



SYMPOSIUM ON THE ROLE OF THE JUDICIARY IN THE ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN MALAWI

TO BE CO-HOSTED BY

THE INTERNATIONAL COMMISSION OF JURISTS (ICJ) IN CONJUNCTION WITH CITIZENS FOR JUSTICE (CFJ) AND THE JUDICIARY OF MALAWI

1. Background

Malawi emerged from dictatorial rule lasting about two and half decades in 1994. During that time Malawians did not enjoy civil and political rights, let alone economic, social and cultural rights (ESC rights), even though Malawi is a State party to a number of UN human rights treaties. Malawi is also a State party to the African Charter on Human and Peoples' Rights that emphasises the interdependence of human rights by recognising that the "satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights".

Even though the current and previous governments have made progress in enabling Malawians to exercise their civil and political, most Malawians are yet to enjoy ESC rights. In fact, while the country has witnessed a strong economic growth and the Government has expressed its commitment to reduce poverty and meet the Millennium Development Goals, the persistence of major obstacles to the enjoyment of ESC rights indicates that victims of violations of these rights in Malawi continue to lack access to justice and to effective remedies. Obstacles to victims' access to justice are of legal, administrative, structural and institutional nature.

It is against this background that it becomes worthwhile strengthening the capacity of Malawian judicial actors to adequately review the compliance of State actions and omissions with its human rights obligations, as well as to address both individual and systemic violations of ESC rights. Judges and magistrates, who are key actors in the judicial enforcement of ESC rights, need therefore to be sufficiently empowered with the knowledge about international and regional standards pertaining to these rights and to share experiences of their judicial protection.

At the international level, the recent adoption of the Optional Protocol to the ICESCR will, once in force, provide for individual communications and inquiry procedures for victims of violations who unsuccessfully sought justice at the domestic level. It is therefore more important than ever to strengthen and make an optimal use of available



domestic remedies. It is also essential that the legal community be aware and knowledgeable of these developments and their relevance for ESC rights adjudication by national courts.

2. Goals and expected outcomes of the workshop

The convening organizations, ICJ and CFJ have a strong experience and in depth knowledge on the legal arguments that sustain the implementation of ESC rights, both at the domestic, regional and global level. Through this project, they intend to raise the awareness of the justiciability of those rights and therefore contribute to a wider application of those rights in practice and a better enjoyment of ESC rights in Malawi, particularly by the most vulnerable and marginalized groups.

The proposed workshop intends to bring together Judges from Malawi and the SADC region, law academics and experts. Our expectation is that once the training is completed, the judges and magistrates will have acquired enhanced practical understanding of international ESC rights protection and ESC rights adjudication. This will significantly enhance victims' access to justice and effective remedies and increase public confidence in the role of judicial actors regarding ESC rights.

Judicial actors will become familiar with the use of regional and universal human rights instruments, including the International Covenant on Economic, Social and Cultural and Rights and the new Optional Protocol to ICESCR (not yet ratified by Malawi), which will particularly be useful for improving litigation on ESC rights in Malawi. In the medium to long-term it is expected that this outcome will have impact on the increase in the use of applicable international and national standards in the field of ESC rights before national courts.

3. Specific objectives of the workshop

The proposed workshop intends to achieve the following specific objectives:

- (a) To provide participants with detailed knowledge about international and regional ESC rights standards, as well as about avenues to protect them;
- (b) To provide them with the opportunity to learn from their peers from other jurisdictions about good practices regarding the judicial enforcement of ESC rights, especially from the SADC region and in particular from RSA;
- (c) To allow participants to learn from each other's experiences and challenges in ESC rights adjudication;
- (d) To raise awareness among high-level political authorities on major ESC rights issues affecting Malawi and the relevance of the role of judicial actors.