

# **MALAWI 2013 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Malawi is a multi-party democracy. In April 2012 Vice President Joyce Banda became president, as required by the constitution, following a brief period of uncertainty after the death of President Bingu wa Mutharika. Banda was Mutharika's running mate in the 2009 elections, which international observers characterized as generally free and fair. Constitutional power is shared between the president and the 193 National Assembly members. Authorities generally maintained effective control over the security forces. Security forces, however, committed some human rights abuses.

The major human rights issues in the country included harsh and life-threatening prison conditions and official corruption.

Other human rights problems included the use of excessive force by security forces; arbitrary arrest and detention; lengthy pretrial detention; 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**

There were isolated reports the government or its agents committed arbitrary or unlawful killings.

Police arbitrarily shot and killed suspects. For example, on May 6, police shot and killed two robbery suspects. A police spokesperson confirmed that the two, and a third accomplice who escaped, were attempting to steal vehicles from the Tobacco Control Commission. At year's end there was no further information available on what action, if any, had been taken by police.

The Internal Affairs Department of the Malawi Police Service (MPS) investigates killings and evaluates whether they occurred in the line of duty or were otherwise justifiable.

Perpetrators of past abuses were occasionally punished, but investigations often were delayed, abandoned, or remained inconclusive. For example, three officers charged with manslaughter in connection with the death of Edson Msiska in police custody at Mzuzu Police Station in January 2012 remained in detention awaiting trial before the Mzuzu High Court.

During investigations, suspects were regularly freed on bail. For example, on May 7, five police officers were arrested in Blantyre, and on May 8, four police officers were arrested in Lilongwe; all were charged with murder related to the 2011 deaths of antigovernment demonstrators. On May 23, the five officers arrested in Blantyre were released on bail.

The February 2012 incident in which police assistant Chikwatu shot and killed car robbery suspect Fabiano remained under investigation, according to police.

Eight police officers arrested in the 2011 death of student activist Robert Chasowa were released on bail in October and were awaiting trial.

#### **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 sometimes used excessive force and other unlawful practices, including sexual abuse.

A report released in August by the Southern Africa Litigation Centre and the Centre for Human Rights Education, Advice, and Assistance focused on the abuse of vagrancy laws by police in Blantyre and Limbe. The report provided numerous examples of inhumane and degrading treatment toward vulnerable groups. For example, in June 2012 anonymous interviews with 15 prostitutes in Blantyre, eight respondents reported being assaulted by police in the past year, including one respondent who had been assaulted nine times by police. Six respondents reported being raped by police, including one who had been raped four times and another three times. The report also cited three teenage children arrested in August 2012 who were held in custody at Limbe Police Station for three days, including two days without food.

## **Prison and Detention Center Conditions**

Prison and detention center conditions remained harsh and potentially life threatening.

The Malawi Human Rights Commission (MHRC) expressed concern regarding the human rights of detained persons. In particular, the MHRC reported that prisons were heavily overcrowded, and in most cases prisoners received only one or two innutritious meals a day. The MHRC also noted poor sanitation and inadequate medical services. Through October the MHRC received 11 complaints regarding the rights of prisoners and other detainees.

Physical Conditions: 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 12,505 inmates in the prisons as of September 4. The Zomba Central Prison was condemned as unfit for human habitation by the Prisons Inspectorate in 1997 but remained in use, housing 2,200 inmates as of October.

Police also held detainees, many for longer than the legal limit of 48 hours, in police stations not designed to accommodate long-term detentions humanely. For example, a 2011 report on pretrial detention by Open Society Initiative for Southern Africa indicated that the Lilongwe Police Station had 87 detainees, including four women and seven children. One of the detainees in Lilongwe had been held for seven months. Authorities often did not hold pretrial detainees separately from convicted prisoners.

The country's 107 female prisoners were housed within 16 prisons. They were segregated from male prisoners and monitored and controlled by female guards and a female officer-in-charge.

According to the Prison Service, as of September 4, there were 1,095 young offenders (between the ages of 18 and 21) in prison, including 1,016 serving sentences and 79 awaiting trial. There were 14 children (under age 18) in prison living with mothers who were serving sentences. Children can be detained in juvenile detention centers (reformatory centers) for a maximum of six months. As of October 17, there were 90 children (82 boys and eight girls) in the country's two juvenile detention centers. The capacity of the two centers combined was

approximately 500. In police detention, children were not always held separately from adults.

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 serious cases of illness and injury, referrals were made to district medical clinics. Potable water was available.

Daily prison rations were meager. Officials allowed family members to bring food and encouraged inmates to grow vegetables and raise livestock; however, malnutrition in the prison population remained a problem.

Due to the lower numbers of female prisoners, prison conditions were slightly better for women in terms of space and access to prison amenities.

Between January and September, 38 inmates died in prison, three due to tuberculosis, seven due to pneumonia, and the rest from HIV/AIDS, diarrhea, and inadequate diet.

The government remained largely noncompliant with the High Court's 2009 requirement to improve prison conditions, according to the Inspectorate of Prisons.

Administration: Prison recordkeeping was considered generally reliable.

Each prison has a designated welfare officer, some of whom had received specialized training, to receive prisoner complaints regarding conditions. This complaint process is mainly verbal and informal, resulting in little follow-up. Prisoners sometimes had the opportunity to make complaints to nongovernmental organizations (NGOs) that make records of cases for inclusion in government advocacy and reports, but this rarely resulted in follow-up on individual cases.

Prisoners could have visitors, observe their religious practices, and submit complaints to prison authorities without censorship. Prison staffing, however, remained inadequate.

The law establishes the Inspectorate of Prisons, which is charged with “monitoring of conditions, administration, and general functioning in penal institutions taking

due account of applicable international standards.” The inspectorate consists of a justice of appeal or a judge, the chief commissioner of prisons, a member of the Prison Service Commission, a magistrate, and the ombudsman. The inspectorate of prisons inspected prisons in the northern region in November; their report would not become public before being provided to parliament in 2014.

Community service programs were available as alternatives to prison terms for first-time offenders with permanent addresses who were convicted of less serious crimes. The government also worked with the UN Children’s Fund (UNICEF) and NGOs to implement diversion programs for juveniles and nonviolent offenders, as an alternative to custodial sentences.

While victim support units in Lilongwe and Zomba attended to the needs of vulnerable individuals sheltering with police, such as victims of trafficking and gender-based violence, other locations had no protective measures in place.

The government increased the annual budget allocation for the Prison Service from the previous year’s 1.1 billion Malawian kwacha (MWK) to 2.5 billion MWK (\$2.7 million to \$6.1 million).

Independent Monitoring: During the year the government permitted domestic and international NGOs and the media to visit and monitor prison conditions and to donate basic supplies. The Malawi Red Cross, the Office of the UN High Commissioner for Refugees (UNHCR), and foreign diplomats visited prisons during the year. The International Committee of the Red Cross (ICRC) did not seek permission to visit any prisons during the year.

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

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

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

The MPS, under the Ministry of Home Affairs, has responsibility for law enforcement and maintenance of order. Police occasionally called on the military for support in operating roadblocks and assistance in manhunts. For example, on October 3 and 4, the MPS and the military conducted joint patrols in Lilongwe to curb increased crime in the city.

Police were inefficient, poorly trained, and corrupt (see section 4). Impunity was a problem. The MPS has an internal affairs unit, but the unit had only seven investigators. The inspector general of police pressed for the professionalization of the MPS. In remarks made in September, he urged senior officers to embrace reform to earn the confidence of the people. Members of the National Police Disciplinary Committee met in March and September.

Officers were disciplined, but punishments often consisted of reassignment to another post or dismissal rather than more stringent sanctions.

Police continued to train officers on 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 of Detainees**

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 often were ignored. Most suspects were apprehended without a warrant if police had probable cause. Only in cases involving corruption or white-collar crime were arrest warrants normally issued by a duly authorized official based on evidence presented. 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 overcrowding of jails, rather than on the merits of the case (see section 4).

While the government is obligated by law to provide legal services to indigent detainees, in the vast majority of cases, such aid was provided only to homicide suspects. The Department of Legal Aid gave priority to women, children, the elderly, and those charged with capital offenses. Legal aid often was delayed, since there were only 18 lawyers and 16 paralegals working as public defenders in the country. Relatives were sometimes denied access to detainees. There were no reports that detainees were held incommunicado or held under house arrest.

The Center for Legal Assistance and Paralegal Advisory Service Institute, NGOs that assist prisoners with legal matters, provided 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 law and constitution prohibit arbitrary arrest and detention. The government, however, used sections of the penal code pertaining to rogues and vagabonds to make arbitrary arrests.

For example, on September 21 and 22, the MPS arrested more than 300 people in Thyolo, Zomba, Blantyre, Mulanje, Mangochi, Lilongwe, Salima, Dowa, Ntchisi and Mzimba districts in an apparent effort to round up criminals. The suspects later faced different charges, including rape, possession of hemp, and violation of penal code sections pertaining to rogues and vagabonds. An MPS spokesperson stated that the cases were brought before judges soon after the arrests, resulting in fines, prison terms, suspended sentences, and acquittals of the suspects but gave no details on individual cases.

Pretrial Detention: As of September, of the total prison population of 12,505 persons, 1,957, or 16 percent, were in pretrial detention. Authorities held most homicide suspects in pretrial detention for two to three years, but there was evidence that some homicide 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.

To reduce case backlog and excessive pretrial detention, certain cases were directed to traditional courts run by chiefs and “camp courts” organized by civil society groups. Camp courts expedite cases by bringing magistrates to the prison. Paralegals gather cases of pretrial detainees who have been held awaiting trial for excessive periods of time, 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 trial date.

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

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

The Malawi Defense Force 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.

## **Trial Procedures**

Defendants are presumed innocent and have the right to a public trial, but not to a trial by jury. Jury trials have been suspended at various times since 1996 and were most recently suspended indefinitely in 2008 due to a lack of funds and a backlog of cases awaiting trial. Child justice courts in Blantyre, Mzuzu, and Zomba handled cases of child offenders.

The constitution and laws provide for an accused to be informed of charges by a court within 48 hours of their arrest in a language they understand. Defendants have the right to be present at their trial, to have an attorney, and, if indigent, an attorney provided at state expense. 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. By law they are not compelled to testify or confess guilt. The law does not provide for a given length of time for the accused to prepare a defense, but the deliberate pace of trials affords defendants adequate time to prepare. The law extends the above rights to all persons. All persons have the right of appeal; however, 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 18 prosecuting attorneys and 20 paralegals, who served as lay prosecutors for certain 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 legal professionals restricted the number of human rights cases pursued and resulted in a large backlog. Through July the MHRC received 47 complaints of limited access to justice and six 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.

The law permits police officers of the rank of sub-inspector or higher to conduct searches when it is not feasible to obtain a court warrant if they have reasonable grounds for believing something needed for an investigation cannot be otherwise obtained without undue delay. Before conducting a search without a warrant, the officer must record the probable cause justification in writing and give a copy to the owner or occupant of the place to be searched.

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

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

The constitution and law provides for freedom of speech and press, and the government generally respected these rights.

Freedom of Speech: The government sometimes used antiseditious and likely breach of peace laws to stifle criticism.

Press Freedoms: The independent media were active and expressed a wide variety of views; however, the government occasionally imposed restrictions.

A broad spectrum of political opinion was available in the country's newspapers. Independent newspapers included two dailies, three weeklies, and one free bimonthly. Newspapers, predominantly published in English, had limited readership outside of more educated urbanites.

Violence and Harassment: In a limited number of cases, journalists were harassed, intimidated, and threatened during the year.

For example, on October 22, police arrested and detained Sylvester Namiwa, a journalist with Galaxy FM Radio, for two hours after he listed on air the names of individuals and companies alleged to be involved in stealing government funds as a part of the MKW 20 billion (\$49 million) Cashgate corruption scandal (see section 4). He was charged with publishing content likely to incite violence. As of December Namiwa was free on bail with no trial date announced.

In October 2012 police arrested and charged journalist Justice Mponda of the online publication *Malawi Voice* with publishing false news. On February 8, a court acquitted Mponda due to the government's failure to pursue the case.

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. These outlets provided consistently pro-government coverage.

### **Internet Freedom**

There were no government restrictions on access to the internet or reports that the government monitored e-mail or internet chat rooms. Lack of infrastructure and the high cost of internet connections continued to limit internet access. According to the International Telecommunication Union, approximately 4 percent of the population used the internet in 2012.

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

There were no government restrictions on academic freedom during the year; however, the government sporadically censored films that were deemed to contain culturally sensitive or sexually explicit material.

The Malawi Censorship Board Secretariat is responsible for reviewing and classifying plays, films, and foreign music for adult content as well as regulating public theaters. While the law provides for a Censorship Board, this board has not been in existence for more than a decade.

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

The constitution and law provide for freedom of assembly and association, and the government generally respected these rights.

### **Freedom of Association**

The government required all organizations, including political parties, to register with the Ministry of Justice. Unlike in the previous year, registrations were not delayed or denied for political reasons, nor did the government threaten organizations with deregistration.

### **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 internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

The government cooperated with the UNHCR and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern. The government's Refugee Committee, which makes decisions on refugee status, met in November for the first time in two years, but refused to make formal determinations on any person recommended for refugee status until the population of the Dzaleka refugee camp was reduced by half. The refugee population grew at a rapid rate due to the influx of refugees from the Democratic Republic of Congo.

In-country Movement: Refugees are subject to an encampment policy that is enforced by the periodic roundup and return of refugees to Dzaleka refugee camp.

### **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 approximately 19,300 individuals as of September, primarily from the Great Lakes region.

Refugee Abuse: Security forces sometimes intimidated refugees and asylum seekers. Police routinely detained and returned refugees found illegally outside the camp. Local citizens often accused refugees of committing various crimes.

There were multiple reports of the exchange of so-called survival sex for food and other necessities in the camp. Gender-based violence and other criminal activity were a major problem at the camp.

Employment: In general the government did not allow refugees to seek employment or educational opportunities outside the camp. Refugees with professional degrees, however, were permitted to pursue employment and other assistance outside the camp, especially those with medical training. The vast majority of refugees were therefore almost completely dependent on donor-funded food assistance.

Access to Basic Services: The UNHCR, NGOs, and the government collaborated to provide most basic services in the refugee camp.

A rapid increase in the refugee population and the inability of refugees to grow food or earn money due to the encampment policy limited the availability of food to what donors were able to provide.

Refugees had access to education and health services through the camp schools and clinic. These facilities, while overtaxed, served both refugee and local community populations. With only 16 police officers for the camp, law enforcement was extremely limited.

While local laws and the justice system are applicable and accessible to refugees, access was limited by inefficiencies and limited resources within the justice system.

Temporary Protection: The government also provided temporary protection to individuals who may not qualify as refugees; 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 periodically through largely free and fair elections based on universal suffrage.

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

Recent Elections: In May 2009 citizens reelected Bingu wa Mutharika of the Democratic Progressive Party (DPP) as 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. In April 2012 Vice President Joyce Banda became president, as provided for by the constitution, following 60 hours of uncertainty after the death of President Bingu wa Mutharika. Banda was chosen by the former president as a running mate before the 2009 election but was expelled from the former ruling DPP party in 2010; she formed the People's Party shortly thereafter.

In November 2012 the National Assembly passed a constitutional amendment permitting concurrent presidential, legislative, and local elections. The first such elections were scheduled for May 2014. Voter registration for the May 2014 elections began in July and was scheduled to continue in 10-14-day regional phases through December. Observers considered the registration process open and credible.

Participation of Women and Minorities: There were 39 women in the 193-seat National Assembly and 10 women in the 32-member cabinet. Women constituted approximately 25 percent of the civil service. There were eight female justices among the 33 Supreme and High Court justices, including the chief justice of the Supreme Court. As of October women were registering to vote in significantly higher numbers than men.

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

#### **Section 4. Corruption and Lack of Transparency in Government**

The law provides criminal penalties for corruption by officials, and the government had some success prosecuting cases; however, officials frequently engaged in corrupt practices with impunity. There were numerous reports of government corruption at the national and local level during the year.

Corruption: Beginning in September a national corruption scandal known as “Cashgate,” involving the theft of at least 20 billion MWK (\$49 million) through fraudulent transactions using the government’s automated payments system, gained significant attention among the government, donors and civil society. Although the fraudulent transactions began as early as 2010, they peaked in the middle of the year, according to investigators. The corruption scandal erupted with the September 13 shooting of Budget Director Paul Mphwiyo outside his home in Lilongwe, apparently in connection with the corruption scheme.

Between September and December, police arrested approximately 70 individuals, primarily mid-level civil servants, in connection with the corruption scheme. For example, on October 1, Roosevelt Ndovi, a principal accountant in the Accountant General's Office was arrested after being found in possession of three million MWK (\$73,000) in his car and \$25,400 at his home.

The "Cashgate" corruption scandal led to the dissolution of the cabinet by President Banda on October 10, with the justice and finance ministers omitted from the new cabinet formed on October 15. The government, in consultation with donors, devised an action plan to pursue cases of corruption, to review how the scandal occurred, and to introduce internal controls and improved systems to prevent further occurrences. On November 7, former justice minister Ralph Kasambara was detained. He was subsequently charged in connection with Mphwiyo's shooting.

In June revelations of likely corruption by the late president Bingu wa Mutharika came to light. A tax assessment of Mutharika's estate conservatively estimated its size at 61 billion MWK (\$150 million), consisting primarily of bank accounts and real property at home and abroad. At the time Mutharika entered office in 2004, his financial disclosures listed his estate at only 150 million MWK (\$368,000). Following press reports on the size of the estate, government officials in the Anti-Corruption Bureau (ACB), Financial Intelligence Unit (FIU), and Department of Public Prosecutions began an investigation, which continued at year's end.

A May 2012 report by an international NGO concluded that corruption posed a serious challenge and noted that high-level political corruption, petty bribery, patronage, and nepotism were widespread. Corruption was regarded as particularly severe in the police, registry and permit services, customs, and the judiciary. There were also reports of widespread corruption and extortion by public officials in procurement.

The ACB is primarily responsible for investigating and prosecuting cases of official corruption. They also work to educate the civil service and public on anticorruption matters and to review certain procurement arrangements in areas of concern, such as the implementation of the Farm Inputs Subsidy Program. The ACB was considered generally competent in its handling of low-level cases where confessions could be obtained. Indictments of former high-level government officials, however, proceeded slowly. The ACB operated far below its needed capacity. For example, the ACB had just eight prosecutors to handle hundreds of

complaints, and its seven investigation teams were staffed at only 50 percent strength, despite the ACB pulling back all of its investigators from its Blantyre branch to focus on Cashgate in Lilongwe. The ACB reported as of September that it completed 298 investigations, which resulted in 50 referrals to prosecutors. There were 36 corruption cases prosecuted as of September, resulting in 15 convictions, as compared with two in 2012.

The FIU monitors financial transactions and plays an important role in corruption investigations. The government provided insufficient resources for the FIU to carry out its mandate. The staff of 12 worked from a converted suburban house, shared a single software license for its main analytical tool, and lacked the funding to carry out basic on-site inspections of banks.

In October 2012 the ACB arrested the former chief statistician for the Population and Housing Census, Willie Kachaka, for misuse of public office due to allegations of corruption in the hiring of vehicles for the 2008 census. On February 8, Kachaka was given a suspended sentence of five months' imprisonment with hard labor. The ACB's appeal of the suspended sentence was pending as of September.

A final verdict in the 2007 corruption case against former president Muluzi remained pending.

Whistleblower Protection: The law provides some protection for whistleblowers. There were no reports of the application of such protection.

Financial Disclosure: The constitution requires the president, vice president, and members of the cabinet to disclose their assets in writing to the speaker of the national assembly within three months of being elected or appointed. There is no requirement in law, however, for the speaker to make the declarations public or available to other members of parliament, and the speaker declined to do so. Civil Society organizations and the press called upon President Banda to publicly declare her assets in the wake of highly publicized corruption scandals, but she refused to make any declaration beyond that required by law. In December President Banda assented to the Public Officers (declaration of assets, liabilities, and business interests) Bill. The new law widens the circle of officials required to make disclosures. The disclosures will be made to the director of the office of public officers' declarations. The declaration should be accessible to the public upon request, but the director has the authority to deny such requests. The law was not expected to be implemented before the May 2014 elections.

Public Access to Information: The constitution provides for public access to government information, but only in so far as such information is required for the exercise of an individual's rights. The government granted such access to citizens and noncitizens, including foreign media. There were no reports of fees charged or denial of access to requested records. In the absence of implementing legislation, access to government information was rarely sought and poorly understood.

### **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 operated in the country.

Government Human Rights Bodies: The MHRC, an independent government agency, is charged with monitoring, auditing, and investigating violations of human rights. Despite independent and energetic leadership, continued resource shortfalls resulted in a backlog of cases, delayed production of reports, and limited human rights monitoring. The MHRC reported that it received 254 complaints of human rights violations through October.

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 administrative action to redress the grievance. During the year the office continued a public awareness campaign that began in 2012 and held public sessions in four districts to educate the public about cases that can be brought to the office. The office had 17 investigators.

In October 2012 police arrested the ombudsman and her executive secretary on charges of questionable merit alleging theft and abuse of office. Both were released on bail and resumed their duties. As of September the case was pending in court.

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

The law forbids discrimination based on race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth, or other status. The law does not specifically mention sexual orientation. The capacity of government institutions to enforce the law 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 or life imprisonment, the courts generally imposed prison sentences. For cases of indecent assault on women and girls, the maximum penalty is 14 years in prison.

The Ministry of Gender, Children, and Social Welfare conducts public education to combat domestic violence and rape.

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. According to the 2010 Malawi Demographic and Health Survey (DHS), 41 percent of women reported being victims of physical or sexual violence. 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. 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 victims 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 extreme cases could be prosecuted under 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 on the 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. The government allowed health clinics and local NGOs 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 limited in rural areas. According to UN data from 2011, approximately 42 percent of married women and girls between the ages of 15 and 49 used a modern contraceptive. The government provided free childbirth services, but these were unevenly distributed due to limited access to hospitals and other medical facilities in rural areas. According to the UN Population Fund, the maternal mortality ratio was 510 deaths per 100,000 live births, and a woman’s lifetime risk of maternal death was one in 36. Nurses and midwives were a critical component of prenatal and postnatal care, due to a shortage of doctors. 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. The DHS also reported that one in four girls experienced pregnancy while a teenager.

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. Few women participated in the limited formal labor market, and those that did represented only a very small portion 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, Children, and Social Welfare.

## **Children**

Birth Registration: Citizenship can be derived from birth within the country or from one's parents. According to the 2008 population census, 16.6 percent of children under the age of 18 had a birth certificate. A compulsory universal birth registration process started in 2012, but it 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. Students from poor families had access to a public book fund. Many girls, especially in rural areas, were unable to complete even primary education due to poverty, lack of schools, and cultural factors; they were at a serious disadvantage in finding employment. The 2010 DHS found that 11 percent of men and 19 percent of women had no formal education and that less than 14 percent of persons age 15-19 had completed primary school.

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. The 2010 DHS estimated that 2.4 million children lived in violent homes, witnessing domestic violence and experiencing its negative effects. Overall, UNICEF estimated that 65 percent of girls and 35 percent of boys experienced some form of child abuse.

The law 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 Ministry of Gender, Children, and Social Welfare undertook activities to enhance protection and support of child victims. The ministry trained and paid salaries to 300 community child protection personnel, who work nationally to identify victims of abuse, underage labor, and trafficking, and referred cases to district welfare offices or police.

Forced and Early Marriage: The minimum age for marriage is 15, with marriage under age 18 requiring parental consent. According to UNICEF, 9 percent of women 20 to 24 years old were first married or in union before they were 15 years old, and 50 percent were married or in union before age 18. The minimum marital age is not widely enforced, and civic education on early marriage was carried out mainly by NGOs.

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

Despite certain legal prohibitions, many abusive practices, including the secret initiation of girls into their future adult roles, continued. In a few traditional communities, girls averaging 12 years old 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.

Sexual Exploitation of Children: The law forbids engaging in sexual activity with children under the age of 16 and stipulates penalties of 14 to 21 years in prison. The law further prohibits “indecent practice” in the presence of or with a child, with offenders liable to imprisonment for 14 years.

The law prohibits child pornography and using a child for public entertainment of an immoral or harmful nature. The maximum penalty for engaging in child pornography is 14 years in prison, while those found guilty of procuring a child for public entertainment are liable to a fine of 100,000 MWK (\$245) and imprisonment of seven years. The law was not effectively enforced.

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. The 2010 DHS reported that 17.8 percent of girls and women age 15 to 19 had experienced sexual violence, 26.8 percent of whom were 14 years old or younger when they first were victimized. Also, 15 percent of women reported that their first sexual intercourse was forced.

The trafficking of children for sexual purposes was a problem, and child prostitution for survival without third-party involvement also occurred. 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 law stipulates punishment up to and including life imprisonment for child traffickers.

Displaced Children: The 2010 DHS found that 19 percent of children under 18 were not living with either biological parent and that 17 percent were orphaned or vulnerable due to extended parental illness, including an estimated 650,000 orphans attributed to AIDS. 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 law prohibits discrimination in education, health care, social services, the workplace, housing, political life, and cultural and sporting activities for persons with disabilities, defined as a long-term physical, mental, intellectual, or sensory impairment. The law prohibits discrimination against those with disabilities in political and public life. The law calls for the government to take measures to ensure access for such persons to transportation, information, and communication and provides for the establishment of a Disability Trust Fund to support persons with disabilities. The law applies to all public facilities, both governmental and private. Although the law became effective during the year after passage in 2012, the government had neither adopted specific standards for its enforcement nor plans for its implementation.

The law prohibits discrimination against persons with disabilities in employment and provides for the social protection and support of persons with disabilities through greater access to public places, fair opportunities, and full participation in all spheres of society. Limited resources prevented the government from protecting these rights.

The Ministry of Disability and Elderly Affairs 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.

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

Consensual same-sex sexual activity is illegal and punishable by up to 14 years in prison in addition to corporal punishment, including hard labor. The penal code outlaws “unnatural offenses” and “indecent practices between males.” Same-sex activity can also be prosecuted as “conduct likely to cause a breach of the peace.” A 2011 amendment to the penal code established penalties for consensual same-sex sexual activity between women, setting a maximum prison term of five years. However, it was the policy of the government not to enforce these laws.

Public discussion of LGBT rights increased during the year. For example, on September 7, a local NGO that campaigns for LGBT rights showed a documentary film on anti-LGBT efforts in Uganda. After the film a discussion on LGBT matters followed between 40 LGBT persons and an estimated 80 clergy members.

*The Weekend Nation* newspaper continued to publish a weekly column entitled “Sexual Minority Forum.” On June 22 and 23, the Centre for Human Rights and Rehabilitation and the Centre for Development of People held a workshop for lesbians and bisexual women where they talked about the discrimination they face.

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

Societal discrimination against persons living with HIV/AIDS remained a problem. Many individuals preferred to keep silent about their health rather than seek help and risk being ostracized. 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. To counter such discrimination, the commission provided funding to the MHRC to examine discrimination issues.

Mobs sometimes applied vigilante justice. For example, on November 25 a mob in Lilongwe killed two alleged armed robbers, burning one inside of a pile of tires and fatally beating the other. A shop owner shot and killed a third member of the group, while police arrested a fourth. An investigation into the incident continued at year’s end.

## **Section 7. Worker Rights**

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

The law allows workers, except for military 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.

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 lengthy settlement procedures established in a collective agreement and conciliation efforts have both failed. The law also requires the parties concerned to apply to the Industrial Relations Court for a determination as to whether a particular strike involves an “essential service,” the interruption of which would

endanger the life, health, or personal safety of part of the population. Members of a registered union in essential services have only a limited right to strike.

The law prohibits antiunion discrimination and provides for remedial measures in cases of dismissal for union activity. The law does not specifically prohibit retaliation against strikers nor actions against unions that are not registered.

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) must belong to a union before it can engage in collective bargaining at the enterprise ( factory) level, and at least 15 percent of employees must be union members for collective bargaining at the sector (industry) level. The law provides for the establishment of industrial councils in the absence of collective agreements for sector-level bargaining. Industrial council functions include wage negotiation, dispute resolution, and industry-specific labor policy development. The government did not effectively enforce applicable laws. As with cases of all types entering the justice system, however, lack of resources and capacity resulted in delays of some labor cases.

Freedom of association and the right to collective bargaining were adequately respected for those in the formal sector. Union membership among workers was low due to the small percentage of the workforce in the formal sector, and because of a lack of awareness of worker rights and fear of reprisals. No known particular group of workers was excluded from relevant legal protections. Nevertheless, the government did not effectively enforce applicable laws. As with cases of all types entering the justice system, lack of resources and capacity resulted in delays of some labor cases. Furthermore, the law did not apply to or benefit the vast majority of workers who are in the informal sectors.

Employers, labor unions, and the government lacked sufficient knowledge of their roles in labor relations and disputes. There were, however, no instances of strikes being declared illegal during the year. In general the right to collective bargaining was respected.

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

There are no special laws or exemptions from regular labor laws in export processing zones.

Informal sector workers organized in the Malawi Union for the Informal Sector (MUFIS), which is affiliated with the Malawi Congress of Trade Unions. Informal sector employees, however, were unable to obtain the same standard of protection as formal sector workers due in part to a Ministry of Labor decision that the MUFIS did not have sufficient standing to bargain collectively.

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

The law prohibits all forms of forced or compulsory labor. Forced labor is punishable by a maximum fine of 10,000 MWK (\$24.50) or two years' imprisonment. The government did not effectively enforce applicable laws.

Children were subjected to domestic servitude and other forms of forced labor, including cattle herding; agricultural labor, particularly on tobacco farms; and menial work in small business. Punishments were almost always limited to fines, and the modest fines did not discourage labor violations.

Forced and bonded labor involving entire families occurred under the tenancy system. Tobacco plantation tenants had exclusive arrangements, often unwritten, with estate owners to sell their crop and to buy inputs such as fertilizer, seed, and often food. These costs, in addition to rent charges, could be greater than the amount of money received from tobacco sales, 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 prohibition of child labor does not apply to work done in homes, vocational technical schools, or other training institutions. The law prohibits child trafficking, including labor exploitation and the forced labor of children for the income of a parent or guardian. The government publishes a list of hazardous work for children. The law specifies a maximum fine of 20,000 MWK (\$49) or five years' imprisonment for violations. The law, however, 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 enlist 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 carried out inspections, particularly on agricultural estates. Despite these efforts, enforcement by police and ministry inspectors of child labor laws was limited. By its own admission, the government made little progress to implement its National Action Plan on Child Labor (2010-16). Most public education activities were carried out by tobacco companies and nongovernmental groups.

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 prevalent on tobacco and tea 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.

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, which is composed of representatives of labor, government, and the private sector. The minimum wage was 317 MWK (\$0.78) per day as of July 2012. The 2010 Integrated Household Survey estimated that 50.7 percent of citizens lived below the poverty line. There was no exception for foreign or migrant workers.

The Ministry of Labor lacked the resources to enforce the minimum wage effectively. Official minimum wages apply only to the formal sector. The minimum wage was irrelevant for most citizens, who earned their livelihood outside the formal wage sector. Wage earners often supplemented their incomes

through farming activities. There were no government programs that provided social protections for workers in the informal economy.

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.

The workweek standards were not effectively enforced, and employers frequently violated statutory time restrictions. The Ministry of Labor's enforcement of the health and safety standards was also poor. The law specifies a maximum fine of 20,000 MWK (\$48) or five years' imprisonment for violations. The fines were not sufficient to deter offenders and no jail terms have ever been reported.

The Ministry of Labor houses a Directorate of Occupational Safety and Health. The law includes extensive occupational health and safety standards. The law protects foreign workers in correct legal status. Illegal foreign workers were subject to deportation.

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 absorbed up to 54 milligrams of dissolved nicotine daily through their skin, the equivalent of 50 cigarettes. Thousands of child tobacco workers suffered from nicotine poisoning. These children often worked 12-hour days, frequently for little or no pay.

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, due to the low level of education of most workers and the high level of unemployment, workers were unlikely to exercise this right.

As of December the Ministry of Labor had not reported the number of workplace fatalities during the year.