

MALAWI 2017 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Malawi is a multiparty democracy. Constitutional power is shared between the president and the 193 National Assembly members. International observers characterized the 2014 elections for president, parliament, and local councils as free, transparent, and credible.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included: excessive use of force by security officers, including torture; harsh and life-threatening prison and detention center conditions; lack of investigation and enforcement involving cases of violence against women, including rape; criminalization of same-sex sexual conduct; and sexual exploitation of children.

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 Deprivation of Life and Other Unlawful or Politically Motivated Killings

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

Police arbitrarily shot and sometimes killed unarmed suspected criminals. For example, in January police shot and killed Jonathan Kaiya, a suspected car thief, under suspicious circumstances while he was being transferred. Kaiya, who was on bail, had been rearrested and transferred to a remote police station for no obvious reason.

Perpetrators of past abuses were occasionally punished, but investigations often were delayed, abandoned, or remained inconclusive.

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

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 torture to extract confessions from suspects. In the past police showed little restraint in such situations, but in at least one instance the Malawi Police Service (MPS) professionally handled the beating of a police officer by protesters. The Malawi Human Rights Commission (MHRC) stated in its annual report that torture was widespread in prisons.

Prison and Detention Center Conditions

Prison and detention center conditions remained harsh and potentially life threatening due to overcrowding and poor sanitation; inadequate food, potable water, heating, ventilation, lighting, and health care; and torture.

Physical Conditions: According to the Inspectorate of Prisons, the government remained largely noncompliant with the High Court's 2009 requirement to improve prison conditions. A 2014 inspection tour that covered 90 percent of prisons found recurrent problems of poor sanitation, poor diet, overcrowding, prisoner abuse, poor ventilation, detention without charge beyond 48 hours, understaffing, prison staff corruption, and insufficient prisoner rehabilitation such as education and vocational training.

Overcrowding and malnutrition remained problems. On September 18, the Malawi Prison Service reported the total prison population was 14,795 in space with a theoretical holding capacity of 7,000. Police held detainees in police stations for long periods beyond the legal limit of 48 hours, which led to pervasive cell overcrowding.

Authorities held women separately from men but often held pretrial detainees and convicted prisoners together. In police detention children were not always held separately from adults. Although inadequate, detention facilities for women and children were generally better than men's facilities. Several hundred irregular migrants as young as 13 were held with the general prison population even after their immigration-related sentences had been served.

As of September, according to the prison service, 41 inmates had died in prison. Leading causes of death were tuberculosis (nine), diarrhea (nine), anemia (four), and malaria (four).

Basic emergency medical care generally was available in the daytime but unavailable after regular working hours. Daily prison rations were meager. Officials allowed family members to provide food and encouraged inmates to grow vegetables and raise livestock in rural prisons. Malnutrition in the prison population remained a problem, however, particularly in urban prisons.

Inadequate infrastructure remained a serious problem. Prisons and detention centers had no provisions for temperature control other than wood fires.

Administration: Each prison had a designated welfare officer, some of whom had received specialized training, to receive prisoner complaints regarding conditions. The complaints process, however, was primarily verbal and informal, allowed for censorship, and provided little follow-up. The MHRC received only two complaints during the year. Prisoners sometimes had the opportunity to complain to nongovernmental organizations (NGOs) that recorded cases for inclusion in government advocacy and reports, but this rarely resulted in follow-up on individual cases.

The MHRC and NGOs working in prisons expressed concern regarding the human rights of detained persons. During the year the MHRC released a report that cited overcrowding, poor sanitation, and inadequate food and health care as major problems in prisons and detention centers. It stated that torture was widespread and most prisoners and detainees lived in degrading and inhuman conditions. From January to August, the MHRC received one complaint regarding the rights of prisoners and two complaints regarding the rights of individuals at a migrant detention facility. The low number of submitted complaints was believed to be due to fear of retaliation by authorities.

A national prison wardens' strike in July and two judiciary staff strikes in February and August, lasting one and three weeks respectively, prevented incarcerated individuals from accessing the courts, delaying further the delivery of justice. During the prison warden strike, families of inmates were not allowed to visit prisoners.

Independent Monitoring: During the year the government permitted domestic and international NGOs and the media to visit and monitor prison conditions and

donate basic supplies. Domestic NGOs, the Malawi Red Cross Society, and diplomatic representatives had unrestricted access to prisons.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, the government did not always observe these prohibitions. The law provides for the right of any person to challenge the lawfulness of his/her arrest or detention in court but does not provide for compensation if found to have been unlawfully detained. Lack of knowledge of statutes and of access to representation meant detainees did not challenge the legality of their detention.

Role of the Police and Security Apparatus

The government exercised effective control over the Malawi Defense Force (MDF) and MPS. The MPS, under the Ministry of Home Affairs, has responsibility for law enforcement and maintenance of order. The MDF has responsibility for external security. The MDF was sometimes asked to carry out policing activity. The MDF commander reports directly to the president as commander in chief.

Police were inefficient, poorly trained, and corrupt (see section 4). Impunity remained a problem. Officers suspected of misconduct generally were transferred rather than investigated and disciplined if found guilty. Authorities, however, prosecuted officers accused of involvement in serious crimes such as robbery, murder, or rape (see section 1.a.).

Like other elements of government, the MDF and MPS were subject to investigation for corruption. In 2015 the Anti-Corruption Bureau (ACB) arrested former army chief General Henry Odillo and his former deputy, Lieutenant General Clement Kafuwa, on corruption charges in connection with contracts for military equipment that was never delivered. The trial began in October 2016, and in April the defendants, who were out on bail, pled not guilty to the charges. The trial had yet to conclude by year's end.

The MDF and MPS cooperated with corruption investigations by the ACB but did not carry out their own internal investigations. Government mechanisms to investigate and punish abuse and corruption were only marginally effective due in large part to funding and human resource constraints.

The inspector general of police remained committed to the professionalization of the MPS. The Professional Responsibility Unit (previously known as the Internal Affairs Department) of the MPS investigates police misconduct, including whether killings or other misconduct that occurred in the line of duty were justifiable.

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 and equipment.

Arrest Procedures and Treatment of Detainees

Police apprehended most suspects without a warrant if they had reasonable grounds to believe a crime was being or had been committed. Only in cases involving corruption or white-collar crime were arrest warrants normally issued by a duly authorized official based on evidence presented. The law provides detainees the right to have access to legal counsel and be released from detention or informed of charges by a court within 48 hours of arrest; however, authorities often ignored these rights. The use of temporary remand warrants to circumvent the 48-hour rule was widespread. Police frequently demanded bribes to authorize bail, which was often granted to reduce overcrowding in jails, rather than release a detainee on the merits of a case. Relatives were sometimes denied access to detainees. There were no reports detainees were held incommunicado or held under house arrest.

Detainees who could afford counsel were able to meet with counsel in a timely manner. While the law requires the government to provide legal services to indigent detainees, such aid was provided almost exclusively to suspects charged with homicide. In 2015 the Legal Aid Bureau replaced the Department of Legal Aid as the institution mandated to provide legal assistance to indigent persons. The bureau had 15 lawyers and 18 paralegals in the three offices, located in the largest cities: Lilongwe, Blantyre, and Mzuzu. Inadequate funding remained a major challenge.

The Center for Human Rights Education Advice and Assistance (CHREAA) assisted persons detained at police stations and in prisons through its Malawi Bail Project, camp courts, police cell visits, and paralegal aid clinic to expedite their releases. During the year CHREAA reached out to 28,367 detainees, 19,543 of whom succeeded in obtaining bail. The Center for Legal Assistance and the Paralegal Advisory Service Institute, NGOs that assist prisoners with legal matters, provided limited free legal assistance to expedite the trials of detainees. Priority

was given to the sick, the young, mothers with infants, persons with disabilities, and those in extended pretrial detention.

Arbitrary Arrest: The constitution and law prohibit arbitrary arrest, unlawful detention, or false arrest. Sections of the penal code pertaining to rogues and vagabonds were used in the past to make arbitrary arrests but were struck down as unconstitutional by the court in January. Authorities, however, continued to make arrests based on other provision such as conduct likely to cause breach of peace and obstruction of police officers. Although prostitution is legal, police regularly harassed sex workers. On April 2, in Lilongwe, police arrested Masauko Chimphamba, a small-scale businessman, and kept him in custody for two nights without charge or telling him the reason for his arrest. On April 4, Chimphamba was released after a man involved in a robbery informed police that Chimphamba was not part of the robbery. Chimphamba registered an arbitrary arrest complaint with the MHRC. By October, however, the complaint had not been followed up, due to his having gone abroad.

Pretrial Detention: Of the total prison population of 14,795 inmates, 1,598, or 11 percent, were in pretrial detention. Despite a statutory 90-day limit on pretrial detention, authorities held most homicide suspects in pretrial detention for two to three years. There was evidence some homicide detainees remained in prison awaiting trial for much longer periods, but reliable information on the number and situation of these detainees was unavailable.

To reduce case backlog and excessive pretrial detention, certain cases were directed to local courts and “camp courts” organized by civil society groups. Camp courts expedite cases by bringing magistrates to prisons. Paralegals gathered cases of pretrial detainees awaiting trial for excessive periods, who were held unlawfully, or who had been granted bail but were unable to meet the terms set by the court. Magistrates, along with the court clerk and police prosecutor, worked through the list, granting bail to some, reducing bail for others, dismissing cases, or setting trial dates.

e. Denial of Fair Public Trial

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

including extensive delays due to motion practice (a three-step court order request), a low bar for granting injunctions, judge shopping, prosecutorial delay tactics, frequent recusals, and lawyers and witnesses not being present on trial dates, undermined the government's ability to dispense justice.

A week-long prison wardens' strike in July and two separate judiciary staff strikes in February (one week) and August (three weeks) prevented inmates from accessing courts.

In November land reclamation advocate Vincent Wandale was involuntarily committed to a mental institution based on a report on his mental health requested by the prosecution. Wandale was on trial for spreading false rumors after he declared himself the leader of an independent state in the South of the country.

The MDF conducts courts-martial but no military or security tribunals. Used more frequently than courts-martial is a nonjudicial procedure under which cases are dealt with summarily by senior officers without a formal trial process. In both procedures military personnel are entitled to the same rights as persons accused in civilian courts.

Trial Procedures

The constitution and law provide for the right to a fair public trial, and an independent judiciary generally enforced this right.

Defendants are presumed innocent. The constitution and law require a court to inform an accused of charges within 48 hours of arrest, with free assistance of an interpreter if necessary. Defendants have the right to be present at their trial, to have an attorney, and, if indigent, an attorney provided at state expense, but such assistance was usually limited to homicide cases. Defendants have the right to challenge prosecution or plaintiff evidence and witnesses, and present their own witnesses and evidence. By law they may not be compelled to testify or confess guilt. The law does not specify a given length of time for the accused to prepare a defense. The slow pace of trials affords defendants adequate time to prepare but not to adequate facilities due to insufficient prison system funding. All persons have the right of appeal; however, appeals often were delayed for years and sometimes never addressed by a higher court.

The judiciary's budgetary and administrative problems led to backlogs that effectively denied expeditious trials for most defendants and kept some defendants

in pretrial detention for long periods. Recruitment and retention of government attorneys remained a problem. MPS prosecutors with limited legal training prosecuted the majority of criminal cases. The Directorate of Public Prosecutions in the Ministry of Justice customarily tried high-profile cases and those involving the most serious offenses. As of September the directorate had 20 prosecuting attorneys supported by 18 paralegals, who also prosecuted certain lower court cases. Minor victims as young as 12 often testified in open court and in at least one instance the minor was cross-examined by the abuser who was self-representing. Child-friendly court facilities existed but were used only for minors in conflict with the law.

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 submit lawsuits seeking damages for, or cessation of, human rights violations. Individuals and organizations may appeal adverse domestic decisions to regional courts. 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. As of September 8, there were only 407 licensed legal practitioners.

f. Arbitrary or Unlawful 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 subinspector or higher to conduct searches without a court warrant if they have reasonable grounds to believe they could not otherwise obtain something needed for an investigation without undue delay. Before conducting a search without a warrant, the officer must write a reasonable-grounds justification 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 Expression, Including for the Press

The constitution and law provide for freedom of expression, including for the press, and the government generally respected this right.

Freedom of Expression: Antisedition and breach of peace laws were sometimes used to stifle criticism. For example, in February 2016 three opposition parliamentarians were arrested and charged with sedition for their statements in a social media conversation in which they discussed taking political advantage of public discontent with the government. While the conditions of their bail were relaxed in March, they remained under indictment. In April, two opposition figures were arrested on suspicion of having authored a resignation letter widely circulated on social media purportedly written by Vice President Saulos Chilima.

Violence and Harassment: Authorities sometimes attempted to intimidate journalists who reported criticism of the ruling party. In January, shortly after leading privately owned media entity Times Media Group exposed a significant government corruption scandal, the Malawi Revenue Authority (MRA) raided and closed the group's offices. The following week, the Malawi Communications Authority (MACRA) censured the group for not adhering to its declared programming schedule during the time its offices were closed by the MRA. In March, MACRA summoned two Times Media Group journalists for statements and allegations of nepotism concerning the president. The government also regularly barred privately owned media from covering government events.

Censorship or Content Restrictions: Journalists sometimes practiced self-censorship, especially at government-owned media outlets such as the Malawi Broadcasting Corporation. In December 2016 the government publicly reprimanded and eventually fined Zodiak Broadcasting Station (ZBS), a leading independent radio and television station, for broadcasting an interview with an opposition politician who criticized the government, which the government claimed was unfairly "one-sided" and violated an obscure public communications regulation. ZBS was subsequently barred from participating in government-organized press conferences.

Internet Freedom

The Electronic Transactions and Cyber Security Act became law on June 1. The new law criminalizes the act of "knowingly receiving and sharing unauthorized data" and stipulates that a person found sharing or receiving such information is

committing a crime and liable to a fine of 1.85 million Malawian kwacha (MWK) (\$2,500) and imprisonment of up to five years. The new law also makes it a crime for any person willfully and repeatedly to use electronic communication to attempt to disturb the peace or right of privacy of any person. Civil society organizations decried passage of the new law, arguing it was meant to silence persons on social media ahead of national elections in 2019. As of November no one had been charged with a crime under the new law. Lack of infrastructure and the high cost of internet connections limited internet access. According to the International Telecommunication Union, approximately 9.6 percent of the population used the internet in 2016, the latest year for which data was available.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom during the year; however, the government sporadically censored films that it deemed contained 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.

b. Freedoms of Peaceful Assembly and Association

The constitution and law provides for the freedoms of peaceful assembly and association, but the government did not always respect these rights.

Freedom of Peaceful Assembly

The constitution and law provide for freedom of assembly, but the government did not always respect this right. On September 21, 26 peacefully protesting students from Lilongwe University of Agriculture and Natural Resources were arrested and charged with conduct likely to breach the peace. They were subsequently released on bail, and their case was pending at year's end.

On September 14, during a march against gender-based violence, male police officers arrested protester Beatrice Mateyo and charged her with "insulting the modesty of a woman" for carrying a placard deemed offensive. Released on bail, she was awaiting trial at year's end.

Freedom of Association

The constitution and law provide for the freedom of association, and the government generally respected this right. The government required registration of all NGOs and political parties. NGOs must register with three different government entities and pay significant yearly registration fees.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

The government cooperated with 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. By the end of September, the 70 percent of the 3,345 Mozambicans at the Luwani Camp who had indicated they wished to return home voluntarily were awaiting completion of an agreement between the governments of Malawi and Mozambique and UNHCR. As of September 30, there were approximately 35,000 asylum seekers and refugees at the Dzaleka Camp in the North, with more refugees continuing to arrive, mostly from the Democratic Republic of the Congo and Burundi.

Abuse of Migrants, Refugees, and Stateless Persons: Security forces sometimes intimidated refugees and asylum seekers. Police routinely detained and returned to the Dzaleka Camp refugees found outside, including those with proper identity documents. Local citizens often accused refugees of committing various crimes.

In-country Movement: Refugees were subject to an encampment policy that restricted them to the Dzaleka and Luwani refugee camps, the only two officially designated refugee camps. Authorities periodically rounded up and returned to the Dzaleka Camp those who left it.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and as of September the government provided protection to more than 35,000

individuals. Asylum seekers primarily came from the Great Lakes region of Africa and Mozambique.

There were multiple reports of so-called survival sex by refugees to obtain income to supplement food rations and other necessities in the Dzaleka Camp. Gender-based violence and other criminal activities were also reported at Dzaleka.

From January to August, the MHRC received three complaints of mistreatment at the Dzaleka Camp.

Employment: In general the government did not allow refugees to seek employment or educational opportunities outside the camp. Most refugees were dependent on donor-funded food assistance. A small number of refugees with professional degrees, especially those with medical training, received permits to pursue employment and other opportunities outside the camp.

Access to Basic Services: UNHCR, NGOs, and the government collaborated to provide most basic services. Refugees had access to education and health-care services through camp schools and clinics. These overtaxed facilities served both refugees and local communities. A rapid increase in the refugee population and the inability of most refugees to grow food or earn money due to the encampment policy limited the available food and services to that provided by donors through UNHCR and the World Food Program. Ration allocations were below recommended levels due to insufficient funding.

While local laws and the justice system applied to refugees, access to the justice system was limited by inefficiencies and inadequate resources. With only 13 police officers assigned to the Dzaleka Camp, law enforcement capacity was extremely limited.

Temporary Protection: The government provided temporary protection to individuals who may not qualify as refugees; however, no reliable statistics were available.

Section 3. Freedom to Participate in the Political Process

The constitution and law provide citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on universal and equal suffrage.

Elections and Political Participation

Recent Elections: In 2014 citizens voted in simultaneous presidential, parliamentary, and local elections. Voters elected Arthur Peter Mutharika of the Democratic Progressive Party as president with 36.4 percent of the vote. Mutharika defeated incumbent president Joyce Banda, marking the first time an incumbent party lost the presidency since the country's first multiparty election in 1994. Presidential and vice-presidential debates took place and were broadcast on radio and television for the first time, which provided voters a new tool for evaluating and contrasting candidates and their policies. The 2014 elections also filled the positions of local councilors following a nine-year gap; the term of councilors elected in 2000 had expired in 2005.

International observers characterized the elections as generally peaceful, free, credible, and transparent, although there were shortcomings. For example, the ruling Democratic People's Party (DPP) regularly diverted state resources for partisan events. National or local government vehicles were sometimes requisitioned to ferry supporters to partisan events. Representatives from several government-affiliated entities attended a DPP fundraiser event held at the presidential palace.

Participation of Women and Minorities: Cultural and traditional gender bias and lower levels of literacy, education, and economic empowerment prevented women from participating in the political process to the same extent as men. There were 32 women in the 193-seat National Assembly and 56 women among the 462 elected local councilors. There were four women in the 20-member cabinet. Women constituted approximately 25 percent of the civil service. There were 10 female justices among the 34 Supreme Court of Appeal and High Court justices.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for conviction of corruption by officials, but the government did not implement the law effectively. Officials sometimes engaged in corrupt practices with impunity. There was little criminal or professional accountability for those involved.

The government, in cooperation with donors, continued implementation of an action plan to pursue cases of corruption, review how the "Cashgate" corruption scandal occurred, and introduce internal controls and improved systems to prevent further occurrences. Progress on investigations and promised reforms was slow.

The vice president headed a public-sector reform effort to address the factors that allowed corruption to thrive.

Corruption: In February the Anti-Corruption Bureau raided several houses including that of then minister of agriculture George Chabonda in connection with the suspect procurement of 100,000 tons of grain from Zambia known as “Maizegate.” Chabonda and two accomplices were arrested in July and released on bail because the “Maizegate” trial was underway.

The investigation and prosecution of approximately 70 individuals, primarily mid-level civil servants arrested in 2013 for involvement in the theft of approximately 20 billion MWK (\$55 million at the time) through fraudulent transactions--the Cashgate corruption scandal--proceeded slowly. As of September a total of 14 cases resulted in convictions, with prison sentences ranging from three to 11 years. At year’s end no high-level officials had been arrested or charged and prosecuted in direct connection with Cashgate. Former justice and constitutional affairs minister Raphael Kasambara received a 13-year sentence for conspiring to murder former budget director Paul Mphwiyo, who was on trial for his involvement in Cashgate. The state’s eight billion MWK (\$10.6 million) corruption case against former president Bakili Muluzi, begun in 2006, remained stalled.

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 for the speaker to make the declarations public or available to other members of parliament. The Public Officers Declaration of Assets Law requires officials in 48 categories, ranging from the president, members of parliament, and senior officials down to specific categories of civil servants, including traffic police and immigration officers, to make financial disclosures. Noncompliance is a basis for dismissal, and individuals who knowingly provide inaccurate information may be fined, dismissed, and imprisoned. The declarations are to be accessible to the public upon request, but the director has the authority to deny such requests. Denials may be appealed to the High Court. On October 4, the Directorate of Assets Declaration revealed that 28 members of parliament, including some cabinet members, failed to declare their assets; however, no sanctions were announced.

Section 5. Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Abuses 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 were somewhat cooperative and responsive to their views.

Government Human Rights Bodies: The MHRC, an independent government-chartered institution, is mandated by the constitution to promote and protect human rights and investigate violations of human rights. Despite its independent leadership, resource shortfalls resulted in a backlog of cases, delayed production of reports, and limited investigation of human rights violations.

The Office of the Ombudsman is mandated to investigate government officials responsible for human rights violations and other abuses. The Ombudsman's Office does not take legal action against government officials but may order administrative action to redress grievances and may recommend prosecution to the director of public prosecution. The office had 18 investigators who were assisted by two support staff. During the year their civic education team conducted public rallies and awareness campaigns in four of the country's 28 districts. It maintained a website with regular updates on its activities.

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

Women

Rape and Domestic Violence: The penal code criminalizes rape of men or women with a maximum penalty of death. The Marriage, Divorce, and Family Relations Act enacted in 2015 explicitly introduces the concept of spousal rape, but the act does not prescribe specific penalties and applies only to legally separated spouses. Spousal rape may be prosecuted under the rape provisions of the penal code. The government generally enforced the law effectively, and convicted rapists routinely received prison sentences.

Data on the prevalence of rape or spousal rape, prosecutions, and convictions were unavailable; however, press reporting of rape and defilement arrests and convictions were an almost daily occurrence. Although the maximum penalty for conviction of rape is death or life imprisonment, the courts generally imposed fixed prison sentences. For cases of conviction of indecent assault on women and girls, the maximum penalty is 14 years in prison.

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

The law provides a maximum penalty of life imprisonment for conviction of domestic violence and recognizes that both men and women may be perpetrators as well as victims. Domestic violence, especially wife beating, was common, although victims rarely sought legal recourse. Police regularly investigated cases of rape, sexual assault, and gender-based violence but did not normally intervene in domestic disputes. Police support units provided limited shelter for some abuse victims.

Female Genital Mutilation/Cutting (FGM/C): The law does not specifically prohibit FGM/C. According to press reports from 2011, some cases of FGM/C were prosecuted as unlawful wounding. A 2014 UN Human Rights Committee report expressed concern regarding the existence of FGM/C in some regions of the country. A few small ethnic groups practiced FGM/C. In most cases FGM/C was performed on girls between ages 10 and 15.

For more information, see data.unicef.org/resources/female-genital-mutilation-cutting-country-profiles/.

Other Harmful Traditional Practices: The Gender Equality Act of 2013 prohibits certain harmful traditional practices, including “widow cleansing” and “widow inheritance.” Nonetheless, in some areas widows were sometimes forced to have sex with male in-laws or a designee 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. The government and NGOs continued efforts to abolish such practices by raising awareness concerning the inherent dangers of such behavior, including the risk of HIV/AIDS transmission.

“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.

Despite certain legal prohibitions, many abusive practices, including the secret initiation of girls into the socially prescribed roles of womanhood, continued. Such initiations were often aimed at preparing girls for marriage with emphasis on training girls how to engage in sexual acts. In some traditional communities, girls as young as age 10 undergo “kusasa fumbi,” a cleansing ritual consisting of forced sexual relations with an older man. According to one UN-sponsored study, more

than 20 percent of girls in secondary school underwent a form of initiation that involved sexual relations with an older man.

In July a five-part series by the French newspaper *Le Monde* reported that the practice of men having sex with girls as part of initiation rites continued.

Sexual Harassment: Although sexual harassment was believed to be widespread, there were no data on its prevalence or on the effectiveness of government enforcement of the law. The Gender Equality Act makes sexual harassment punishable by up to five years' imprisonment if convicted. Extreme cases could be prosecuted under certain sections of the penal code, such as indecent assault on a woman or girl, which provides for up to a 14-year prison sentence if convicted, or insulting the modesty of a woman, a misdemeanor punishable by one year's incarceration if convicted.

Coercion in Population Control: There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/.

Discrimination: By law women have the same legal status and rights as men and may not be discriminated against based on gender or marital status, including in the workplace. Nevertheless, women had significantly lower levels of literacy, education, and formal and nontraditional employment opportunities, as well as lower rates of access to resources for farming. Widows often were victims of discriminatory and illegal inheritance practices in which most of an estate was taken by the deceased husband's family.

The government addressed women's concerns through the Ministry of Gender, Children, Disability, and Social Welfare. The law provides for a minimum level of child support, widows' rights, and maternity leave; however, only women employed in the formal sector knew their rights, had access to the legal system, and thus benefited from these legal protections.

Children

Birth Registration: Citizenship may be derived from birth within the country or abroad to at least one Malawian parent "of African race." There were no reports of

discrimination or denial of services due to lack of birth registration. For additional information, see Appendix C.

Education: The government provided tuition-free primary education for all children. Education for children under age 18 is compulsory. Families were responsible for paying book fees and purchasing uniforms. Students from poor families had access to a public book fund. For additional information, see Appendix C.

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. For additional information, see Appendix C.

The law prohibits subjecting a child to any social or customary practice that is harmful to health or general development. Prohibited practices included child trafficking, forced labor, early and forced marriage or betrothal, and use of children as security for loans or other debts.

Ministry of Gender, Children, Disability, and Social Welfare activities to enhance protection and support of child victims included reuniting rescued victims of child labor with their parents and operating shelters for vulnerable children.

Early and Forced Marriage: The Marriage, Divorce, and Family Relations Act sets the minimum age for marriage at 18. On April 2, the president signed a constitutional amendment removing a provision that allowed marriage at age 15 with parental consent. Civic education on early marriage was carried out mainly by NGOs. Some traditional leaders annulled early marriages and returned the girls involved to school. For additional information, see Appendix C.

Sexual Exploitation of Children: The law forbids engaging in sexual activity with children under age 16 and stipulates penalties for conviction 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 of up to 14 years.

The law prohibits child pornography and using a child for public entertainment of an immoral or harmful nature. The maximum penalty for conviction of 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 (\$133) 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 trafficking of children for sexual purposes was a problem, and child prostitution for survival at the behest of parents or without third-party involvement occurred. In urban areas, bar and rest house owners recruited girls as young as 12 from rural areas to do household work such as cleaning and cooking but then coerced them to engage in sex work with customers in exchange for room and board. For additional information, see Appendix C.

Displaced Children: According to the *2010 Demographic and Health Survey*, 19 percent of children under age 18 were not living with either biological parent and 17 percent were orphaned or vulnerable due to extended parental illness or death, including an estimated 650,000 orphaned because of 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. See the Department of State's *Annual Report on International Parental Child Abduction* at travel.state.gov/content/childabduction/en/legal/compliance.html.

Anti-Semitism

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

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

Persons with Disabilities

The Disability Act prohibits discrimination in education, health care, the judicial system, 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 persons with disabilities in political and public life and calls for the government to take measures to provide access for them to transportation, information, and communication services. The law provides for the establishment

of a disability trust fund to support persons with disabilities, including with regard to access to public facilities, both governmental and private.

Societal stigma related to disability and the lack of accessibility to public buildings and transportation had a negative impact on the ability of persons with disabilities to obtain services and obtain and maintain employment.

Accommodations for persons with disabilities were not among the government's priorities. Although the Disability Act took effect in 2013, the government had yet to adopt standards and plans for its enforcement and implementation. The Ministry of Gender, Children, Disability, and Social Welfare is responsible for protecting the rights of persons with disabilities, but it was unable to do so.

There were public and privately supported schools and training centers that assisted persons with disabilities. As of September the MHRC reported receiving seven complaints related to disability rights and concluded investigations into three of them. The complaints regarded the insufficient availability of wheelchairs, inadequate access to schooling for children with disabilities, and the unavailability of sunscreen at a health facility for an individual with albinism.

Acts of Violence, Discrimination, and Other Abuses Based on Sexual Orientation and Gender Identity

By law and practice lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons are denied basic civil, political, social, and economic rights. Consensual same-sex sexual activity is illegal and punishable by up to 14 years in prison, including hard labor. The penal code outlaws “unnatural offenses” and “indecent practices between males.” In 2014, however, Solicitor General Janet Banda told the UN Human Rights Commission the government would not enforce these laws. In 2015 Minister of Justice Samuel Tembenu reaffirmed the moratorium on the enforcement of laws criminalizing consensual same-sex sexual activity and continued the moratorium during the year.

Same-sex sexual activity may 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 for conviction of five years.

In 2016, the latest year for which data were available, the Center for the Development of People documented 21 instances of abuse based on sexual

orientation and gender identity. The nature of the abuses fell into three broad categories: stigma, harassment, and violence.

HIV and AIDS Social Stigma

Societal discrimination against persons with HIV/AIDS remained a problem, especially in rural areas. Many individuals preferred to keep silent regarding their health conditions 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.

The *2012 People Living with HIV Stigma Index for Malawi* indicated that of 2,272 persons with HIV interviewed, significant percentages reported having been verbally insulted, harassed, and threatened (35.1 percent) and excluded from social gatherings (33.7 percent).

Other Societal Violence or Discrimination

Mobs and local citizens sometimes engaged in vigilante attacks, at times killing persons suspected of crimes such as theft.

There were several attacks on persons with albinism driven by the demand for body parts for witchcraft rituals in neighboring Tanzania. Religious, traditional, civil society, and political leaders, including the president, publicly denounced the attacks. The government launched a public-awareness campaign and conducted training of police, prosecutors, and judges in border districts to counter the trend.

In September, after rumors of “blood-suckers” stealing blood from individuals to use in “black magic” rituals emerged in the southern region, vigilante crowds attacked outsiders and purported accomplices of “blood-suckers.” Several were injured and at least six died in the attacks.

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. Unions must register with the Registrar of Trade Unions and

Employers' Organizations in the Ministry of Labor. The law places some restrictions on the right to collectively bargain, including requirements of prior authorization by authorities, and bargaining status. The law provides for unions to conduct their activities without government interference. The law also prohibits antiunion discrimination and provides for remedial measures in cases of dismissal for union activity. The law does not specifically prohibit retaliation against strikers or 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) belong to a union before it may 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 law allows members of a registered union to strike after going through a mandatory mediation process overseen by the Ministry of Labor. A strike may take place only after a lengthy settlement procedure set out in the Labor Relations Act has failed. The law also requires the labor minister to apply to the Industrial Relations Court to determine 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. The law does not provide a specific list of essential services. Members of a registered union in essential services have only a limited right to strike. There are no special laws or exemptions from regular labor laws in export processing zones. The law does not apply to the vast majority of workers who are in the informal sector without work contracts.

The government did not effectively enforce applicable laws. As was true of all cases entering the justice system, choices relating to the allocation of limited resources and lack of capacity resulted in delays of some labor cases. Small fines for most violations were insufficient to deter violations. Provisions exist for punishment of up to two years in prison, but no convictions were reported.

Freedom of association and the right to collective bargaining were adequately respected for those in the formal sector. The law requires that unions must be registered, and registration was granted routinely. Union membership among workers was low due to the small percentage of the workforce in the formal sector and a lack of awareness of worker rights. Employers, labor unions, and the

government lacked sufficient knowledge of their roles in labor relations and disputes.

Arbitration rulings were legally enforceable; however, the Industrial Relations Court did not monitor cases or adequately enforce the laws.

Informal sector workers organized in the Malawi Union for the Informal Sector (MUFIS), which is affiliated with the Malawi Congress of Trade Unions. MUFIS worked with district councils to address issues affecting informal workers due in part to a Ministry of Labor decision that MUFIS did not have sufficient standing to bargain collectively with employers.

b. Prohibition of Forced or Compulsory Labor

The law prohibits all forms of forced or compulsory labor. Forced labor is punishable by a modest fine or short imprisonment, which was insufficient to deter violations. The government did not effectively enforce applicable laws.

Children were subjected to domestic servitude and other forms of forced labor, including cattle herding; bonded labor on plantations, particularly on tobacco farms; and menial work in small businesses.

Also see the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip/rls/tiprpt/.

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 14 and 18 may not work in hazardous jobs or jobs 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 Employment Act provides a list of hazardous work for children and specifies a fine or imprisonment for violations. The law, however, was not effectively enforced due to lack of resources and staffing. Penalties and enforcement were insufficient to deter offenders.

Police and Ministry of Labor officials were responsible for enforcing child labor laws and policies. Labor inspectors do not have law enforcement authority and must enlist police to pursue violators.

The Ministry of Labor carried out inspections, focused mainly on agricultural estates, but enforcement by police and ministry inspectors of child labor laws was minimal. The government acknowledged making little progress in implementing its *2010-16 National Action Plan on Child Labor*. Most public education activities were carried out by tobacco companies--tobacco is the country's largest export--and NGOs.

Child labor remained a serious and widespread problem. The *2015 National Child Labour Survey* found that 38 percent of children ages five to 17 were involved in child labor. Child labor was prevalent on tobacco farms, subsistence farms, and in domestic service. Thousands of child tobacco workers suffered from nicotine poisoning. These children often worked 12-hour days, frequently for little or no pay. 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/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

The employment law prohibits discrimination against any employee or prospective employee, but the government in general did not effectively enforce the law.

Discrimination in employment and occupation occurred with respect to gender and disability (see section 6). Despite the law against discrimination based on gender or marital status, 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. Few women participated in the limited formal labor market, and those that did represented only a very small portion of managerial and administrative staff. Households headed by women were overrepresented in the lowest quarter of income distribution.

LGBTI individuals faced discrimination in hiring and harassment, and persons with disabilities faced discrimination in hiring and access to the workplace.

e. Acceptable Conditions of Work

The minister of labor sets the minimum wage rate based on recommendations of the Tripartite Wage Advisory Board, which is composed of representatives of labor, government, and employers. The minimum wage was 962 MWK (\$1.28) per day as of July, lower than the World Bank's poverty income level of \$1.90. During the year the World Bank estimated that 69 percent of citizens lived below the poverty line. There was no exception to the requirement of paying the minimum wage for foreign or migrant workers.

The Ministry of Labor lacked the capacity to enforce the minimum wage effectively. Official minimum wages apply only to the formal sector and thus did not apply to most citizens, who earned their livelihood outside the formal wage sector. Wage earners often supplemented their incomes through farming activities. No government programs provided social protections for workers in the informal economy. According to the *2013 Malawi Labour Force Survey*, of the 7.8 million persons in the working population, 88.7 percent were in the informal sector.

Migrant workers are entitled to the same legal protections, wages, and working conditions as citizens if they comply with immigration laws. Those persons not in compliance are subject to deportation.

The legal workweek is 48 hours, with a mandatory weekly 24-hour rest period. The law requires premium payment for overtime work and prohibits compulsory overtime. The law provides for a period of annual leave of no less than 15 working days. Workweek and annual leave standards were not effectively enforced, and employers frequently violated statutory time restrictions. The Ministry of Labor's enforcement of health and safety standards was also poor. The law specifies fines and imprisonment for violations, but these penalties were not sufficient to deter offenders, and there have never been reports of jail terms.

The law includes extensive occupational health and safety standards. The Ministry of Labor houses a Directorate of Occupational Safety and Health responsible for minimum standards, but the number of labor inspectors was insufficient to enforce the law effectively. Workers, particularly in industrial jobs, often worked without basic safety clothing and equipment. In tobacco fields workers harvesting leaves generally did not wear protective clothing; workers absorbed up to 54 milligrams of dissolved nicotine daily through their skin, the equivalent of 50 cigarettes.

Workers have the right to remove themselves from dangerous work situations without jeopardy to continued employment. Workers dismissed for filing complaints regarding workplace conditions have the right to file a complaint at the

labor office or sue the employer for wrongful dismissal; however, due to ignorance of such rights and high levels of unemployment, workers were unlikely to exercise these rights. Additionally, authorities did not effectively protect employees in this situation.