases. Most participants in the public hearings indicated ignorance about the existing mechanisms for ensuring judicial accountability. The legal fraternity is viewed as a closed group or “brotherhood” where shared training backgrounds compromise judicial independence and promote a culture of impunity. This environment fosters a lack of responsibility in case handling, and courts frequently fail to enforce their own rulings as respondents ignore summons without facing penalties.

Community members and civil society participants highlighted inefficiencies in police investigations and prosecutions. They observed that police often arrest suspects before conducting adequate investigations, which leads to people being held in custody for over 48 hours, sometimes even being remanded in prisons. This contributes to prison overcrowding.

Though police bail is supposed to be free, participants shared experiences suggesting that it is frequently associated with corruption. In response, the Malawi Police Service emphasized that while the police must be held accountable, the public also needs to stop enabling corruption by refusing to pay bribes.

CASE STUDY 2 (IRC Lilongwe District Registry): In the Matter of Patrick Kadiwa v Malawi Judiciary

In this case on 3rd June, 2024, the Industrial Relations Court entered a default judgement wherein it was ordered that the Respondents pay compensation to the complainant or reinstate him. A notice of assessment was sent to the Respondent but the respondent did not appear in court neither did it send any word as a reason for its absence. The Court proceeded with the assessment without the respondent and issued an order on 15th July, 2024. 8 months on, the respondent is yet to comply with an order of the Court.

Considering that the respondent is the judiciary which is expected to be advancing the ends of justice. Its conduct is very concerning

6.5 Cost of Accessing Justice

Participants overwhelmingly pointed out that the financial cost of accessing justice is a major obstacle for the majority of Malawians. Expenses include legal fees, transportation to and from

court (made worse where adjournments are made without the matter being heard at all), and bail payments. These costs are unaffordable for many, especially those that are poor. As a result, wealthier individuals can navigate the justice system much easier, while the poor face prolonged pre-trial detention, missed court appearances, and limited legal support, sometimes leading to wrongful convictions or prolonged legal limbo. Consequently, exacerbating prison overcrowding and increased backlog of cases.

Access to justice is significantly hindered by high costs and limited resources. The Malawi Legal Aid Bureau stated that they have only 45 lawyers serving the entire population. Limited access to legal aid services forces many people to sell property to afford private legal representation. In Mzimba, it was learnt that due to shortage of lawyers, Legal Aid Lawyers are based in Mzuzu and only visit Mzimba, Rumphu and Nkhata Bay on specific days in a week. Rumphu and Nkhata Bay are only served once in a week while Mzimba is visited twice. This arrangement means that if a matter has been adjourned, it can only be set for a hearing in the other week. This has serious implications on the timely delivery of justice. This is one of the reasons why people stay long on remand, thereby contributing to congestion in police cells and prisons.

People have complained about the complexity and length of legal procedures which discourage them from seeking justice. Moreover, essential institutions such as PASI and the Legal Aid Bureau voiced out that they experience persistent underfunding and under staffing which means their legal practitioners have to travel to other districts in order to provide services, which is not always the case due to underfunding. Combined with widespread poverty and high litigation fees, many citizens are effectively barred from civil litigation.

During the public hearings, Malawi Police Service and Malawi Prison Service also complained that they face transportation challenges which further delays justice, particularly in presenting suspects to court within the constitutional 48-hour timeframe and remand period. Concerns were raised regarding the rising costs of litigation and the limited availability of pro bono legal services. Participants noted that the Legal Aid Bureau, though mandated to provide legal aid, primarily operates in urban centers restricting access to those in rural areas. In the Northern Region, for example, practicing lawyers are only based in Mzuzu and Karonga. The Bureau faces challenges such as financial constraints, inadequate staffing, and logistical difficulties that hinder outreach to rural areas. These limitations leave many without access to legal representation. This situation is made worse by widespread legal illiteracy. The National Legal

Services Scheme by the Malawi Law Society and the Legal Aid Bureau, to provide pro bono legal services, has registered some successes in terms of legal aid but its implementation for wider impact requires review.

There was also a concern over nepotism in the judiciary. It was alleged that some judicial staff employ their relatives as court clerks, which makes it difficult to discipline them when they are late or underperforming.

During the call for submissions, individuals who were invited to the Commission to provide more details about their submissions also expressed concern with the cost of accessing justice. One woman, whose case has been ongoing for more than eight years in various courts, including the Child Justice Court, stated that she has spent a significant amount of money on a case that seems to have no end. Another woman said that in her case, she was unable to find legal representation as she could not afford it. She has since opted to go back home to her village in Chitipa.

CASE STUDY 3 (SN V WN)

In this case a man was assaulted by a group of individuals in Mzimba and his case went to trial as a criminal case. At the conclusion of everything the court directed that the man be paid the money which was paid by the defendants as a fine. The money was paid into court in Mzuzu. He complained that it was expensive for him to go to Mzuzu to access the money. He also lamented that the amount of money which the Court directed the defendants to pay as fine was not congruent to the amount of damage that was caused by the defendants. He also said that he had spent so much money going to Court for the hearings which kept being adjourned and what he got at the end was not enough. All in all, for him the cost of accessing justice was too high/expensive.

6.6 Neglected Rights of Victims in Criminal Cases

Participants expressed concern that the judiciary, particularly in criminal matters, appears to focus predominantly on the rights and interests of suspects or perpetrators, while largely overlooking the needs and rights of victims. This perception is reinforced by Section 42 of the Constitution, which outlines extensive protections for accused persons. While such protections

are important, it was noted as disheartening that alleged victims especially in sensitive cases such as sexual violence often receive little to no court-ordered support during proceedings. In many cases, the courts seem to be primarily concerned with the procedural and constitutional rights of the accused, without offering parallel consideration for the emotional, psychological, or practical needs of the victims.

While there was general public understanding of the right to bail for all offences, a strong plea was made for courts to conduct more thorough assessments of the nature and impact of the alleged offences when making such decisions. Additionally, concerns were raised regarding the Presidential pardon process, which is often seen as favouring perpetrators without any corresponding mechanisms to acknowledge or address the trauma and needs of their victims. These concerns leave many victims feeling abandoned by the justice system, with limited avenues for redress or support. As a result, there is a growing sense among the public that justice is inaccessible or skewed against those who suffer from acts of violence and crime.

6.7 Linkages between the formal and informal Justice Systems

Some participants suggested that the use of an informal justice system might reduce the burden from courts and expedite access to justice. It was noted that in the past, traditional leaders (chiefs) handled a significant number of disputes at the local level. However, it has now become a common practice for almost every matter to be taken directly to the formal courts, further straining the justice system. Whereas the informal justice can reduce the burden in the formal courts, there is also a need for proper regulation on the type of cases that the informal justice system can handle.

The informal justice system is however, not without its own faults. It was noted that in some cases, traditional leaders demand payment in the form of livestock, such as goats or chickens, as a precondition for hearing cases. This can be more expensive than formal court processes and may compromise the fairness of judgements and access to justice. Some participants were concerned about the specific days when chiefs hold their hearings, some of which clash with their days of prayer, especially on Saturdays and Sundays.

Poor coordination between the formal and informal justice systems also affects the outcome of some criminal matters. For instance, it was noted by police that the trend of reporting criminal matters such as rape and defilement through local chiefs often results in

such matters being recorded late, thereby affecting the authenticity of the medical tests that are conducted late after the incident.

6.7 Political Interference in appointment of judges

Participants expressed a concern over the independence of the judiciary which they perceive is highly compromised by political influence, particularly through the appointment of judges and the Chief Justice by the President. Civil Society Organizations further alleged that the broader legal framework is politically driven, as many key justice sectors' positions are filled by political appointees, undermining objectivity and impartiality in the system.

In response to this matter, the Judiciary said that it welcomes reforms to make the judiciary more independent. They however note that any legislative reforms must be in line with constitutional provisions, especially in upholding the principle of separation of powers.

6.8 Structural Challenges Within the Justice System

Participants complained of broader structural and operational challenges hindering them from accessing justice. For instance, courts such as the High Courts are concentrated in urban areas, leaving poor rural populations with limited physical access. Participants expressed concern about judicial infrastructure which they said was grossly inadequate, especially in rural areas. For instance, there is only one High Court serving the entire Northern Region, forcing some litigants to travel from districts as far as Chitipa. Participants from Mzimba pointed out that while magistrate courts exist in areas such as the Boma, Euthini, and Eswazini; other places like Bulala have no formal court, requiring people to spend up to **K50,000** to reach the nearest court. Although mobile courts exist, they are heavily dependent on donor funding.

Besides the challenge of inadequate physical infrastructure, there also exists a serious problem of shortage of judges and other judicial personnel. Judges and magistrates are overloaded with case files.

Courts should also take measures to become more disability friendly by, among others, introducing sign language interpreters. The government's support for the justice system was also deemed insufficient. For example, the LAB in the Northern Region has only ten lawyers, resulting in significant case backlogs.

Participants further criticized lack of transparency within the judiciary citing weak oversight mechanisms as contributors to inefficiencies within the judicial system. They

further raised concerns over the ineffective disciplinary procedures stating that the absence of stringent measures to hold judicial officers accountable undermines trust in the system. The public has noted the enactment of the Judicial Service Administration Act and is keen on its enforcement.

Furthermore, while some participants are aware of the services offered by Legal Aid Bureau (LAB), it was however observed that LAB is severely understaffed, with only 45 lawyers serving across 28 districts. This makes it nearly impossible to provide timely and effective legal representation to thousands of cases it receives.

6.9 Poor Coordination within the Justice System

Key players such as Malawi Prison Service, Malawi Police Service, PASI expressed concern that justice delivery suffers from poor coordination. They cited the lack of platform for stakeholders to promote accountability and cooperation in the justice system. Furthermore, the lack of collaboration among justice sector institutions contributes to inefficiencies. Additionally, court files frequently go missing due to inadequate case management systems. When judicial officers are promoted or transferred, there are no clear handover and follow-up mechanisms to ensure case continuity.

6.10 Lack of Awareness of the Justice System to the General Population

During the public hearing in Mangochi, participants expressed a lack of awareness about their legal rights and how the justice system operates including court procedures. For example, the manner in which criminal cases are handled within the justice system vis-a-vis the role of the victim in the prosecution of cases. In addition, the high number of suspects on remand shows lack of knowledge of bail application or legal representation. Mangochi Prison conceded that as of 28th March 2025, the prison, which is designed to accommodate 105 inmates, including convicted individuals, was holding 127 inmates on remand alone. In addition, participants stated that many people do not know how to apply for bail or request legal representation. This lack of civic education makes it difficult for individuals to seek redress or defend themselves when accused of crimes.

Institutions such as Malawi Law Society, Women Lawyers Association and Centre for Human Rights Rehabilitation raised concern over the high levels of illiteracy and lack of awareness among the population which hinders access to justice. Many people cannot read

or write and are unable to understand legal documents or court procedures. The Constitution and other legal texts are not easily accessible to the general public.

Public awareness of the law is low, and legal jargon makes it difficult for lay people to understand their rights. The Malawi Police Service also expressed a concern that many citizens lack basic legal knowledge, such as the difference between police bail and court bail.

6.11 Societal and Cultural Barriers

Culture was cited as a significant barrier to accessing justice, particularly for women. In patriarchal societies, such as the Northern Region where women are raised in a culture of silence and are not expected to question decisions made by their husbands. When they speak out particularly on issues of gender-based violence or land rights, they are often labelled as troublemakers. This discourages others from reporting violations and perpetuates a cycle of silence and suffering. As a result, the majority of women fail to access justice.

6.12 Underutilization of Mobile and Camp Courts

PASI noted that there is underutilization of camp courts which is contributing to the inefficiency in the delivery of justice. Institutions such as the Judiciary, LAB and relevant CSOs, which could play a vital role in enhancing access to justice through mobile and camp courts remain underutilized and underfunded. Their potential to decentralize justice delivery through camp courts and mobile courts especially in hard-to-reach areas is not fully realized.

6.13 Delay in Operationalization of Land Tribunals

Most of the people expressed the concern over lack of customary land tribunals to settle land disputes in the communities. Participants stated that land disputes are handled by formal justice which has increased the cost and time required to resolve such matters. Due to this change, chiefs are no longer responsible to handle land disputes. For example, Chiefs complained of the shortage of judicial officers in rural areas, especially for land-related cases which compels citizens to travel long distances to urban courts like Lilongwe High Court.

The judiciary has acknowledged this problem and notes that the problem has placed additional strain on the judiciary.

6.14 Status of some cases that are in courts

The Commission presented some specific cases and requested the judiciary, through the Chief Registrar, to provide updates on their status. Outlined below is a summary of the updates provided:

NO	CASE NAME	ISSUES RAISED	STATUS
1	Westings Kambalame v Reserve Bank	Delayed ruling	Ruling delivered on 27 June 2025
2	Ganizani Kadya & others v AG	Delays in scheduling pre hearing date	The cited case number shows different parties. MHRC to verify the case number
3	Anthony Maloya v Admarc	Order of appeal not signed by presiding judge	Order was signed, appeal was heard and case dismissed.
4	Brian Kapito v Rodrick Chilipande	Matter not heard since 2029	Court searching for file
5	Patrick Kadiwa v Malawi Judiciary	Noncompliance with the court order to have him reinstated.	Matter referred to the Judicial Service Commission for appropriate action.
6	David Kapopo Mhango v Peter Mkolesha	Delayed judgement	Judgment was delivered on 20 th March 2025
7	Dennis Banda v IRC		The registrar responded and stated that the matter is in the High Court and will follow up with the High Court on status
8	H. Kango'mbe v Civil Sports Club and AG	Matter not allocated to a judge since 2017	Initially handled by Justice Kamanga and mediation terminated in 2019. However present file was not traced. Judiciary will follow up with the counsel for the complaint whose records were traced
9	Maxwell Kapalamula v Laurent Biliyati	Delayed date for hearing	Judiciary traced the file. The matter was not moving due to wont of prosecution by the complainants and is due for striking out. Last adjournment was in 2022.
10	Church and Society of CCAP Church of Livingstonia v Mota Engil	Delayed hearing	Matter last entered court in August 2021. File not physically traced. However, the court welcomes any assistance that counsel for the complainant can provide in

			order to fast track the tracking of the file.
11	Berrington Mwakitwanga v Civil Sports Club	Delayed hearing since 1997. Was last adjourned in 2001.	Matter has been re assigned to Justice Pemba and trial date to be set soon. Justice Pemba was on leave at the time of the engagement between MHRC and the Judiciary.
12	Rodwell Zimba v AG	Delayed ruling by Justice Mwaungulu, Retired. Matter has been in court since 1993	File was not traced. More time requested to investigate the matter.
13	Farmers World Limited v Emmey Sohal	Delayed judgment by Justice Mdeza	Justice Mdeza was on annual leave until August 2025. Judgment date to be set once he is back from leave

7.0 COMMISSION'S FINDINGS

Based on the Commissions analysis of the evidence gathered through the call for submissions, public hearings and interviews with informants, the following are its findings on the focus of the investigation: -

7.1 Challenges in Accessing Justice

Delays in accessing justice

This has been identified as a major challenge in accessing justice. Delays have been attributed to the following factors:

- a) Limited availability of courts, especially in the rural areas
- b) Shortage of magistrates and judges
- c) Transfers and promotions of judicial officers, including police prosecutors,
- d) Lack of adherence to set timelines for delivery of judgements
- e) Understaffed Legal Aid Bureau
- f) Limited access to private practicing lawyers.
- g) Bureaucratic inefficiencies
- h) Lack of accountability for judicial officers

7.2 Corruption and abuse of authority

There is a widespread perception that corruption is common in the judiciary and Malawi Police Service. This takes the form of bribes for police bail to influence the outcome of the case, influencing case scheduling and stalling the case through disappearance of case files.

Additionally, there is abuse of office by the judicial officers by not adhering to their code of ethics, creating a general perception that judicial officers are untouchable. Moreover, lack of discipline among judicial officers has contributed to impunity which has led to loss of trust by the public. Specific names of some judicial officers that are suspected to engage in corruption have been mentioned

7.3 Political Interference in appointment of judges

The appointment of judges and Justices of Appeal by the President is seen as a compromise on judicial independence. Participants have proposed a review of the criteria for appointment of High Court Judges and Justices of Appeal. The judiciary welcomed proposals for reforms, provided that they are consistent with the constitution.

7.4 Structural Challenges Within the Justice System

- a) Courts are concentrated in urban areas, limiting access by rural masses.
- b) There is a limited number of judges and magistrates, serving too many clients.
- c) There is limited interface between formal and informal justice systems.
- d) LAB is understaffed and with very few lawyers deployed in the districts.

7.5 Poor Coordination within the Justice System

Collaboration among stakeholders is affected by the following factors:

- a) Absence of joint accountability mechanisms.
- b) Inefficient case management systems leading to missing files and poor referrals.
- c) Poor handover processes during transfers of judicial officers.

As a result, police will usually take suspects to court only to learn after hours that their cases will not proceed. In the process, the case backlog keeps piling.

7.6 Inadequate Awareness of the Justice System

Low illiteracy levels affect peoples' understanding of court procedures and processes. This affects their perception of the quality of justice. This is compounded by legalistic court documents that are not user friendly.

7.7 Cultural Barriers

Some cultural norms and practices discourage women from taking up their matters to court for fear of rejection in society. This is common among victims of gender-based violence. Whilst Malawi has progressive laws promoting gender equality, including the Gender Equality Act, continued application of discriminatory practices is indicative of ungendered informal justice systems and a lack of enforcement of laws and policies, particularly in aiding justice.

7.8 Delay in Operationalization of Customary Land Tribunals

This has resulted in delays in resolving customary land disputes. This is also compounded by lack of jurisdiction by magistrates over land matters. Most people in the rural areas do not have access to the High Court. This has put extra pressure on the already congested judiciary.

7.9 Rights of Victims in Criminal Cases

There is a public perception that the justice system seems to favour rights of suspects over rights of the victims of crime. This has been noted in court proceedings and in presidential pardoning processes where there is no consultation with the victims or their families.

7.10 Costs of accessing justice

The justice system has been seen to be costly in the following areas: -

- a) Legal representation by private lawyers
- b) Transport to and from the courts.
- c) Compliance with bail conditions such as payment for surety
- d) Appearance fees in chiefs' courts

7.11 Role of the informal justice system

Informal courts are underutilized because of the appearance fees in the form of cash or livestock, which are often exorbitant and unregulated. Hence, it is not serving as an affordable alternative to people that cannot access judicial services in formal courts.

7.12 Underutilization of Mobile and Camp Courts

There are inefficiencies in mobile and camp courts which act as an alternative to conventional court setting in delivering justice. Lack of funding is a major cause for this challenge.

7.13 Current legal and administrative procedures for ensuring judicial accountability and professionalism.

In as much as there has been a general public outcry pertaining to rampant corrupt practices and alleged incompetence within the judiciary involving some magistrates and judges, no judge has ever been disciplined over such allegations. This is because even though the Judicature Administration Act mandated the Judicial Service Commission to conduct disciplinary procedures, there are no regulations for the same. Members of the general public are concerned that despite numerous allegations of corruption and abuse of office by judicial officers, very few have been prosecuted.

7.14 Laws and Policies Governing the Appointment and Conduct of Judicial Officers.

The Judicial Service Administration Act of 2024 has established the Independent Complaints Commission of the Judiciary. Though the establishment of this body is a progressive development, its powers are confined to making recommendations only.

8.0 RECOMMENDATIONS

Based on the findings the Commission is making the following recommendations:

8.1 Addressing challenges in accessing justice:

- a) The Judiciary must embrace a people-centered approach to justice delivery. The people-centred approach takes into consideration the needs of the marginalised and disadvantaged groups in the society such as expectant women, children, persons with disabilities, the elderly, asylum seekers and the ultra-poor. This implies taking deliberate steps to ensure that people with special needs are given priority when handling cases.
- b) The Judiciary must enforce timelines for the delivery of judgements and this information must be made known to the public. There is disregard to the 90 days period for delivery of judgments for concluded cases.
- c) The Judiciary must improve the case management system to ensure smooth and seamless handling of cases especially when a judicial officer has been transferred or promoted. This includes the embracing use of digital technologies in case management.
- d) The Judiciary must recruit, train and deploy more magistrates and judges across the country.
- e) The Judiciary should decentralize court services and construct more court structures in the rural areas.

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- f) The Judiciary must expedite the operationalization of the Independent Judicial Complaints Committee to enhance accountability of judicial officers.
 - g) Government should adequately fund the Legal Aid Bureau to recruit more lawyers and open more offices to increase legal representation.
 - h) Malawi Police Service should train more prosecutors and investigators to expedite the prosecution of cases.
 - i) Malawi Police Service must observe timelines for taking suspects to court.³⁸
 - j) The Malawi Law Society and the Attorney General should intensify disciplining of errant lawyers as per the Legal Education and Legal Practitioners Act.

8.2 Addressing Corruption and Abuse of Power

- a) Members of the general public who have evidence about corruption in the justice system must promptly report to the Anti-Corruption Bureau or Malawi Police Service.
- b) The Judiciary and the Malawi Police Service should take necessary measures to prevent corruption and abuse including the following:-
 - i. Enhancing integrity in the justice system by providing regular ethics and human rights training for judicial officers and police, and enforcing strict penalties against corruption and misconduct.
 - ii. ACB and the Police ICC should investigate all allegations of corruption against the judiciary and the abuse of power by the police respectively.
 - iii. Increase awareness on prevention and reporting of corruption against the judiciary and the Malawi Police Service to the public.

8.3 Addressing Structural Challenges

- a. The judiciary should increase availability of courts in the rural areas.
- b. The judiciary and other actors should strengthen the use of community service as a form of punishment for some cases.
- c. There is need to consider legal reforms aimed at reinstating jurisdiction of magistrate courts over land and chieftaincy matters.
- d. The judiciary should open up to the public in terms of accessing information about their processes and operations.

³⁸ Refer to Criminal Procedure and Evidence Code, Cap 8:01 of the Laws of Malawi (Section 161 D, 161 F, and 161 G)

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- e. The Treasury should increase allocation and timely release of funding to LAB to reduce over reliance on donor funding.
 - f. LAB should increase its coverage to all parts of the country by recruiting more lawyers and opening more offices.
 - g. The judiciary should include sign language and other disability friendly formats in case handling.
 - h. The judiciary and other institutions must take measures for ensuring that rights of the victims in criminal cases are taken into full consideration and that court users with special needs and vulnerable persons are assisted appropriately.

8.4 Coordination and Awareness Within the Justice System

- a) Court users should enhance coordination for effective and efficient handling of cases.
- b) The judiciary and other relevant actors should improve the case management system to prevent loss of files and improve referrals.
- c) The judiciary should introduce innovative ways of hearing cases, such as use of virtual platforms as a way of reducing on case adjournments.
- d) The judiciary and Malawi Police Service should standardise case handover procedures during staff transfers and promotions to ensure continuity.
- e) The judiciary should intensify civic education and legal literacy campaigns using radio, community meetings and mobile and social media platforms.
- f) The informal justice system should be regulated to ensure fairness on appearance fees, fines and penalties.

8.5 Operationalise Customary Land Tribunal

- a) The Ministry of Lands should expedite the operationalisation of Land Tribunals across the country to reduce the burden of the High Courts presiding over land matters.
- b) The Ministry of Lands should intensify awareness about the existence of Land Tribunals and the procedures involved in handling land matters.

8.6 Availability of Legal Aid Services to Vulnerable Groups

- a) LAB should increase availability of their legal services to the poor and rural areas, including waiver of fees in some instances.
- b) The Ministry of Justice should expedite the enactment of the Traditional Court Bill to give powers to chiefs to preside over some cases.

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- c) Court users should intensify the use of mobile and camp courts to expedite cases.

8.7 Legal and Administrative Procedures for Ensuring Accountability and Professionalism

- a) The judiciary must publicise available mechanisms for receiving and handing complaints against judicial officers. There is limited awareness among members of the general public about the internal mechanisms that have been put in place by the judiciary, including the Complaints Boxes that have been placed in the court premises..
- b) The judiciary should conduct regular monitoring and appraisal of judicial officers.
- c) Members of the general public are encouraged to utilise the newly established Judicial Complaints Committee to raise any issues of concerns about the performance of judicial officers.

8.8 Reform Laws and Policies Governing Appointment of Judicial Officers

Parliament must review and amend laws on appointment of judges of the High Court and Supreme Court to ensure political neutrality.

9.0 CONCLUSION

This inquiry has revealed both positive efforts and persistent challenges in ensuring equitable access to justice in Malawi. The barriers identified, including court delays, corruption, high legal costs, cultural barriers, and inadequate infrastructure, continue to disproportionately affect vulnerable populations, hindering their ability to access justice.

While the findings highlight critical areas for improvement, they also underscore the importance of sustained collaboration among government institutions, civil society, and communities. The Commission strongly encourages the implementation of practical, results-oriented solutions that promote fairness, accountability, and transparency within the justice system. These solutions should focus on addressing systemic challenges such as streamlining case management, enhancing legal aid services, combating corruption, and improving access to justice in rural and underserved areas.

It is essential that all stakeholders, including the judiciary, law enforcement agencies, and the public, work together towards the common goal of building a justice system that is inclusive, transparent, and accessible for all Malawians.



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Chairperson



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