

ANNUAL REPORT



Office of the Ombudsman

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Office of the Ombudsman

31st March, 2018

The Honourable Speaker
National Assembly
Parliament Building
Private Bag B362

LILONGWE 3

Your Honour,

TWENTY THIRD ANNUAL REPORT

I have the honour to present the Twenty-Third Annual Report of the Office of the Ombudsman for the period January, 2017 to December, 2017.

The Report is submitted pursuant to Section 127 of the Constitution of the Republic of Malawi and Section 9 of the Ombudsman Act.

Yours faithfully

Martha Chizuma.

OMBUDSMAN

ABBREVIATIONS AND ACRONYMS

ADMARC	Agricultural Development and Marketing Corporation
AOMA	African Ombudsman and Mediators Association
AORC	African Ombudsman Research Centre
DP	Development Partners
EDF	European Development Fund
EU	European Union
HRSP	Human Rights Support Programme
IEC	Information, Education and Communication
IOI	International Ombudsman Institute
MDA	Ministries, Departments and Agencies
MGDS	Malawi Growth and Development Strategy
MRA	Malawi Revenue Authority
NCT	National Compensation Tribunal
ODPP	Office of the Director of Public Procurement
OoO	Office of the Ombudsman
OPA	Organization Performance Agreement
OPC	Office of the President and Cabinet
ORT	Other Recurrent Transactions
SDG	Strategic Development Goals
UNDP	United Nations Development Program

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EXECUTIVE SUMMARY

2017 was in many aspects a significant year for the Office of the Ombudsman. Remarkable strides were achieved in the period under review in all fronts. Of utmost significance is the complaints handling function where the Office received 217 cases, out of which 195 case files were opened and 33 complaints were dismissed after screening. The Office also closed 987 files accumulated over the years and this is the first time that the Office has closed cases of such magnitude. Three systemic investigations were conducted in the year and two reports, namely, Malawi's Unhealed Wounds and Out of Sight Out of Mind were successively released. Under the legal services, the office conducted 188 public inquiries and released 53 determinations. This was made possible through the adoption of innovative measures in complaints handling and resolution.

During the year under review, the Office continued to engage communities using various means of public awareness. The Office conducted public awareness campaigns through sensitization workshops with community leaders and MDAs, public rallies and radio programs. The public awareness campaigns conducted in the rural communities used local government structures through NICE Public Trust's establishments. The civic education has helped to empower people to enforce their rights and hold their leaders accountable in a peaceful manner. Furthermore, during the reporting year, the Office launched a Communication Strategy as part of making sure that the office and its stakeholders follow proper communication channels.

In order to learn best practices and enhance its operations in serving Malawians, the Office in the year under review continued to establish partnerships and networking with local and international institutions. Locally, the Office signed memoranda of understanding with a number of local organizations to facilitate in reaching out to the people at the grassroots level. The Office was also included in a 5 year Chilungamo Programme which is sponsored by European Union. Internationally, the Office continued to attend various international meetings. To this end, the Office extends its special appreciation to EU as well as UNDP for the financial support rendered in 2017.

It is important to note that despite the above advances that the Office has achieved in 2017, there were also a number of challenges that affected the maximum realization of its mandate. Some of the challenges include inadequate funding levels, high rate of unresponsiveness by public institutions and limited resources.



Martha Chizuma

Ombudsman



LEGAL AND POLICY FRAMEWORK

1.1 ESTABLISHMENT, MANDATE AND FUNCTION

The Office of the Ombudsman (The Office) is an independent oversight and accountability institution that was created by the 1994 Constitution of the Republic of Malawi and became operational in 1995. The enabling legislation, the Ombudsman Act followed in 1996, barely a year after the office began its operations. The Malawian Ombudsman office is a classic example of a parliamentary ombudsman whose focus is dealing with cases of maladministration. Succinctly, the constitutional mandate of the OoO is "to investigate any and all cases where it is alleged that a person has suffered injustice and it does not appear that there is any remedy reasonably available by way of proceedings in a court or by way of appeal from a court or where there is no other practicable remedy", pursuant of article 123 of the Constitution.

Aside from the Constitution and the Ombudsman Act, the office adheres to other local and international instruments. Locally, the Office advances the goals and aspirations of established national agenda currently qualified in Malawi Growth and Development Strategy II (MGDS II). Internationally, the office gets guidance from a number of instruments which include the Sustainable Development Goals (SDG), African Agenda 2063 and the Paris Principles.

Accordingly the Office was established to promote good administrative practices such as transparency, responsiveness, fairness, efficiency and accountability. Consequently, these will contribute to a dignified life and wealth creation.

Over the years, the Office has been handling more labour related cases. In 2015 the Office adopted the repositioning agenda to fully utilize its unique mandate under the law. The repositioning agenda consists of three aspects namely: conducting systemic investigations; own motion investigations and shift from labour related cases to cases of maladministration.

1.2 Vision, Mission and Core Values

1.2.1 Vision

A Malawi free of maladministration

1.2.2 Mission

To safeguard administrative justice and promote efficient and effective public service delivery and good governance

1.2.3 Core values

The Office of the Ombudsman stand on four core values:

Respect and Fairness: We treat all people with courtesy and dignity as well as act reasonably, impartially, just, unbiased and in an equitable manner.

Integrity: We act honestly, morally and in good faith.

Empowerment: We strive to help the public to report incidences of maladministration and encourage MDAs to resolve complaints internally.

Commitment: We adhere to the laws and policies including reporting obligations.



COMPLAINTS HANDLING IN PERSPECTIVE

2. COMPLAINTS HANDLING IN PERSPECTIVE

During the year under review, the office handled 1889 files of which 1670 were carried over from the backlog of cases accumulated over the years and 219 new files opened in the year. The office closed 987 representing 52 percent closure rate. This implies that the backlog has been reduced from 1670 to 902 representing 54 % backlog clearance rate.

2.1. Cases received in 2017

In 2017 the Office received and opened 219 files representing a 9.2% increase from the case load of 2016. Out of the said case files, 25 cases were dismissed after screening for various reasons such as lack of merit, lack of jurisdiction and some were referred to other institutions. Out of the 219 opened files, 139 were labour related and 56 focused on service delivery.

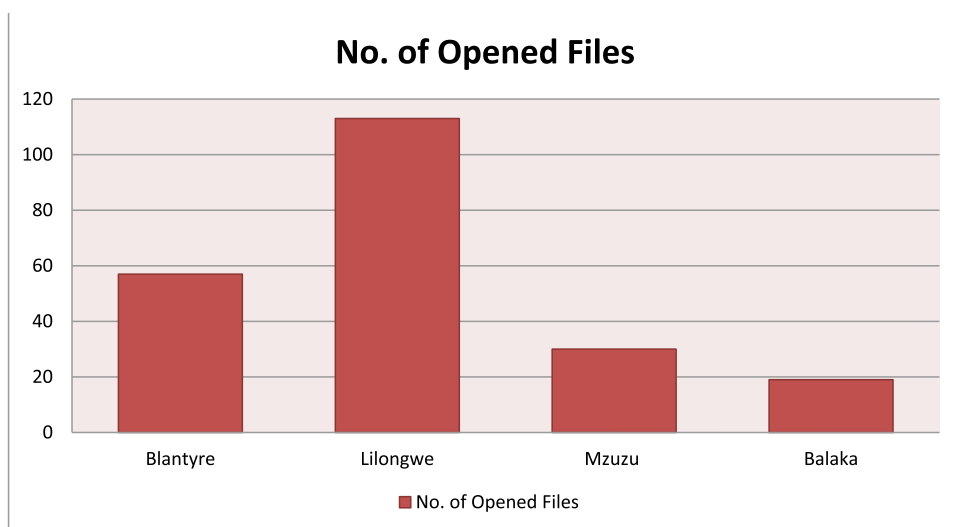


Figure 1: Number of opened files

From the graph, Lilongwe office registered the highest number of complaints, seconded by Blantyre, then Mzuzu and finally Balaka. On the gender representation of the complainants, the office continued to receive a high number of male complainants than that of females and groups (either mixed-gender or male dominated). This is shown in the bar graph below:

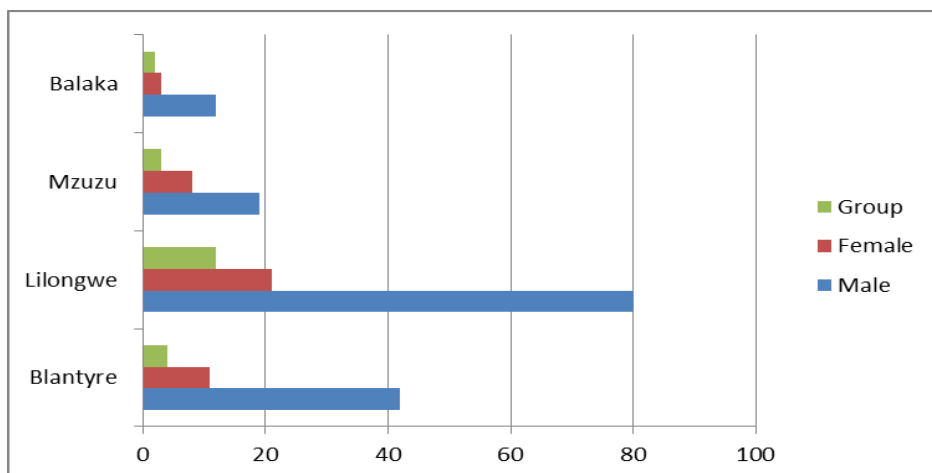


Figure 2: A gender representation of complaints

2.2 Public Inquiries

The office conducted 188 public inquiries out of which 53 determinations were issued and 17 complaints were resolved during the inquiries. Thus, at the public inquiries some of the complainants were assisted right away due to involvement of the ombudsman in the investigations process. Public inquiry is a method of complaint resolution mechanism where the ombudsman call parties to a complaint for orally presentations and resolutions negotiations.

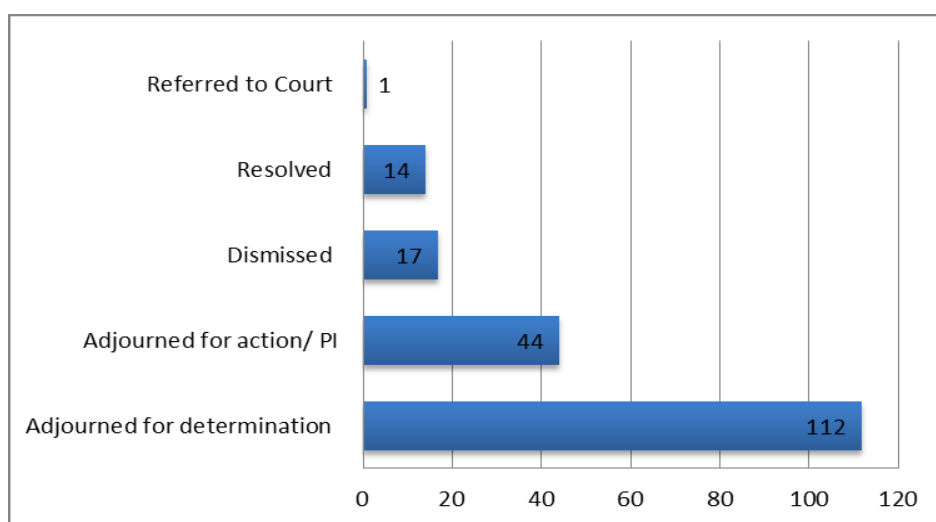


Figure 3: Breakdown of matters under the public inquiries

2.3 Number of Closed Files

During the year under review, the office recorded the highest number of files closed in a calendar year. A total of 987 cases were closed in the year. Among the regional offices, Mzuzu office registered the highest number of closed files, with a total of 406 files representing a 41 percent of the total files closed. Blantyre came second, closing 376 files representing 38.4 percent; Lilongwe regional office was third, closing 96 files, representing 10 percent while Lilongwe head office was fourth, closing a total of 80 files representing 8.1 percent. Balaka office came last, closing a total of 28 files, representing 2.8 percent of the total files closed.

In the year, 27 determinations were complied with by the various respondents. To date, 214 determinations remain non-complied.

The Office made several strategies in order to achieve a high compliance from the respondents. Firstly, the Office conducted an interface meeting with Legal Affairs Committee of Parliament. A number of undertakings were made for payment during the interface and as at the date of this report, progress has been made in the compliance process. Secondly, the Office introduced the complainant tracing system and intensified follow ups of non-complied determinations. Just as the interface meeting, this system has also produced positive results.

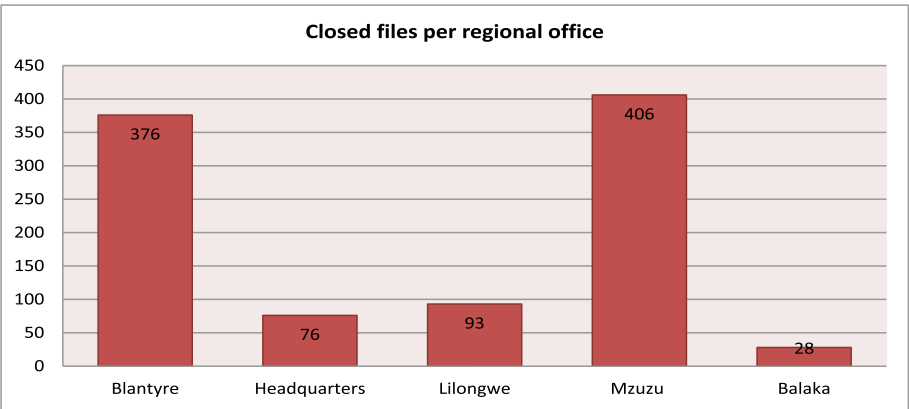


Figure 4: Number of closed files per regional office

34 percent of the total files were resolved, 33 percent of the files were closed because of non-responsiveness on the part of the complainants, 18 percent were closed because they lacked merit, 14 percent of the closed files were because the office had no jurisdiction over them; 1 percent of the closed files was because the complaints were withdrawn at inquiry. Less than one percent of the files were closed because of death of a complainant.

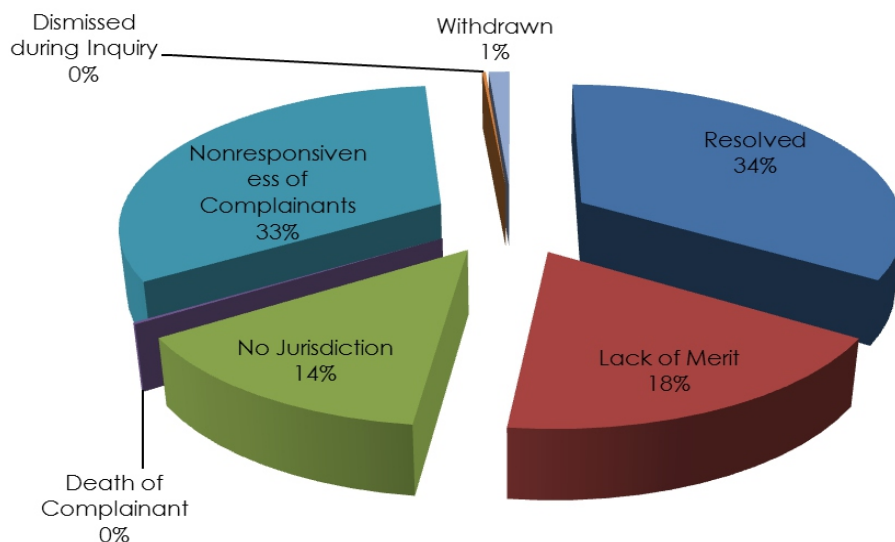


Figure 5: Pie chart showing reasons for closure of files

2.4 Systemic Investigations

The office conducted 3 systemic investigations for National Compensation Tribunal, Ministry of Health in relation to Mental Health Service Delivery and Injustices at Bwaila Hospital and Workers Compensation Commission. Out of the three, two were finalized and released.

2.4.1 Malawi's Unhealed Wounds

This involved an investigation into allegations of maladministration and other irregularities by Malawi Government over the manner in which the National Compensation Tribunal (the Tribunal) was set up, operated and wound up. A report of the same was released on 30th October, 2017. The investigation found lots of illegalities and general acts of maladministration in relation to the Tribunal such as abuse of power in payment of compensations; omission of constitutional duty to establish National Compensation Tribunal Fund which resulted in illegal payments of compensations; underutilisation of diverse remedies stipulated in the National Compensation Tribunal Act; failure to resolve and conclude the cases within the mandatory period of the Tribunal; laissez faire approach by the Tribunal by failing to assess the claims which was unjust and unfair to the Claimants; favouritism in the priority of payments contrary to democratic principles; overdrawing of the compensation paid to the politician claimants resulted in reduction of funding to the Tribunal which negatively impacted on the cash flow payable to ordinary Claimants and failure to notify the claimants on the closure of the Tribunal was unfair treatment. There were three categories of remedies on the investigations which were grouped into national, community and individual levels.

2.4.2 Out of Sight, Out of Mind

This related to an investigation into allegations of maladministration in the mental health service delivery and injustices on the patients with mental disorders by Ministry of Health in the Central Region of Malawi. This was an own motion investigation which was in response to a newspaper investigatory article titled, 'Bwaila Mental Ward goes insane' published in the Nation on Sunday of 9th April, 2017. From the preliminary investigations, a number of human rights violations and acts of maladministration by the Ministry of Health in the administration of mental health service delivery at Bwaila Psychiatric Unit were revealed. Despite not receiving a formal complaint on this the office conducted a systemic investigation into this matter as the violations revealed were against one of the most vulnerable groups in society. A number of remedial actions were directed by the Honourable Ombudsman on the case.

2.5 Observations based on patterns of complaints

- (i) The public is finally grasping the repositioning agenda and have taken the task on themselves to lodge service delivery related complaints. This is a positive direction towards developing a reporting culture on issues that affect them, more especially on poor public service delivery and maladministration.
- (ii) The systemic investigations approach being undertaken by the office has enhanced knowledge of decision makers in MDAs as regards reducing acts of maladministration in that majority are able to resolve complaints internally. They achieve this by applying the knowledge gained from the systemic gaps and their recommendations, thereby ensuring public machinery free of maladministration and illegalities.
- (iii) The systemic investigations is helping to find out the root cause of maladministration. at the same time it also helps to response complaints of the same nature.

2.6 Judicial Review and Litigation

Complainants that are not satisfied with the Honorable Ombudsman's decision as per the dictates of Section 124(2) of the Constitution may seek a judicial review by the court. During the year in review, 2 complainants who were dissatisfied with the determinations of the Honourable Ombudsman took their matters to court. The office has since filed sworn statements in opposition in court. These matters are now awaiting dates of hearing.

2.7 Interface Meeting with Members of Parliament

The Office conducted an interface meeting with members of the Legal Affairs Committee of Parliament. The activity was held at Parliament Building in Lilongwe from 23rd to 25th October 2017. The objective of the meeting was mainly to interact with the Members of the Committee and to enhance their oversight role and hence ensure that the Ombudsman's work is more effective as enshrined in the Constitution and the Ombudsman Act. During the interface meeting, The Legal Affairs Committee summoned Government Ministries, Departments and Agencies to get responses on the outstanding determinations and non-remedied complaints.



Figure 6: The Honourable Ombudsman, Members of Staff posing with Legal Affairs Committee members of Parliament

During the interface meeting, the Office awarded certificates to best performing institutions. The awards were organized with the aim of encouraging MDAs exemplary performance in complaint handling and serving the public and improve the relationship with the respondents. The criterion used in classifying the award was based on response rate of the respondent institution, compliance and effort in resolving complaints. Among the best performing institutions were Agricultural Development and Marketing Corporation (ADMARC), Malawi Revenue Authority (MRA) and Malawi Police Service.

2.8 Follow-Ups of Non-Complied Determinations

The determination follow-up activities took place from 11th to 18th May, 2017 and again from 6th to 11th August, 2017. This activity enabled the Office to follow up on non-complied determinations and build relationships with respondent institutions on how best their respective institutions can speed up compliance and resolution of cases. The activity revealed that some cases were actually complied with, but the respondents and complainants did not inform the Office.

2.9 Meetings with Heads of MDAs

The Honourable Ombudsman made personal visits to the Heads of Institutions with the agenda of discussing non-compliance of determinations and non-remedied complaints that needed to be complied with and resolved. This activity was a success as many institutions have either been complying with the determinations or responding to correspondences.



RESEARCH AND PUBLIC AWARENESS

3.1 PUBLIC AWARENESS

The public awareness activities were undertaken in accordance to goal number 2 of the Office's 2016-2021 Strategic Plan, to have a public well aware of administrative justice processes and governance-related issues. In the year the Office developed and launched its first ever communication strategy. The process of the development and launch itself was supported by UNDP.



Figure 7: Communication Strategy launch

The public awareness campaigns undertaken include; sensitization meetings with MDAs, stakeholder workshops, meetings with ADCS/VDCS, ward councilors and TAs, public rallies, production of IEC materials, exhibitions, radio and TV programs and sharing information through electronic platforms such as Facebook and official website.



Figure 8: Pictorial focus of public awareness campaigns

3.2 RESEARCH

The Office conducted an in depth study on factors behind non-compliance with its determinations as well as seemingly delays by MDAs to rectify maladministration complaints upon acceptance of occurrence of injustice and making commitment to remedy injustices. The research revealed that MDAs usually fail to comply or resolve complaints in time due to inadequate funds for payments to the complainants, poor records management and limited utilization of compliance enforcement mechanisms among others. The findings of the study informed the interface meeting with members of Legal Affairs Committee of Parliament and will still be used in forums for purpose of improving compliance with determinations of the Ombudsman and resolutions of public complaints with reasonable time.



PARTNERSHIPS AND NETWORKING

4 PARTNERSHIPS AND NETWORKING

During the year under review, the Office engaged actively with both local and international partners for purpose of enhancing the discharge of its mandate.

4.1 Relationships with Development Partners

In the year, the office was added as a beneficiary institution of Chilungamo Programme, a justice and accountability programme funded by the European Union, through the European Development Fund 11. Its inclusion was based on the good performance of the office. The office also maintained a good working relationship with UNDP under the Human Rights Support Project.

4.2 Partnerships through Memoranda of Understanding

Realizing that the general public including the most vulnerable and marginalized are still not aware of the existence, mandate and operations of the mandate and function of the office, it managed to create partnerships through MOUs with some stakeholders who are working in different areas of governance. Some of these stakeholders were radio stations like Nkhoma and Maziko, and local CSOs such as CCJP, MACOHA and Story Workshop.



Figure 9: The Honourable Ombudsman and stakeholders after signing the MoUs

4.3 Participation in International Engagements

As a way of harnessing best practices, the Office continued engaging in international activities through its membership in African Ombudsman and Mediators Association (AOMA) and International Ombudsman Institute (IOI) as well as the existing relationship with African Ombudsman Research Centre (AORC).

The Honourable Ombudsman, in her capacity as Board of Director of Africa IOI region attended the IOI Board of Directors meeting which was held in Vienna from 26 - 28 April 2017.

Again, the Honourable Ombudsman and Regional Officer-East attended the IOI Africa Region meeting, AORC Training Workshop on Leadership and Management and AOMA Southern Africa Regional meeting held at Radisson Blu Hotel Lusaka Zambia from 27th to 30th March, 2017.

The DDLS, attended a month-long pilot attachment program in South Africa organized by AORC which was aimed at sharing and learning experiences and, in turn, contribute to the projects of AORC.

The Honourable Ombudsman and the Director of Legal Services attended a week long experience sharing program in South Africa. This study tour was a learning process for the NCT systemic investigation report writing. In this learning experience, the Honourable Ombudsman and Director of Legal and Investigations learnt a lot about the South African Truth and Reconciliation Committee and how it managed the complaints that were laid before it. They also met with the National Coordinator of Khulumani Group, and South African Human Rights Commission.



SUPPORT SERVICES

5.1 MONITORING AND EVALUATION

As a way of strengthening institution capacity through monitoring and evaluation, the Office in the year under review conducted three surveys. The first survey, client feedback survey, focused on establishing the level of complainants' satisfaction with the quality of services rendered to them by the Office. The second, employee satisfaction survey focused on investigating relevant issues affecting employees' working conditions. The third survey, service charter compliance survey, focused on how the Office complies with the service charter that guides the speed of investigating complaints.

5.1.1 Performance Excellence Award

The Office received a 2016/2017 most improved governance institution performance recognition award during the Office of the President and Cabinet (OPC) Organization Performance Agreement (OPA) price presentation ceremony. The award was given based on the improvements made in 2017.



Figure 10: The Honourable Ombudsman (Centre) with members of staff after receiving the award

5.2 Financial Management

In the year under review, the Office had two sources of funds, firstly from the government through the approved annual budget allocation which is divided into Other Recurrent Transactions (ORT) and Personal Emoluments, and secondly from the development partners, UNDP through the HRSP and the European Union through the EDF 11 Chilungamo Programme. Most of the finances that came from ORT were essentially used for the office's day to day operations such as payment of service charges, provision and maintenance of fleet services, investigations, civic education and the provision of office maintenance. The funds from the development partners were mainly used for complaint handling, public awareness, trainings and research. The table below shows a detailed explanation of funds from the government as well as development partners:

FUNDING FROM THE GOVERNMENT	
ITEM DESCRIPTION	AMOUNT
Other Recurrent Transactions	209,713,517.00
Personal Emoluments	229,339,747.48
Total	439,053,234.48
FUNDING FROM DEVELOPMENT PARTNERS	
UNDP HRSP Programme	49,765,801.00
CHILUNGAMO Programme (EU 11th EDF)	25,768,163.00
TOTAL	75,533,964.00

Figure 11: A breakdown of funds

5.3 HUMAN RESOURCE MANAGEMENT AND DEVELOPMENT

The Human Resource Unit of the Office provides Human Resources services, both from operational to strategic level, to the whole institution which involves coordination, recruitment and selection, trainings of members of staff, grievance handling and promotions.

Currently, the office has a total of 98 employees out of the government approved establishment of 112, representing 88% rate. Below is a breakdown of the activities undertaken in the year under review:

5.3.1 Recruitment and Promotions

During the year under review the office had 25 vacant posts and managed to fill 20 posts representing an 80 percent success rate. Out of the 20 recruited, one was a technical staff and the rest were support staff

Within the year 10 members of staff were promoted. Out of the 10 promoted staff, 7 were within technical positions and the three were support staff.

5.3.2 Trainings

In the year 2017 the Office coordinated various trainings as an ongoing effort to equip members of staff with the skills required for efficient and effective discharge of their duties. 12 Officers attended both short term and long term training programs. The newly appointed members of staff and some of the promoted members of staff were inducted.

5.4 CAPITAL ASSETS

During the year under review the office managed to procure two cars, Toyota Prado TX and Toyota Corolla Sedan. The office also procured and fitted 2 air conditioners, three desktop computers and received three desktop computers from OPC and bought conference chairs and table.



CHALLENGES, RECOMMENDATIONS AND CONCLUSION

CHALLENGES, RECOMMENDATIONS AND CONCLUSION

Despite the milestones achieved in the year under review, the Office faced a number of challenges in the discharge of its mandate as outlined below.

6.1 CHALLENGES

(i) Inadequate funding

In 2017, the Office was not adequately funded and this affected its operations and most of the planned activities were halted. This greatly affected rate of implementation of routine activities for the Office. The inadequate funding is not in tandem with the Office's wide mandate of ensuring administrative justice and public service delivery at all levels of the government.

(ii) Delay in the resolution of court cases

Whilst either party has got a right to apply for review, when such applications are made before the courts, they take long to be resolved thereby derailing the speedy compliance of determination and closure of case files. In addition, other court cases against the Office pose challenges to the office's execution of its mandate.

(iii) Obsolete Office Equipment

The office continues to face the challenge of worn out and unsuitable office furniture, computers and vehicles which have outlived their lifespan. Despite purchasing two vehicles, three computers and other office furniture, these were not adequate for the smooth operations of the office. In most cases, the Office rely on borrowing vehicles from other MDA's to execute its activities especially for those that needed field trips or other day to day work that involves visiting other offices.

6.2 RECOMMENDATIONS

From the challenges outlined in the previous section, it is recommended that:

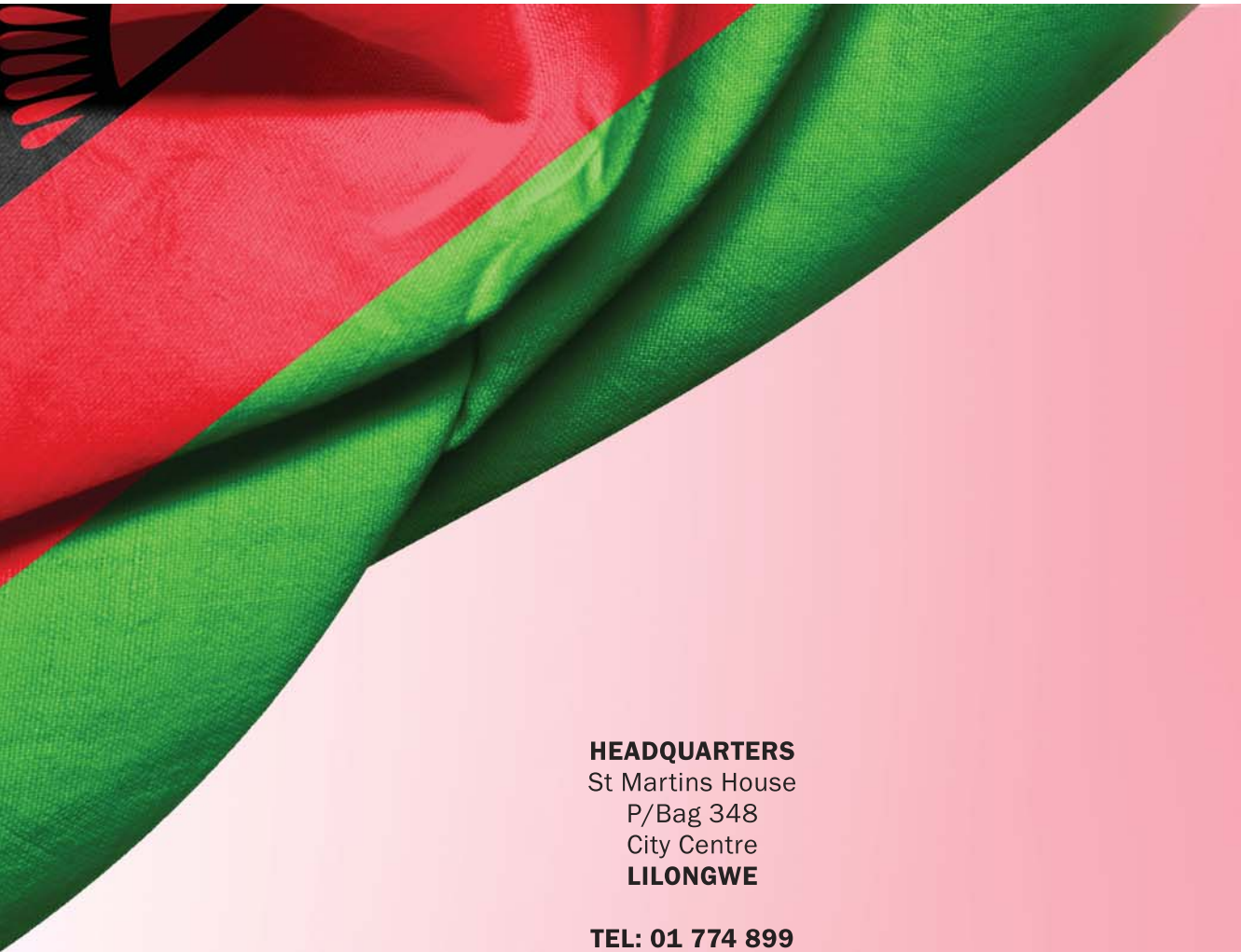
- i. There is need for parliament to assist the Office in lobbying for increased funding, as well as proactively engaging the office and MDAs on issues related to the discharge of its mandate.

6.3 CONCLUSION

The year 2017 was a significant period as the office managed to make considerable progress towards full utilization of its mandate. During the year, the office continued to carry out investigations on individual files, conducted three systemic investigations and managed to close a record number of files. The Office further managed to hold an interface meeting with the Legal Affairs Committee of Parliament and there was the determination follow up exercise and the file tracing exercise. All these initiatives helped to resolve complaints.

In spite of the successes presented, the Office faced a number of challenges that hindered the speedy resolution of complaints. Issues such as delays in resolving complaints by MDAs, delay in the resolution of court cases and inadequate funding continue to hamper the smooth operations of the Office. The report has presented a number of recommendations that can help to solve the challenges discussed.

The Office will build on the achievements of 2017 to make further progress in 2018 by being more creative and flexible in ensuring a Malawi that is free of maladministration.



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