

# MALAWI

## EXECUTIVE SUMMARY

Malawi is a multiparty democracy. In 2009 voters reelected Bingu wa Mutharika of the Democratic Progressive Party (DPP) as president in what international observers characterized as a generally free and fair election. Constitutional power is shared between the president and the 193 National Assembly members. Security forces reported to civilian authorities.

Three major human rights issues in the country include the use of excessive force by security forces, which resulted in deaths and injuries; harsh and life-threatening prison conditions; and limits on freedom of speech, press, and political expression.

Other human rights problems included arbitrary arrest and detention; lengthy pretrial detention; official corruption; occasional mob violence; societal violence against women; trafficking in persons; discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons; and child labor.

In some cases, the government took steps to prosecute officials who committed abuses, but impunity remained a problem.

### **Section 1. Respect for the Integrity of the Person, Including Freedom from:**

#### **a. Arbitrary or Unlawful Deprivation of Life**

The government or its agents did not commit any politically motivated killings; however, security forces killed 20 persons on July 20 and 21 during and after demonstrations against the government in Lilongwe, Blantyre, Mzuzu, and Karonga.

The demonstration was organized to protest President Mutharika and his ruling DPP's inaction on "poor economic and democratic governance." An injunction banning public demonstrations throughout the country delayed the start of the protest, but after the injunction was lifted protests went ahead. Only protesters in Blantyre secured last-minute legal permission for the demonstrations. Protests in all cities devolved into violence on July 20, with police firing tear gas and warning shots and disorganized groups destroying property. Civil unrest continued the following day with widespread looting in major cities. In an attempt to restore order, police used tear gas and live bullets. The Malawi Defense Force (MDF)

deployed on both July 20 and 21 to quell violence and restore calm. The final death count, including victims who died later from injuries, was 20 persons. None of those who died was a participant in the demonstrations.

On November 30, a commission of inquiry into the events commenced work with several public hearings and another session planned for the northern region in early 2012. The commission has an eight-month window to complete its work. To date, police have admitted using live bullets and the inspector general of the Malawi Police Service (MPS) admitted to mishandling the protests and called for a return of bonuses paid to police who worked during the July unrest.

On September 24, Robert Chasowa, vice president of “Youth for Freedom and Democracy” and a student at the Polytechnic School, was found dead on campus under controversial circumstances. Chasowa was under police watch for the publication of “Political Update,” which was highly critical of the government. Police claimed that he committed suicide by falling from a building, and as evidence, produced two suicide notes. Irregularities in the letters raised suspicions and Chasowa’s family demanded further investigation. A postmortem in October concluded that he died from head injuries sustained from assault by a blunt instrument and not as a result of a fall. A commission of inquiry was to investigate the circumstances surrounding Chasowa’s death, but no one had been named to the panel by year’s end.

Police arbitrarily shot and killed suspects. For example, on December 20, police shot and killed four suspects in Limbe who were trying to escape after allegedly planning to break into a shop. The same night, police also shot and killed a man in Blantyre suspected of attempted robbery. No action reportedly was taken against the police officers responsible.

Police were implicated in the death of several prisoners in custody. For example, in March Emmanuel Kafere died in a police cell at Mulenga police unit in Zomba. A postmortem indicated that Kafere died from internal bleeding after suffering head stab wounds, two broken legs, and a broken arm. The policeman accused of Kafere’s death was charged with murder and appeared in court on March 21. At year’s end, he was being held in pretrial detention and the case was awaiting trial.

On December 4, Kingsley Khope died in Ndirande police’s custody in Blantyre. Family members were denied visitation and demanded a postmortem. Police claimed Khope died on arrival at the hospital after complaining of malaria, but the family accused police of causing the death by assaulting Khope.

Perpetrators of past abuses were occasionally punished, but investigations often were abandoned or remained inconclusive. For instance, there were no further developments in the following 2010 killings: the July shooting death of Silence Kapalamula by a police officer and the September death of a woman and her child, who were struck and killed by a speeding truck driven by a police officer.

### **b. Disappearance**

There were no reports of politically motivated disappearances.

### **c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment**

The constitution and law prohibit such practices; however, police used excessive force and other unlawful techniques, including sexual abuse, during the year. While senior officials publicly condemned prisoner mistreatment, their subordinates continued to employ unacceptable techniques. The Malawi Human Rights Commission (MHRC) and local nongovernmental organizations (NGOs) criticized police for human rights violations several times throughout the year.

On July 31, former soldier Ulemu Martin Nkhata was arrested and manhandled by police after he turned himself in. Allegedly, Nkhata illegally possessed a gun. He sustained several cuts on his body and was later hospitalized. While police claimed a mob beat Nkhata after he was caught stealing, Nkhata identified 13 policemen as his attackers. Nkhata's wife backed up his story as she was at the police station when he turned himself in. A regional police spokesman claimed that he was not aware of alleged police brutality, and no further action was taken by the authorities.

On December 18, police officers beat Joseph Nyirenda at a football match. Nyirenda claimed that following the assault, police took him into custody and ordered him to pay 5,000 Malawian kwacha (MWK) (\$30) police bail. After complaining to a human rights organization, Nyirenda was admitted to Karonga District Hospital. At year's end, no charges had been filed for alleged police brutality.

There were no further developments in the March 2010 beating of Harry Mwandama by police and the May 2010 beating of Mercy Lozani by three police officers.

## **Prison and Detention Center Conditions**

Prison conditions remained harsh and potentially life threatening. Overcrowding, inadequate nutrition, substandard sanitation, poor health facilities, and inadequate infrastructure remained serious problems. Prisons and detention centers, while generally well ventilated, had no provisions for temperature control other than wood fires. Basic emergency medical care generally was available in the daytime, but unavailable after regular working hours. For more involved cases of illness and injury, referrals were made to district medical clinics. Potable water was available. Prison recordkeeping was considered generally reliable.

The prison system's 30 facilities, built to accommodate approximately 5,500 inmates, routinely held at least double that number. According to the Prison Service, there were 12,033 inmates in the prison system at year's end. Police stations also held detainees, many for longer than the legal limit of 48 hours. Police stations were not built to accommodate humanely to long-term detention. A report on pretrial detention by Open Society Initiative for Southern Africa (OSISA) indicated that Lilongwe Police Station had 87 detainees, including four women and seven children. One of the detainees in Lilongwe had been held for seven months.

Prison staffing remained inadequate despite efforts to recruit more staff. Daily prison rations were meager. Family members were allowed to bring food items, and inmates were encouraged to grow vegetables and raise livestock; however, malnutrition in the prison population remained a problem.

While the exact number was not known, numerous inmates died in prison each month, largely due to HIV/AIDS, diarrhea, pneumonia, tuberculosis, and an inadequate diet. For example, 32 inmates died at Zomba Maximum Security Prison during the year. Eastern Region Prison spokesperson Kumbukani Chikomo attributed the deaths to prison congestion, which complicated identification and treatment of sick prisoners.

In 2009 the High Court noted that overcrowding had contributed to the death of 259 inmates in a span of approximately 18 months. The court decreed that the government had 18 months (which expired May 2011) to improve prison conditions. At year's end, the prison system was not in compliance with the judgment.

The 157 female prisoners were segregated within 16 prison compounds located in 30 facilities, and monitored by female guards and a female officer-in-charge, who keeps the keys to the female section of the prison. Pretrial detainees often were not held separately from convicted prisoners. The 2011 OSISA report found that the supervision of female detainees varied in police detention. In Lilongwe and Mzimba, both male and female officers supervise female detainees, while in Blantyre, Thyolo, and Zomba only female guards monitored female prisoners.

According to the Prison Service, at year's end there were 486 children in prison, either serving sentences or awaiting trial. Malawi Prison Service defines persons under age 18 as children, with those between the ages of 18 and 21 classified as "young offenders." Children could be detained in the country's reformatory centers, but for a maximum of six months, and only as a last resort or if the child is likely to be a repeat offender. There were two juvenile detentions centers (reformatory centers) in the country. The Mpemba boys' home could accommodate 370 children, and Chilwa 120 children. In practice, children were not always held separately, at least in police detention.

While Victim Support Units attended to the needs of vulnerable detainees such as women and children in Lilongwe and Zomba, other locations, such as Mzimba, had no protective measures in place due to a lack of facilities.

Prisoners generally were allowed to have visitors, observe their religious practices, and submit complaints to prison authorities.

Community service programs were available as alternatives to prison terms for first-time offenders with permanent addresses who were convicted of less serious crimes.

During the year the government permitted domestic and international NGOs, such as Amnesty International, and the media to visit and monitor prison conditions and to donate basic supplies. The International Committee of the Red Cross (ICRC) did not seek permission to visit any prisons during the year. However, the NGO Irish Rule of Law International and senior foreign diplomats visited prisons during the year.

The government increased the budget allocation for the Prison Service from the previous year's 1.2 billion MWK to 2.4 billion MWK (\$7.1 million to \$14.2 million). However, the bulk of the increase was slated for the construction of a new prison in Lilongwe, rather than improving current conditions.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibit arbitrary arrest and detention; however, the government did not always observe these prohibitions in practice.

#### **Role of the Police and Security Apparatus**

The MPS, controlled by the Ministry of Home Affairs and National Defense, had responsibility for law enforcement and maintenance of order. Police occasionally called on the army for support in operating roadblocks and assistance in manhunts.

The police force was inefficient, poorly trained, and corrupt (see section 4). Impunity was a problem. Inadequate resources and a lack of qualified candidates in the recruiting pool hampered efforts to improve MPS quality. Police service maintained a disciplinary committee chaired by the inspector general of police to investigate abuses; however, resources were limited and it met only sporadically. Officers were disciplined, but punishments often consisted of reassignment to another post or dismissal rather than more stringent sanctions.

Police continued efforts to improve their investigative skills, including training in internal investigations, victims' rights, sexual abuse, domestic violence, and trafficking in persons. Police continued to receive foreign assistance for training officials and procuring equipment.

#### **Arrest Procedures and Treatment While in Detention**

The law provides an accused person the right to challenge the legality of detention, have access to legal counsel, and be released on bail or informed of charges by a court within 48 hours; however, these rights were often ignored in practice. Most suspects were apprehended without a warrant if police had probable cause. While arrest warrants were normally issued by a duly authorized official based on evidence presented in cases involving corruption or white-collar crime, poorer citizens were often arrested without warrants. The use of temporary remand warrants to circumvent the 48-hour rule was widespread. Police frequently demanded bribes to authorize police bail, which was often granted to reduce prison overcrowding rather than on the merits of the case (see section 4).

While the government is obligated to provide legal services to indigent detainees, in a vast majority of cases, such aid is only provided to homicide suspects. Due to

limited resources, the Department of Legal Aid prioritizes its assistance, focusing on vulnerable groups such as women, children, the elderly, and those facing capital offense charges. Legal Aid access often was delayed, since there were only 24 lawyers and seven paralegals working as public defenders in the country. Relatives were sometimes denied access to detainees.

The Center for Legal Assistance, an NGO that assists prisoners with legal matters, continued to provide free legal assistance to expedite the trials of detainees, with priority given to the sick, the young, and those subjected to long trial delays.

Arbitrary Arrest: The government arbitrarily arrested persons, sometimes using colonial-era antisediton and treason laws to stifle criticism.

On February 28 and March 1, police arrested 54 persons in Blantyre City in an apparent effort to round up criminals. All were later fined and released under a colonial-era rogue and vagabond law.

In December police arrested more than 4,000 persons in a nationwide sweep designed to increase security over the holiday season. Arrest charges included robbery, theft, and violation of the colonial-era rogue and vagabond law. A police spokesperson noted that of the 4,000 detained, some were in police custody, some were fined, and others were in pretrial detention.

During the year the MHRC received six complaints of arbitrary detention related to excessively long pretrial detention, denial of bail, and unheard appeals.

There were no further developments in the 2008 treason cases against former president Bakili Muluzi and nine other persons, most of whom had close ties to the United Democratic Front.

Pretrial Detention: A total of 1,480 persons, or 12 percent of the total prison population of 12,033, were in pretrial detention. Most pretrial homicide suspects were held in pretrial detention for two to three years, but there was evidence that many detainees remained in prison awaiting trial for much longer periods. Reliable data on the exact number and situation of these long-term pretrial detainees was unavailable. However, during a fall visit to Maula prison, a reputable NGO discovered that there were 1,986 prisoners, of which nearly 600 were detainees awaiting trial. Of these pretrial detainees, 122 were being held on expired warrants. In December the NGO identified three youthful pretrial

detainees (two age seven and another age five) and worked to get them released on bail.

To reduce case backlog and excessive pretrial detention, minor cases are being directed to traditional courts (run by chiefs) and “camp courts” (led by civil society). Camp courts expedite cases by bringing magistrates to the prison. Paralegals gather cases of pretrial detainees who have overstayed, are held unlawfully or have been granted bail but cannot afford the terms set by the court. Magistrates, along with the court clerk and police prosecutor, work through the list granting bail to some, reducing bail, dismissing cases, or setting a date when the accused must appear for trial.

#### **e. Denial of Fair Public Trial**

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence in practice. However, the judicial system was inefficient and handicapped by serious weaknesses, including poor record keeping, a shortage of attorneys and other trained personnel, heavy caseloads, and lack of resources.

The MDF has courts martial but no military or security tribunals. Military personnel accused and tried by courts martial are afforded the same rights as persons accused in civil criminal courts. MDF courts martial can try civilians in cases concerning military operations; however, this has not occurred.

#### **Trial Procedures**

Defendants are presumed innocent and have the right to a public trial but not to a trial by jury. The Ministry of Justice continued its indefinite suspension of jury trials in murder cases, since murder suspects sometimes were incarcerated for years awaiting trial by jury. Juries were used in other types of cases. A Child Justice Court was set up in Blantyre to handle cases involving child offenders. Defendants have the right to be present at their trial, are entitled to an attorney, and, if indigent, to have an attorney provided at state expense. Due to limited resources, such assistance generally was limited to homicide cases. Defendants have the right to present and challenge evidence and witnesses and have access to government-held evidence relevant to their cases. The law extends the above rights to all persons. All persons have the right of appeal; however, in practice appeals often were delayed for years and sometimes never addressed by the higher court.



The judiciary's budgetary and administrative problems effectively denied expeditious trials for most defendants. The Department of Public Prosecutions had 27 prosecuting attorneys and 10 paralegals, who served as lay prosecutors for minor cases in magistrate courts. Recruitment and retention of government attorneys remained a problem.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **Civil Judicial Procedures and Remedies**

There is an independent and impartial judiciary in civil matters, and citizens have access to a court to bring lawsuits seeking damages for, or cessation of, human rights violations. The law provides for administrative and judicial remedies for alleged wrongs; however, a lack of resources and legal professionals restricted the number of cases pursued and resulted in a large backlog. During the year the MHRC received 67 complaints of limited access to justice and four complaints of unfair administrative justice procedures.

### **f. Arbitrary Interference with Privacy, Family, Home, or Correspondence**

The constitution and law prohibit such actions, but the government did not always respect these prohibitions in practice.

In 2009 parliament passed a law legalizing warrantless searches. The MHRC reported that police regularly entered homes of poorer citizens using special police search orders, which were issued by a supervisory police officer rather than by a court.

The government sometimes detained the family members of persons suspected of criminal activity. For example, police regularly used "bait arrests" of relatives when a suspect could not be found to draw out the wanted individual from hiding.

## **Section 2. Respect for Civil Liberties, Including:**

### **a. Freedom of Speech and Press**

#### **Status of Freedom of Speech and Press**

The law provides for freedom of speech and press; however, at times the government attempted to limit these rights.

Freedom of Speech: The government sometimes threatened the use of colonial-era antiseditious and treason laws to stifle criticism.

Following the president's March 6 directive to quell dissent, several members of civil society, including some of the July 20 protest organizers, were victims of attempted violence and arson. The home of one human rights activist and the office of another human rights organization were firebombed. Other activists faced attempted home or office invasions.

On October 14, four human rights activists were arrested and charged with sedition and conducting a demonstration without permission. The four had held placards calling President Mutharika a dictator during a demonstration coinciding with a regional summit. On October 19, the magistrate granted bail to all four and ordered them to report to the police every two weeks. At year's end, the case was awaiting trial.

Freedom of Press: The independent media were active and expressed a wide variety of views; however, the government imposed some restrictions, such as the use of onerous licensing and registration provisions. A broad spectrum of political opinion was available in the country's newspapers. Independent newspapers included two dailies, one biweekly and four weeklies.

There were 16 private radio stations that broadcast primarily in urban areas and six community radio stations. State-owned Malawi Broadcast Corporation (MBC) TV was the sole national television broadcaster. In November the Malawi Communications Regulatory Authority awarded four new radio and television broadcasting licenses. Three of the successful license recipients were either owned by or closely connected to President Mutharika's family.

In January President Mutharika signed a law empowering the government to "prohibit the publication or importation" of publications deemed to be "contrary to the public interest." The MHRC took the controversial "media freedom law" to the High Court and the case was pending at year's end. The law was also referred to the Malawi Law Commission for review in December.

Violence and Harassment: Journalists were harassed, intimidated, and threatened with arrest during the year.

A few journalists reported that they received death threats. For example, Nation Publications Limited journalist Phillip Pemba reported death threats received in the aftermath of an article revealing that Robert Chasowa had dealings with police to stop the planned August 17 protests before his suspicious death in September (see section 1.a.). Similarly, a Radio Maria journalist received a death threat message on his cell phone after reporting on remarks by First Lady Callista Mutharika on the scarcity of fuel. In September a former employee of Malawi Institute of Journalism received death threats for allegedly publicizing a recording of “a private conversation” between President Mutharika’s brother and a former deputy minister of sports and culture. On October 20, a Capital Radio host received death threats due to his critical reporting. Investigations into these cases were pending at year’s end.

Police also questioned and arrested journalists. For example, on the weekend prior to the July 20 demonstrations, unidentified individuals set fire to vehicles belonging to private radio broadcaster Zodiak Radio, and when protests and civil unrest occurred as a result, journalists were detained and beaten while covering the events.

In October police questioned *Weekend Nation* Editor George Kasakula and *Malawi News* Deputy Editor Innocent Chitosi of Blantyre Newspapers Limited. These papers had carried detailed insights into Chasowa’s death and dealings with the police.

Censorship or Content Restrictions: Journalists sometimes practiced self-censorship, especially at government-owned media outlets such as MBC Radios One and Two and MBC TV.

Prior to the July 20 demonstrations, MBC TV characterized the planned protests as a gay rights campaign and only ran content with messages against the demonstrations. On July 20, the director general of the Malawi Communications Regulatory Agency (MACRA) warned private media they could face legal action for broadcasting live reports from demonstrations as they “may incite violence” leading to damage and loss of life. In a statement, he stated that “the authorities would like you to desist from such broadcasts with immediate effect in the interest of the security of the nation.” Most private broadcasters complied with this order.

MACRA shut down Joy Radio, Capital Radio, and Malawi Institute of Journalism FM for approximately four hours on July 20.

### **Internet Freedom**

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the expression of views via the Internet, including by e-mail. Lack of infrastructure and the high cost of Internet connections continued to limit Internet access.

### **Academic Freedom and Cultural Events**

Unlike the previous year, there were government restrictions on academic freedom during the year. While there were no restrictions on cultural events, the government sporadically censored films that were deemed to contain culturally sensitive or sexually explicit material.

On February 12, police interrogated Blessings Chinsinga over his classroom lecture on the cause of mass protests in Egypt and Tunisia. Lecturers at the University of Malawi's Chancellor College publicly protested the interrogation, but their union's demand for academic freedom went unheeded. In response, lecturers boycotted the classrooms starting February 16. Four lecturers, including Chinsinga and the acting president of the Chancellor College Academic Staff Union, were suspended. Chancellor College officially closed twice, but reopened on November 14 after nearly nine months without classes. Although the four lecturers were reinstated, the underlying academic freedom issue had not been resolved to their satisfaction.

## **b. Freedom of Peaceful Assembly and Association**

### **Freedom of Assembly**

The constitution and law provide for freedom of assembly, but the government fettered this right in practice. The law and government action chilled attempts of public protest. For example, the Police Act of 2010, which the Malawi Law Commission was reviewing at year's end, holds organizers accountable for any damages and injuries during a protest. City Councils and police routinely ignored or delayed responding to protest notifications, which prevented groups from

receiving legal authorization to exercise their right to assemble. Injunctions and court orders were routinely used to block protests.

During a March 6 political rally, President Mutharika stated that demonstrations should be subject to a deposit of two million MWK (\$12,000). At year's end, the government had not enforced this proclamation.

On February 14, police arrested leaders of a planned demonstration about fuel shortages, preventing the protest from taking place.

On July 20, civil society groups organized demonstrations to protest the inaction of President Mutharika and his ruling DPP on "poor economic and democratic governance." Twenty persons died when violence broke out during protests that went ahead despite an injunction banning public demonstrations (see section 1.a.).

### **Freedom of Association**

The constitution and law provide for freedom of association, and the government generally respected this right. The government required all organizations, including political parties, to register with the Ministry of Justice. Registrations for new political parties and NGOs were routinely delayed and prevented domestic and international NGOs from registering. The Office of the President and cabinet were involved in the approval process for new registration, which added an element of politicization. On several occasions, ministers threatened to deregister NGOs involved in protests or with views contrary to those of the government, although at year's end, no organizations had been deregistered.

#### **c. Freedom of Religion**

See the Department of State's *International Religious Freedom Report* at [www.state.gov/j/drl/irf/rpt](http://www.state.gov/j/drl/irf/rpt).

#### **d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons**

The constitution and laws provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. However, delays in obtaining passports delayed travel for some citizens.

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern.

### **Protection of Refugees**

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to some 13,000 refugees, primarily from Central Africa.

Nonrefoulement: The government generally provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular group, or political opinion. There were no reports of deportations of recognized refugees during the year.

Refugee Abuse: Security forces sometimes intimidated refugees and asylum seekers. Police routinely detained refugees found illegally outside of camps and returned them to camps. Local citizens often accused refugees of theft and demanded their deportation.

Employment: While no legal framework existed, the government allowed refugees to seek both employment and educational opportunities, although it restricted these activities outside the refugee camps. Refugees with professional degrees, especially those with medical training, were in previous years given work permits to pursue employment outside the camps. There remain some individuals, notably nurses and teachers, who have been issued such permits in the past and remain in employment based on them. UNHCR, NGOs, and the government collaborated to provide basic assistance, including education to children, in refugee camps.

The government cooperated with UNHCR in assisting refugees and asylum seekers but restricted refugees' ability to move freely and work outside of refugee camps.

Access to Basic Services: Refugees have access to health services through a clinic in the camp, which serves both refugee and local community populations. Malawian laws and the justice system are applicable and accessible to refugees. In practice, access was limited by lack of knowledge on the part of refugees as to services available.

Durable Solutions: By law the government does not accept refugees for permanent settlement.

Temporary Protection: The government also provided temporary protection to individuals who may not qualify as refugees under the 1951 Convention relating to the Status of Refugees or the 1967 Protocol; however, no reliable statistics were available.

### **Section 3. Respect for Political Rights: The Right of Citizens to Change Their Government**

The constitution and law provide citizens with the right to change their government peacefully, and citizens exercised this right in practice periodically through largely free and fair elections based on universal suffrage.

#### **Elections and Political Participation**

Recent Elections: In May 2009 the citizenry re-elected Bingu wa Mutharika of the DPP president in what international observers characterized as a generally free and fair election, although there were shortcomings. Observers criticized the inequitable access to the state-owned media faced by opposition parties and candidates. Opposition parties accused the government of using public funds for campaign purposes.

Nationwide local elections were last held in 2000 and have been repeatedly postponed since. In December 2010 the president unilaterally suspended the nine-member Malawi Electoral Commission (MEC), which was preparing for local polls scheduled for April 2011. The reason for the suspension was an investigation into missing funds. The investigation revealed the problem to be lack of documentation and not fraud, so the commissioners were reinstated on April 4. However, 10 MEC financial staff remained on suspension at year's end, which hindered MEC operations.

The executive branch exerted considerable influence over the unicameral national assembly, which followed a hybrid parliamentary system loosely based on both British and presidential-parliamentary models. All cabinet ministers were also members of the National Assembly, although they were not required to be.

Although the government did not prohibit activities of opposition political parties, the parties alleged that the government encouraged opposition party divisions. Sporadic, minor violence occurred between supporters of rival political parties.

Political Parties: While parties generally were allowed to operate without restriction or outside interference, there were instances of intimidation by members of the ruling DPP.

The government delayed the registration of new political parties, which limited their ability to operate legally. Political parties were forced to resort to the courts for judicial relief. For example, the Peoples Party applied for registration in April, but its application was rejected. The party was finally registered July 28, but only after a Supreme Court ruling compelled the government to accept the application.

Participation of Women and Minorities: There were 39 women in the 193-seat National Assembly and eight women in the 32-member cabinet, including the country's first female vice president. Women constituted approximately 25 percent of the civil service. There were three female justices among the 27 Supreme and High Court justices.

There were six members of minority groups, defined as "white," "colored" ("mixed race"), and South Asian, in the National Assembly.

#### **Section 4. Official Corruption and Government Transparency**

The law provides criminal penalties for official corruption, and the government has had some success prosecuting cases; however, officials frequently engaged in corrupt practices with impunity. The World Bank's 2010 Worldwide Governance Indicators reflected that corruption was a serious problem. President Mutharika spoke publicly against corruption and cautioned government officials to refrain from questionable activities. Efforts to combat corruption and promote transparency continued.

The Malawi Anti-Corruption Bureau (ACB) investigated, indicted, and prosecuted persons charged with low-level corruption during the year; however, critics charged that the bureau generally avoided indictments of high-level government officials. The ACB was considered generally competent in its handling of low-level cases. Indictments of former high-level government officials proceeded slowly, often due to legal challenges filed in court by the accused. Surveys indicated that while a majority of citizens had been exposed to government



anticorruption messages, only 15 percent knew how to report corruption to the ACB. The ACB reported that it completed 289 investigations during the year, which resulted in 77 referrals to prosecutors. A total of 65 corruption cases were prosecuted during the year, resulting in 11 convictions, five acquittals, and no withdrawals.

A final verdict in the 2007 corruption case against former president Muluzi was pending at year's end.

The constitution provides for public access to government information, in so far as such information is required for the exercise of an individual's rights. In practice, the government granted access to citizens and noncitizens, including foreign media.

### **Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights**

A variety of domestic and international human rights groups generally operated without government restriction, training civic educators, advocating changes to existing laws and cultural practices, and investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

UN and Other International Bodies: UN agencies and international NGOs had offices in the country and had access to investigate human rights abuses. The ICRC delegation for southern Africa, based in Harare, Zimbabwe, also covered the country.

Government Human Rights Bodies: The MHRC, an independent government agency, is charged with monitoring, auditing, promoting, and investigating violations of human rights. Continued resource shortfalls resulted in a backlog of cases, delayed production of reports, and hindered human rights monitoring. The MHRC reported that it received 460 complaints of human rights violations during the year.

The Office of the Ombudsman is mandated to investigate government officials responsible for human rights violations and other abuses. The ombudsman does not take legal action against government officials, but may order an administrative action to redress the grievance. Between August 2009 and October 2010, when the ombudsman position was unoccupied, the office continued investigations of

existing cases, but no new investigations were authorized. The office continued to lack adequate resources and had difficulty retaining staff. At year's end, the office had seven lead investigators aided by 13 assistants. Some recommendations from the ombudsman were referred to parliament after they were ignored or challenged by government departments and agencies.

## **Section 6. Discrimination, Societal Abuses, and Trafficking in Persons**

The law specifically provides for equal rights for women, forbids discrimination based on language or culture, race, disability, or social status, and provides for equality and recognition before the law for every citizen. However, the capacity of government institutions to ensure equal rights for all citizens was limited.

### **Women**

Rape and Domestic Violence: The law criminalizes rape with a maximum penalty of death. Spousal rape is not explicitly mentioned but could be prosecuted under the same rape laws. The government generally enforced the law effectively, and convicted rapists routinely received prison sentences. Data on the prevalence of rape or spousal rape and conviction figures were unavailable; however, press reports of rape arrests and convictions were an almost daily occurrence. The judiciary continued to impose penalties on persons convicted of rape. Although the maximum penalty for rape is death, the courts generally imposed the maximum assault penalty of 14 years in prison for child rape and assault.

Domestic violence, especially wife beating, was common, although women seldom discussed the problem openly, and victims rarely sought legal recourse. Legal experts and human rights workers attributed victims' reluctance to report their abusers to economic dependence on the abuser, lack of awareness of their legal rights, and fear of retribution and ostracism. The law provides a maximum penalty of life imprisonment for domestic violence and recognizes that both men and women can be perpetrators as well as victims. Police regularly investigated cases of rape and sexual assault but did not normally intervene in domestic disputes. Police support units provided shelter to some abuse survivors and dealt with human rights and gender-based violence, but officers' capacity to assist and document cases was limited.

Harmful Traditional Practices: In a few isolated areas, widows were sometimes forced to have sex with in-laws as part of a culturally mandated "sexual cleansing" ritual following the death of the husband. In some cases, widows were "inherited"

by a brother-in-law or other male relative. Although there are no laws specifically prohibiting these practices, the government and civil society continued efforts to abolish them by raising awareness concerning the inherent dangers of such behavior, including the risk of HIV/AIDS transmission.

Sexual Harassment: Sexual harassment is not specifically prohibited by law, but it can be prosecuted under existing sections of the penal code, such as indecent assault on a woman or girl, which carries up to a 14-year prison sentence, or insulting the modesty of a woman, which is a misdemeanor punishable by one year in jail. There was no available data on the extent of sexual harassment, although it was thought to be widespread, or effectiveness of government enforcement.

Reproductive Rights: The government recognized the right of couples and individuals to decide freely and responsibly the number, spacing, and timing of their children. Health clinics and local NGOs were permitted to operate freely in disseminating information on family planning under the guidance of the Ministry of Health. There were no restrictions on the right to use contraceptives, but access was more limited in rural areas. The government provided free childbirth services, but these services were unevenly distributed due to limited access to hospitals and other medical facilities in rural areas. Nurses and midwives were a critical component of prenatal and postnatal care, due to a shortage of doctors. The 2010 Malawi Demographic and Health Survey (DHS) reported the maternal mortality ratio to be 675 deaths per 100,000 live births. Skilled health providers assisted in 71 percent of births with another 14 percent assisted by a traditional birth attendant and 9 percent by untrained relatives or friends. Modern contraceptive use among married women between ages 15 and 49 was approximately 46 percent, according to the DHS. Men and women were entitled to equal access to diagnosis and treatment of sexually transmitted infections.

Discrimination: Under the law, women have the right to full and equal protection and may not be discriminated against on the basis of gender or marital status, including in the workplace; however, discrimination against women was pervasive, and women did not have opportunities equal to those available to men. Women had significantly lower levels of literacy, education, and formal and nontraditional employment opportunities, as well as lower rates of access to resources to increase agricultural productivity.

Women often had less access to legal and financial assistance, and widows often were victims of discriminatory and illegal inheritance practices in which most of an estate was taken by the deceased husband's family. Women usually were at a

disadvantage in marriage, family, and property rights; however, awareness of women's legal rights continued to increase, and women began to protest abuse and discrimination. Households headed by women were represented disproportionately in the lowest quarter of income distribution. More than half, 52 percent, of full-time farmers were women; however, they had limited access to agricultural extension services, training, and credit. Gender training for agricultural extension workers and the gradual introduction of rural credit programs for women increased. However, few women participated in the limited formal labor market and those that did constituted less than 5 percent of managerial and administrative staff.

The law provides for a minimum level of child support, widows' rights, and maternity leave; however, only individuals who could use the formal legal system benefited from these legal protections.

The government addressed women's concerns through the Ministry of Gender, Child, and Community Development. The Organization for Economic Cooperation and Development's Gender, Institutions, and Development data reflected the elevated discrimination in social institutions and the high inequality to which women were subjected on a daily basis.

## **Children**

Birth Registration: Citizenship can be derived from birth within the country or from one's parents. In 2007 the government launched the pilot phase of the national registration and identification system, the first step in the creation of a national identification system to provide for mandatory registration of births; however, the system had not been fully implemented by year's end. There were no reports of discrimination or denial of services due to lack of birth registration.

Education: The government provided tuition-free primary education for all children, although education was not compulsory. Families were responsible for paying book fees and purchasing uniforms. However, students from poor families had access to a public book fund. Many girls, especially in rural areas, were unable to complete even a primary education due to poverty, lack of schools, and cultural factors, and were at a serious disadvantage in finding employment.

Child Abuse: Child abuse remained a serious problem. The press regularly reported cases of sexual abuse of children, including arrests for rape, incest, sodomy, and defilement. A 2008 study by the safe schools program in Machinga

found that 90 percent of girls and 47 percent of boys in primary schools experienced some form of violence, including sexual touching by other students, sexual abuse by teachers, corporal punishment, and verbal and psychological abuse.

In 2010 parliament passed the Child Care, Protection, and Justice Act, which prohibits subjecting a child to any social or customary practice that is harmful to the health or general development of a child. Targeted practices included child trafficking, forced labor, forced marriage or betrothal, and use of children as security for debts or loans. The law was passed in July 2010 but had not been fully enacted as it was awaiting final publication in the official legal records at year's end.

The Ministry of Gender, Child, and Community Development undertook activities to enhance protection and support of child victims. The ministry trained and paid small stipends to more than 800 community child protection personnel, who worked nationally to identify victims of child abuse, underage labor, and trafficking, and referred cases to district social welfare offices or the police.

Child Marriage: The minimum age for marriage is 15, with marriage under age 18 requiring parental consent. "Girl Up", a UN Foundation campaign, reported in November that child marriage was widespread, with nearly 50 percent of girls marrying before age 18.

Harmful Traditional Practices: The law does not specifically prohibit female genital mutilation (FGM). A few small ethnic groups practiced FGM. In most cases, FGM was performed on girls between 10 and 15 years of age.

Despite the Child Care, Protection, and Justice Act, many abusive practices, including the secret initiation of girls into their future adult roles, continued. In a few traditional communities, girls averaging 12 years of age were forced to have sexual relations with older men as part of such initiation rites. "Kupimbira," a practice that allows a poor family to receive a loan or livestock in exchange for daughters of any age, existed in some areas. The MHRC expressed concern over reports of parents forcing their daughters into marriages for food.

Sexual Exploitation of Children: The widespread belief that children were unlikely to be HIV positive and that sexual intercourse with virgins could cleanse an individual of sexually transmitted diseases, including HIV/AIDS, contributed to the widespread sexual exploitation of minors.

Reports of European tourists paying for sex with teenage boys and girls continued.

The trafficking of children for sexual purposes was a problem, and child prostitution for survival without third-party involvement also occurred. For example, at local bars and rest houses, owners coerced girls who worked at the establishments to have sex with customers in exchange for room and board. The Child Care, Protection, and Justice Act stipulates punishment up to and including life imprisonment for child traffickers, but the law had not officially taken effect by year's end.

The penal code outlaws carnal knowledge of females under the age of 16 and stipulates penalties up to and including the death penalty for offenders.

Displaced Children: A few charitable organizations attempted to reduce the number of child beggars in urban areas; however, the problem of street children remained serious, as the number of orphans whose parents died from HIV/AIDS increased. Extended family members normally cared for such children and other orphans.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

### **Anti-Semitism**

The Jewish community was very small, and there were no reports of anti-Semitic acts.

### **Trafficking in Persons**

See the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **Persons with Disabilities**

The Employment Act prohibits discrimination in employment; however, there is no comprehensive law governing discrimination against persons with disabilities. The law provides for the support of persons with disabilities through greater access to public places, fair opportunities in employment, and full participation in all spheres of society; however, limited resources prevented the government from protecting

these rights in practice. The government had not mandated accessibility to buildings and services for persons with disabilities.

The Department of Persons with Disabilities and the Elderly, within the Ministry of Gender, Child, and Community Development is responsible for protecting the rights of persons with disabilities. There were public and privately supported schools and training centers that assisted persons with disabilities. There also were several self-supporting businesses run by and for persons with disabilities. The Malawi Rural Development Fund provided loans to persons with disabilities to support these activities.

### **Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity**

Consensual same-sex sexual activity is illegal and is punishable by up to 14 years in prison in addition to corporal punishment, including hard labor. The Malawi Penal Code outlaws “unnatural offenses” and “indecent practices between males.”

In January the president assented to a parliamentary penal code amendment that criminalizes “indecent practices between females.” The amendment codifies the illegality of consensual same-sex sexual activity between women, setting a maximum prison term of five years for convicted offenders.

An environment conducive to discrimination based on sexual orientation was created and maintained by senior government officials. On World Tourism Day in September, the tourism minister said it was not proper for citizens to engage in same-sex sexual activity as “very un-Malawian.” The mistaken notion that western donor countries were withholding financial aid unless the country permits same sex marriages enhanced a homophobic environment. In October the Malawi Council of Churches declared that the country needed aid, and millions of innocent citizens should not be penalized because same-sex sexual activity was outlawed.

### **Other Societal Violence or Discrimination**

Societal discrimination against persons living with HIV/AIDS remained an issue. Many individuals preferred to keep silent about their health rather than seek help and risk being ostracized, but campaigns by the government and NGOs to combat the stigma had some success. The National AIDS Commission maintained that discrimination was a problem in both the public and private sectors. A 2011 report

of the People Living with HIV Stigma Index also confirmed that HIV and AIDS discrimination and stigma exist in the country.

Mobs sometimes used arson as a tool of vigilante justice.

On October 17, angry villagers torched the entire police unit in Mitundu as well as seven police staff houses as a backlash against perceived police failure to provide security in the area. Violence started with the murder of Marko Chapola at Mitundu Trading Center on October 16. Riot police were deployed to contain the situation, and in the ensuing battles between police and angry villagers, 49 villagers were arrested, and two injured with rubber bullets. All suspects were released on bail by October 26 and the case was pending at year's end.

On November 28, villagers burned and looted the house and compound of Mariam Nazeem in Kalilima Village. Nazeem, who was suspected of using witchcraft to cause several deaths in the area, was missing at year's end.

There were no further developments in the September 2010 killings of Ulemu Sesani and Moses Kachala by a mob in the Blantyre's Ndirande suburb.

## **Section 7. Worker Rights**

### **a. Freedom of Association and the Right to Collective Bargaining**

The law allows workers, except for army personnel and police, to form and join trade unions of their choice without previous authorization or excessive requirements. The law provides for unions to conduct their activities without government interference; however, in reality the law does not apply to the vast majority of workers in the informal sectors.

Unions must register with the Registrar of Trade Unions and Employers' Organizations in the Ministry of Labor, and registration was granted routinely.

The law allows members of a registered union to strike or go through a formal mediation process overseen by the Ministry of Labor. A strike can take place only after all complex and time-consuming settlement procedures established in a collective agreement and conciliation efforts have failed. Members of a registered union in "essential services" have a limited right to strike. Essential services are defined as services whose interruption would endanger the life, health, or personal safety of the whole or part of the population, as determined by the Industrial



Relations Court (IRC). While there is a definition of “essential services,” there is no defined list. Laws do not specifically prohibit retaliation against strikers. There is no prohibition on actions against unions that are not registered. The law prohibits antiunion discrimination and provides for remedial measures in cases of dismissal for union activity.

Workers in the formal sector have the right to organize and bargain collectively. The law requires that at least 20 percent of employees (excluding senior managerial staff) belong to a union before it can engage in collective bargaining at the enterprise level, and at least 15 percent union membership for collective bargaining at the sector level. The law provides for the establishment of industrial councils in the absence of collective agreements for sector-level bargaining. Industrial council functions included wage negotiation, dispute resolution, and industry-specific labor policy development. The law was not effectively implemented due to lack of human and financial resources. No known particular group of workers was excluded from relevant legal protections. There are no special laws or exemptions from regular labor laws in export processing zones (EPZ).

The government protected the right to collective bargaining. Workers exercised the right to form and join independent unions and the right to conduct strikes in practice. Malawi Congress of Trade Unions (MCTU) reported two incidents of alleged antiunion discrimination during the year. There was anecdotal evidence that union organizers were dismissed or had their rights violated in order to deter unionization.

On May 20, an employee of a freight forwarding company was dismissed for unauthorized absence while attending an International Labor Organization-sponsored course in Germany. The employee had applied for unpaid leave according to the company’s leave terms, but was later informed that unpaid leave was no longer part of the company’s conditions of service. The employee alleged that his dismissal was for his trade union activism and claimed that the company had previously fired employees for speaking out in favor of forming or joining a trade union. The employee believes that his dismissal marked an attempt to weaken the union. At year’s end, MCTU was involved in the issue.

In November workers at a rubber plantation announced the formation of a union after two years of covert organization. The union leader was arrested and charged with “organizing workers without the consent of the Management, District Commissioner, and Labor officers.” His case was pending at year’s end.

Union membership was low due to the small percentage of the workforce in the formal sector, and because of lack of awareness of worker rights and fear of reprisals. Many companies in the EPZs resisted union activity, and union organizers stated they had little access to workers in the EPZs. Informal sector workers organized in the Malawi Union for the Informal Sector (MUFIS), which is affiliated with MCTU. However, informal sector employees were unable to obtain the same standard of protection as formal sector workers. This inequity is the result of a Ministry of Labor decision that the MUFIS does not have sufficient standing to bargain collectively.

Employers, labor unions, and the government lacked sufficient knowledge of their legitimate roles in labor relations and disputes, which limited their effectiveness in implementation and enforcement of the law. For example, ambiguities in the law regarding what services are considered to be “essential” could lead to unions having difficulties striking legally. There were, however, no instances of strikes being declared illegal during the year.

Arbitration rulings were legally enforceable; however, in practice, due to lack of funding and a heavy case backlog, the IRC could not monitor cases or adequately enforce the laws.

#### **b. Prohibition of Forced or Compulsory Labor**

The government prohibits all forms of forced or compulsory labor. Forced labor is punishable by a maximum fine of 10,000 MWK (\$60) or two years’ imprisonment.

Laws against forced and compulsory labor were not effectively enforced due to lack of capacity and resources. The 2010 Child Care, Protection, and Justice Act specifically outlaws forced child labor, but the law had not been fully enacted at year’s end.

There were reports that forced child labor occurred. Children are subjected to domestic servitude and other forms of forced labor, including in cattle herding; agricultural labor, particularly on tobacco farms; and menial work in small business. In practice, punishments were almost always limited to fines, and the modest fines imposed were not effective in discouraging labor violations.

Although the Ministry of Labor reported no cases of forced labor, forced and bonded labor involving entire families occurred under the tenancy system.

Tobacco plantation tenants had exclusive arrangements, often unwritten, with the estate owners to sell their crop and to buy inputs such as fertilizer, seed, and often food. These costs, in addition to rent charges, often were greater than the amount of money received from tobacco sales, systematically leading to a situation of debt bondage to repay the inputs and other costs.

Also see the Department of State's *Trafficking in Persons Report* at [www.state.gov/j/tip](http://www.state.gov/j/tip).

### **c. Prohibition of Child Labor and Minimum Age for Employment**

The law sets the minimum age for employment at 14, and children between the ages of 14 to 18 may not work in jobs that are considered hazardous or that interfere with their education. The law specifies legal work hour limits, but in practice, the Ministry of Labor lacks the capacity to monitor and enforce the law. The law specifies a maximum fine of 20,000 MWK (\$119) or five years' imprisonment for violations. However, the law was not effectively enforced due to lack of resources, manpower and insufficient penalties to deter offenders.

Police and Ministry of Labor officials were responsible for enforcing child labor laws and policies; however, labor inspectors did not have law enforcement capabilities and must cooperate with the police to pursue violators.

The Ministry of Labor continued to conduct child labor law enforcement courses for district labor officers, district social welfare officers, police, and district magistrate court officers. During the year the ministry continued inspections, particularly on agricultural estates. There were 29 district labor officers and an estimated 160 labor inspectors at year's end. Approximately 1,340 inspections were carried out from January to September. The Labor Ministry's youth committees in rural areas continued to monitor and report on child labor. Despite these efforts, enforcement by police and ministry inspectors of child labor laws was hindered by lack of funding.

Child labor remained a serious and widespread problem. A June 2008 report from the Ministry of Labor stated that more than 1.4 million children, or one of every three children, were engaged in some form of child labor.

Child labor was common on tobacco farms, subsistence farms, and in domestic service. Many boys worked as vendors, and young girls in urban areas often worked outside of their families as domestic servants, receiving low or no wages.

An August 2009 report issued by Plan International stated that children working in the tobacco industry were being exposed to high levels of nicotine poisoning, equivalent to smoking 50 cigarettes a day. The government disputed the report, arguing that the claim that 78,000 children worked in the tobacco industry was greatly inflated. Debate continued over the true extent of the problem.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at [www.dol.gov/ilab/programs/ocft/tda.htm](http://www.dol.gov/ilab/programs/ocft/tda.htm)

#### **d. Acceptable Conditions of Work**

The Ministry of Labor sets separate urban and rural minimum wage rates based on recommendations of the tripartite wage advisory board (TWAB), which is composed of representatives of labor, government, and the private sector. The minimum wage, revised in January, is 178.25 MWK (\$1.06) per day; for both rural and urban areas. The poverty lines (at 2004 prices) were 16,165 MWK (\$96) per person per year for poor households and 10,029 MWK (\$60) per person per year for ultra-poor households. It is estimated that 52.4 percent of citizens live below the poverty line. There was no exception for foreign or migrant workers.

The maximum legal workweek is 48 hours, with a mandatory weekly 24-hour rest period. The law requires payment for overtime work and prohibits compulsory overtime. In practice these standards were not effectively enforced, and employers frequently violated statutory time restrictions.

The Ministry of Labor houses a Directorate of Occupational Safety and Health. The law includes extensive occupational health and safety (OSH) standards.

Poor functioning of the TWAB resulted in delayed and inadequate wage rate revisions. Official minimum wages apply only to the formal sector as the government lacks enforcement mechanisms for the informal sector. Wage earners often supplemented their incomes through farming activities. The Ministry of Labor lacked the resources to enforce the minimum wage effectively. However, the minimum wage was irrelevant for most citizens, who earned their livelihood outside the formal wage sector.

The Ministry of Labor's enforcement of the work week and the OSH standards was also poor. The law specifies a maximum fine of 20,000 MWK (\$119) or five

years' imprisonment for violations. These penalties were not sufficient to deter offenders. No jail terms have ever been reported.

Workers, particularly in industrial jobs, often worked without basic safety clothing and equipment. In tobacco fields, the handling of the leaves was done largely without protective clothing; workers absorb up to 54 milligrams of dissolved nicotine daily through their skin, equal to the amount of 50 cigarettes.

Approximately 80,000 child tobacco workers reportedly suffered from a disease called green tobacco sickness, or nicotine poisoning. These children often worked 12-hour days, often without pay or received an average of 42 MWK (\$0.25) for long hours of work. Workers dismissed for filing complaints about workplace conditions have the right to file a complaint at the labor office or sue the employer for wrongful dismissal. Workers have the right to remove themselves from dangerous work situations without jeopardy to continued employment; however, given the low level of education of most workers and the high level of unemployment, workers were unlikely to exercise this right.

Six workplace fatalities were reported during the year. Two restaurant workers and their employer died when the building collapsed in Blantyre. In Chikwawa a sugar factory employee fell into a broiler. A driver at a uranium mine near Karonga died, and one employee of a plastics company in Blantyre died.

The law protects foreign workers in correct legal status. Illegal foreign workers were subject to deportation.