



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



**CO-HOSTED BY**

**INTERNATIONAL COMMISSION OF JURISTS (ICJ),  
CITIZENS FOR JUSTICE (CFJ) AND THE JUDICIARY OF MALAWI**

**MANGOCHI, MALAWI  
27 – 29 SEPTEMBER 2011**

## 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.

## 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.

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## 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.

## DAY ONE: 28 SEPTEMBER 2011

8:30 - 9.00 Arrival and Registration of Delegates

### SESSION ONE: OPENING CEREMONY

Session Chair: **Martin Okumu-Masiga**, ICJ Africa Programme Deputy-Director

9.00 - 9.45 Introduction and Welcome Speeches

9.00 – 9.30 Opening Address: *'Achieving Social and Economic Development through the Enforcement of Economic, Social and Cultural Rights in Malawi: The Role and Contribution of the Judiciary'*  
**Chief Justice of Malawi: Lovemore Munlo**

9.30 – 9.45 Introduction of ICJ and the Symposium:  
**Prof. Michelo Hansungule**, ICJ Commissioner

Vote of Thanks and Invitation of the Keynote Speaker:  
**Reinford Mwangonde**, Executive Director, Citizens for Justice

9.45 - 10.15 Keynote speech: *'The Enforcement of Malawi's International Commitments on Economic, Social and Cultural Rights today: challenges and opportunities'*  
**Law Commissioner: Gertrude Lynn Hiwa**

10.15 - 10.30 **GROUP PHOTO SESSION**

10.30 - 10.45 **TEA BREAK**

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## **SESSION TWO: ECONOMIC, SOCIAL AND CULTURAL RIGHTS UNDER INTERNATIONAL HUMAN RIGHTS LAW**

Session Chair: **Justice S. Kalembera**, High Court of Malawi

10.45 – 11.45 **Conceptual and International Legal Framework for the Protection of Economic, Social and Cultural Rights**

Prof. Michelo Hansungule, Centre for Human Rights, UP & ICJ Commissioner

**Standards and Mechanisms for the Protection of Economic, Social and Cultural Rights in the African Regional System**

Mumba Malila, Dep. Chairperson, African Commission on Human & Peoples' Rights

**Protection and Promotion of Socio-economic Rights in the SADC Legal and Institutional Framework: Issues, Challenges and Opportunities** - Justice Charles Mkandawire, Registrar of the SADC Tribunal and ICJ Commissioner

11.45 – 12.45 **DISCUSSION AND EXPERIENCE SHARING**

12.45 - 14.00 **LUNCH BREAK**

## **SESSION THREE: APPLICATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS INTERNATIONAL STANDARDS AT THE MALAWI DOMESTIC ARENA**

Session Chair: **Justice Nyirenda**, SCJA

14.00 - 15.30 **The Application of Malawi International Human Rights Obligations at the Malawi Domestic Level: An Overview of the Constitution, Laws, Policy and Practice**

Prof. Edge Kanyongolo, Dean of Faculty of Law, University of Malawi

**Missed Opportunities for the Protection of Economic, Social and Cultural Rights in Malawi? Presentation of a case study**

Reinford Mwangonde, Executive Director of Citizens for Justice

**Courts and the Enforcement of Economic, Social and Cultural Rights in Malawi: Issues, Challenges and Opportunities**

Redson Kapindu, Dep. Director of SAIFAC & Lecturer, University of Johannesburg

**The Role of Non-Judicial Organs and their Interplay with Courts in the Protection of Economic, Social and Cultural Rights in Malawi**

Marshal Chilenga, Malawi Human Rights Commission

15.30 - 16.45 **DISCUSSION AND EXPERIENCE SHARING**

16.45 - 17.00 **HOUSEKEEPING ANNOUNCEMENTS AND VOTE OF THANKS**

18.30 **WELCOME AND NETWORKING DINNER**

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## DAY TWO: 29 SEPTEMBER 2011

### SESSION FOUR: JUDICIAL ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: COMPARATIVE EXPERIENCES AND LESSONS FOR MALAWI

Session Chair: **Justice Ivy Kamanga**

08.30 - 09.30 **The Role of Courts in the Implementation of Economic, Social and Cultural Rights in South Africa**

Justice Cachalia, Supreme Court of Justice of RSA and ICJ Commissioner

**Courts and the Enforcement of Socio-economic Rights in Botswana: Successes and Failures**

Justice Bethuel Oagile Dingake, High Court of Botswana

**Challenges and Lessons in Judicial Enforcement of the Economic, Social and Cultural Rights of Women: The Case study of Swaziland**

Justice Qinisile Mabuza, High Court of Swaziland

**Selection of Progressive Jurisprudence on Justiciability of Economic, Social and Cultural Rights**

Phebe Mavungu Clement, Legal Adviser, ICJ Africa Regional Programme

09.30 - 10.15 **DISCUSSION AND EXPERIENCE SHARING**

10.15 - 10.30 **TEA BREAK**

### SESSION FIVE: JUDICIAL ENFORCEMENT OF SPECIFIC ESC RIGHTS IN MALAWI: PROBLEMS AND LESSONS LEARNT

Session chair: **Justice Chinangwa**

10.30 - 12.30 **BREAKOUT SESSIONS:**

**Judicial Enforcement of Economic, Social and Cultural Rights in Malawi: From Theory to Practice** [Four Breakout Groups to Discuss on enforcement of specific ESC Rights and identify the obstacles (Substance, Procedure, Remedies and Execution-related) to an effective justiciability of ESC Rights, to access to justice for victims of violations thereof and to formulate practical recommendations for remedial action]

Coordination: Justice Nzikamanda and ICJ Staff

12.30 - 13.30 **PRESENTATION AND DISCUSSION OF RESULTS FROM BREAKOUT SESSIONS IN PLENARY**

13.30 - 14.30 **LUNCH BREAK**

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## SESSION SIX: CONCLUDING SESSION: WAY FORWARD

Session Chair: **Martin Okumu-Masiga**, ICJ Africa Deputy-Director

14.30 - 15.30 **Guest speech: 'Capitalizing the Role of Courts and Judges in the Enforcement of Economic, Social and Cultural Rights: From Rhetoric to Practice'**

Justice Yvonne Mokgoro, Former Judge of the South African Constitutional Court and Lecturer at the University of Pretoria

15.30 – 16.00 **Reading and Adoption of a Declaration 'The Role of Courts and Judges in the Effective Enforcement of Economic, Social and Cultural Rights in Malawi'**

16.00 - 16.30 **Closing Remarks:**

Justice Charles Mkandawire, ICJ Commissioner  
Reinford Mwangonde, Executive Director, Citizens for Justice  
Chief Justice of Lovemore Munlo, Judiciary of Malawi

16.30 - 16.45 **HOUSEKEEPING ANNOUNCEMENTS**

17.00 **END**

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