

# MALAWI 2019 HUMAN RIGHTS REPORT

## EXECUTIVE SUMMARY

Malawi is a multiparty democracy. Constitutional power is shared between the president and the 193 National Assembly members. On May 21, elections for president, parliament, and local councils were conducted. International observers characterized the elections as competent and professional.

The Malawi Police Service, under the Ministry of Home Affairs and Internal Security, has responsibility for law enforcement and maintenance of order. The Malawi Defense Force (MDF) has responsibility for external security. The executive branch sometimes asked the MDF to carry out policing activity. The MDF commander reports directly to the president as commander in chief. Civilian authorities maintained effective control over the security forces.

Significant human rights issues included: extrajudicial killings, torture, and arbitrary detention committed by official security forces; harsh and life-threatening prison and detention center conditions; significant acts of corruption; lack of investigation and enforcement in cases of violence against girls and women, including rape and domestic violence, partly due to weak enforcement; trafficking in persons; and criminalization of same-sex sexual conduct.

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 reports the government or its agents committed arbitrary or unlawful killings.

On February 21, Buleya Lule died while in police custody in Lilongwe, just hours after appearing in court as one of six suspects in the February 13 abduction of Goodson Makanjira, a 14-year-old boy with albinism (see section 6, Other Societal Violence or Discrimination). In a May report into Lule's death, the Malawi Human Rights Commission (MHRC) found the deceased was tortured, and his immediate cause of death was from torture using electricity. Earlier police had

arranged an autopsy that blamed his death on intracranial bleeding and hypertension. The MHRC recommendation that the police officers involved be prosecuted was pending action as of October.

On September 24, Justin Phiri died in police custody in Mzuzu. Phiri was among approximately 20 individuals arrested and charged with inciting violence during a September 19 public demonstration at Karonga Town. Phiri was also among several individuals beaten with sticks by soldiers for allegedly wounding two soldiers during the demonstration. Investigations into Phiri's death were pending as of October.

Perpetrators of past abuses were occasionally punished administratively, 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. The MHRC stated in its annual report that torture was widespread in prisons.

Reputable nongovernmental organizations (NGOs) working with sex workers reported police officers regularly extracted sexual favors from sex workers under the threat of arrest.

On October 18, the MHRC opened an independent inquiry into allegations police officers raped women and teenage girls in Nsundwe, M'bwatalika, and Mpingu in Lilongwe. The alleged rapes took place on October 16 and were said to be revenge for the October 8 killing of police officer Usuman Imedi by an irate mob in Nsundwe. An independent inquiry was expected to be conducted concurrently with a police investigation into the alleged rapes.

One allegation of sexual misconduct by a Malawian peacekeeper deployed to the United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) reported in 2016 remained pending at year's end. Two additional

allegations of abuses by Malawian peacekeepers with MONUSCO, in 2016 and 2014, were reported during the year.

### **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 an Inspectorate of Prisons report released in September, the Malawi Prison Service was failing to execute its rehabilitative role, while the courts were failing to exercise their sentence review powers in time. A March 2018 Inspectorate of Prisons monitoring tour of prisons and police cells across the country 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 December 3, the Malawi Prison Service reported a total prison population of 14,060 in space with a designed 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 centers, 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. The International Office of Migration (IOM), however, noted significant improvements in the treatment of migrants held at prison facilities, including easier access to care for migrants with medical conditions. The IOM also claimed improved channels of communication with prison staff and easier access to detention facilities.

As of December, according to the prison service, 49 inmates had died in prison. Leading causes of death were tuberculosis, pneumonia, malaria, and HIV/AIDS-related conditions.

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. Prisoners sometimes had the opportunity to complain to 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 that 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 one complaint regarding the rights of individuals at a migrant detention facility. NGOs believed the low number of submitted complaints was due to fear of retaliation by authorities.

Independent Monitoring: During the year the government permitted domestic and international NGOs and 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 or her arrest or detention in court but does not provide for compensation if the person was 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.

## 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. The Legal Aid Bureau is mandated to provide legal assistance to indigent persons. The bureau had 23 lawyers and 29 paralegals in its three offices, located in the largest cities: Lilongwe, Blantyre, and Mzuzu.

The Center for Human Rights Education, Advice, and Assistance 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 release. During the year the Center for Legal Assistance (CELA) reached out to 1,789 detainees, 172 of whom it succeeded in obtaining release for through camp courts at the prisons. CELA and the Paralegal Advisory Service Institute, both NGOs that assist prisoners with legal matters, provided limited free legal assistance to expedite 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 in 2017 by the High Court. Authorities, however, made arrests based on other provisions, such as conduct likely to cause breach of peace and obstruction of police officers. Although prostitution is legal, police regularly harassed sex workers. In 2017, in Lilongwe, police arrested Masauko Chimphamba, a small-scale businessperson, and kept him in custody for two nights

without charge or telling him the reason for his arrest. Chimphamba was released after a man involved in a robbery informed police 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 approximately 14,000 inmates, at estimated 2,500, or 18 percent, were in pretrial detention. Despite a statutory 90-day limit on pretrial detention, authorities held most homicide suspects in detention for two to three years before trial. 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 to expedite cases by having magistrates visit prisons to adjudicate cases. 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; and corruption. 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, recusals, and lawyers and witnesses not being present on trial dates, undermined the government's ability to dispense justice.

The MDF conducts courts-martial but not 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 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. Police prosecutors with limited legal training prosecuted most criminal cases. The Directorate of Public Prosecutions in the Ministry of Justice customarily tried high-profile cases and those involving the most serious offenses. In 2017 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 November there were only 520 licensed legal practitioners in a country of more than 18 million inhabitants.

#### **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: In the aftermath of the May tripartite elections, during several weeks in which thousands of citizens protested the results on the streets, the government, through the Malawi Communications Regulatory Authority (MACRA), took at least two separate steps to suppress and curtail freedom of speech.

On June 7, MACRA banned call-in radio shows, justifying this by claiming the shows were a platform for callers to incite the public against the government. On August 6, the government banned all radio stations in the country from live broadcasting of demonstrations when most radio stations suspended regular programming to cover the protests. MACRA stated the broadcasters should install a delay machine to allow sufficient time for it to disapprove prohibited content.

On September 2, the Media Institute of Southern Africa (MISA) Malawi, a private rights advocacy group, applied to the High Court for an injunction against MACRA regarding its blanket ban of call-in programs on radio stations. MISA Malawi was joined in the application by the Times Media Group, Zodiak Broadcasting Station, and Capital Radio. On September 25, the High Court granted MISA Malawi's injunction to temporarily lift the ban while the court investigated whether some broadcasters indeed violated the terms of their licenses as alleged by MACRA.

Violence and Harassment: On September 18, in Lilongwe, two journalists, Golden Matonga from the *Nation* newspaper and Gladys Nthenda from *Kulinji.com*, were assaulted by demonstrators protesting the May election outcome. The demonstrators who assaulted them believed they were taking photographs for police, despite the two showing their press identity cards.

Censorship or Content Restrictions: Journalists sometimes practiced self-censorship, especially at government-owned media outlets such as the Malawi Broadcasting Corporation (MBC). Government agencies sometimes selectively targeted prominent media houses critical of the government for enforcement actions. On October 18, the Malawi Revenue Authority sealed National Publications Limited offices in Blantyre due to unpaid tax arrears. In contrast, the equally tax-delinquent progovernment MBC owed 4.5 billion Malawian kwacha (MWK) (\$5.9 million) in back taxes but operated without any impediment.

## **Internet Freedom**

The Electronic Transactions and Cyber Security Act became law in 2017. The law criminalizes the act of “knowingly receiving and sharing unauthorized data” and stipulates that a person convicted of sharing or receiving such information is subject to a fine of 1.85 million MWK (\$2,400) and up to five years’ imprisonment. The 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 law, arguing it was meant to silence persons on social media ahead of May 21 national elections. As of November no one had been charged with a crime under the law. Lack of infrastructure and the high cost of internet connections limited internet access.

## **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.

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

The constitution and law provide 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.

Government officials used their positions to prevent protests or gatherings by civil society by deliberately misapplying the legal requirement for demonstrators to notify local government officials. On October 30, ruling on the attorney general's petition to ban demonstrations led by the Human Rights Defenders Coalition (HRDC), Supreme Court Justice Lovemore Chikopa stated persons did not require permission to demonstrate.

Despite government officials' opposing efforts, the HRDC was able to lead demonstrations in the major urban centers on June 20, July 4, July 5, July 25, August 5, September 18, and from October 1 to October 4. The demonstrators demanded the resignation of Jane Ansah, chair of the Malawi Electoral Commission, whom HRDC alleged to have mismanaged the conduct of the May 21 elections. As of November, Ansah had not resigned her position.

### **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.

During the year the government tried to increase its control over civil society. Two draft laws include provisions that would give government-controlled bodies the ability to deregister NGOs, impose criminal penalties on the trustees of organizations, and increase annual registration fees five-fold. The proposed laws were stalled in parliament by two court injunctions brought by civil society. While

the court case was pending, the government issued a new NGO policy that implements provisions in the law, despite it not being passed.

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

See the Department of State's *International Religious Freedom Report* at <https://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.

### **e. Internally Displaced Persons**

Not applicable.

### **f. Protection of Refugees**

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 of the camp, including those with proper identity documents. Local citizens often accused refugees of committing various crimes, and this at times resulted in looting of refugee property by community members. During the year UNHCR received no cases of refugees facing forced return to their countries of origin. Sporadic detention of persons of concern who were found outside the camp took place, with others taken to court and fined up to 100,000 MWK (\$130), an approach authorities adopted in 2018.

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. UNHCR also reported gender-based violence and other criminal activities at Dzaleka. Some refugees reported fear of alleged country of origin operatives in Malawi.

In 2018 the MHRC received one complaint of mistreatment at the Dzaleka Camp.

The government continued to ban registration of perceived lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons on the basis that it was against the law. UNHCR continued to advocate for the Ministry of Homeland Security to reverse its decision and consider registration and processing of all arrivals, including

LGBTI cases. In the interim UNHCR registered the persons of concern in the database and conducted the mandatory Refugee Status Determination (RSD).

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. As of September 30, there were 42,686 asylum seekers and refugees at the Dzaleka Camp in the central region, with an average monthly arrival total of 500 individuals, mostly from the Democratic Republic of the Congo.

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 42,000 individuals. Asylum seekers primarily came from the Great Lakes Region of Africa. Most of them remained designated as asylum seekers, with fewer than 14,000 recognized as refugees.

On April 12, the government published a gazette notice on group-based determination for asylum seekers from the eastern Democratic Republic of the Congo, in North and South Kivu Provinces, and Katanga Region. As of September the RSD backlog in the country stood at 28,702 of the 42,686 total asylum seeker and refugee population. UNHCR advocated for more efficient refugee status determination procedures to end the backlog. With the implementation of the recognition of refugee status for Congolese citizens, it was expected the backlog would decline to 35 percent by year's end.

Freedom of 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.

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, although only 37 percent of school-age refugee children were enrolled in primary and secondary school. The Dzaleka

camp housed almost 43,000 persons of concern, creating congestion and a burden on resources and facilities. 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. Shelter and food ration allocations were below recommended levels due to lack of space and 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.

For the first time, refugees and asylum seekers were included in the *Malawi Development and Growth Strategy III* and the *2019-2023 United Nations Development Assistance Framework*. On several occasions the country expressed its commitment to implement the *Comprehensive Refugee Response Framework*, which aims to integrate refugees into national systems. UNHCR continued to engage the government to accelerate the roll out of the framework, and a joint implementation plan was expected in early 2020.

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

#### **g. Stateless Persons**

Not applicable.

### **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: On May 21, citizens voted in simultaneous presidential, parliamentary, and local elections. International observers characterized those elections as generally competent, professional, and successful. Voters reelected to

a second five-year term incumbent Arthur Peter Mutharika of the Democratic Progressive Party as president with 38.5 percent of the vote. Presidential and vice presidential debates took place and were broadcast on radio and television, which provided voters a tool for evaluating and contrasting candidates and their policies. Lazarus Chakwera of the main opposition Malawi Congress Party received 35.4 percent of the vote, while Mutharika's former vice president Saulos Chilima of the United Transformation Movement received 20.2 percent of the vote. On May 31, Chakwera and Chilima challenged the election results in court and sought an annulment of the election. As of November the court had not ruled on the challenge.

Participation of Women and Minorities: No laws limit participation of women or members of minorities in the political process, and they did participate. 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 45 women in the 193-seat National Assembly and 67 women among the 462 elected local councilors. There were five women in the 24-member cabinet. Women constituted 25 percent of the civil service. Of the 35 Supreme Court of Appeal and High Court justices, 10 were women.

#### **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.

Corruption: The Anti-Corruption Bureau is the agency primarily responsible for investigating and prosecuting cases of official corruption. It also works to educate the civil service and public on anticorruption matters. As of October the bureau reported it completed 94 investigations in the 2018/19 financial year and referred 21 of those cases to prosecutors.

On January 10, one Cashgate trial involving 11 suspects was concluded with 10 of the suspects convicted and one acquitted. The 10 were convicted of money

laundering and conspiracy to commit a felony involving 201 million MWK (\$264,000) from the former Ministry of Disability and the Department of the Accountant General. On April 16, the High Court sentenced three of the 10 to five years' imprisonment each, four of the 10 to four years' imprisonment each, and the last three of the 10 to three years' imprisonment each.

The state's eight billion MWK (\$10.5 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 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 grounds for dismissal, and individuals who knowingly provide inaccurate information may be fined, dismissed, and imprisoned.

In October 2018 the director of Public Officers' Declarations wrote the president and the speaker of parliament recommending they take disciplinary measures against a cabinet member and members of parliament for failure to comply with asset declaration statutes. No disciplinary measures had been carried out by October.

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. The Directorate of Assets Declaration made no effort to make the paper-based asset declarations more readily available by, for example, digitizing them.

## **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 human rights abuses. Despite its independent leadership, resource shortfalls resulted in a backlog of cases, delayed production of reports, and limited investigation of human rights abuses. Seven MHRC commissioners appointed by the president on March 25 were never sworn in after the ombudsman challenged the legality of the appointments of two of the commissioners. The ombudsman and the law commissioner are ex officio members of the MHRC. As of November the issue remained unresolved, and the MHRC remained without commissioners.

The Office of the Ombudsman is mandated to investigate government officials responsible for human rights 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 21 investigators who were assisted by 11 government interns. During the year more than 4,000 members of the public were reached through ombudsman mobile clinics. During these exercises the office carried out sensitization campaigns with Village Development Committees and Area Development Committees, road shows, and distribution of flyers, T-shirts, and caps. It maintained a website, Facebook page, and an active Twitter account and provided 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 women with a maximum penalty of death for conviction. The 2015 Marriage, Divorce, and Family Relations Act explicitly introduces the concept of spousal rape, but the act does not prescribe specific penalties for conviction 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' imprisonment.

The Ministry of Gender, Children, Disability, and Social Welfare and donor-funded NGOs conducted public education campaigns to combat domestic sexual harassment, 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. A 2017 UN study found no evidence of FMC/C but that of a practice of labia elongation or pulling. It was performed on girls between ages 10 and 15 during sexual initiation camps in rural areas of the Southern Region. For additional information, see Appendix C.

Other Harmful Traditional Practices: The law prohibits harmful social, cultural, or religious 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 sought 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 pubescent 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 how to engage in sexual acts. In some traditional communities, girls as young as 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.

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 law makes conviction of sexual harassment punishable by up to five years' imprisonment and places an obligation on government to ensure workplaces have policies and procedures aimed at eliminating sexual harassment in the workplace. Extreme cases could be prosecuted under certain sections of the penal code, such as indecent assault on a woman or girl, under which conviction provides up to a 14-year prison sentence, or conviction of insulting the modesty of a woman, a misdemeanor punishable by one year's incarceration.

Coercion in Population Control: There were no reports of coerced abortion, but there were reports of involuntary sterilization. In November the Office of the Ombudsman launched a public appeal for information and testimony following media reports of involuntary hysterectomies of caesarian patients at Blantyre's referral hospital. For estimates on maternal mortality and contraceptive prevalence, see Appendix C.

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, few knew their rights or had access to the legal system and thus did not benefit 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 to age 18 is compulsory, although many families could not afford book fees and uniforms, and limited space in secondary schools prevented many students from continuing beyond primary education. 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 include child trafficking, forced labor, early and forced marriage or betrothal, and use of children as security for loans or other debts.

The 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 law sets the minimum age for marriage at 18. 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 younger than 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’ imprisonment, while those found guilty of procuring a child for public entertainment are liable to a fine of 100,000 MWK (\$130) and seven years’ imprisonment. 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. They 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 younger than 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 <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

### **Anti-Semitism**

The Jewish community is 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 <https://www.state.gov/trafficking-in-persons-report>.

### **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 regarding 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 October the MHRC reported receiving no complaints related to abuse of disability rights.

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

By law and practice, LGBTI persons are denied basic civil, political, social, and economic rights. Consensual same-sex sexual activity is illegal, and conviction is punishable by up to 14 years' imprisonment, including hard labor. The penal code, a legacy from the British colonial era, outlaws "unnatural offenses" and "indecent practices between men."

Same-sex sexual activity may also be prosecuted as "conduct likely to cause a breach of the peace." The penalty for conviction of consensual same-sex sexual activity between women is up to five years' imprisonment.

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.

In August, Lawrence Phiri, a transgender man, was attacked by an unknown assailant while at a bar in Lilongwe. The attacker preceded the assault by shouting slurs at Phiri and questioning his gender and sexuality. Phiri suffered severe lacerations on the head as a result of the assault.

## **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 percent) and excluded from social gatherings (33 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 demand for body parts for witchcraft rituals. Religious, traditional, civil society, and political leaders, including the president, publicly denounced the attacks. On January 22, Eunice Nkhonjera, an 18-month-old girl with albinism, was abducted from her home in the northern town of Karonga. In February police arrested three persons suspected of involvement in her kidnapping. On February 13, Goodson Makanjira, a 14-year-old boy with albinism, was abducted from his home in the central region district of Dedza. Police arrested six suspects, one of whom, Buleya Lule, died in police custody. Both cases remained under police investigation at year's end. In a sign of increased vigilance against killings of persons with albinism, courts across the country handed down severe sentences to those convicted of killing persons with albinism. On May 3, the court in the southern district of Thyolo sentenced to death a man who had confessed to killing a 19-year-old man with albinism in 2017. The convict admitted he had intended to use the deceased's body parts to become rich on instructions from a witchdoctor in neighboring Mozambique. On August 13, a High Court judge convicted and sentenced to death Douglas Mwale, Fontino Folosani, and Sophie Jere for murdering Priscott Pepuzani in 2015.

## **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, Skills, and Innovation; registration requirements are not onerous, but failure to meet annual reporting requirements may result in cancellation of a union's registration. 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.

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, including seven days' notice of a strike and a 21-day conciliation process as 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 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 most 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, 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. Union membership among workers was low due to the small percentage of the workforce in the formal sector.

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, but penalties for conviction were insufficient to deter violations. The government did not effectively enforce applicable laws.

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

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report>.

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

The law sets the minimum age for employment at 14, and children between 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 conviction of violations. 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, Skills, and Innovation increased the number of labor inspectors by 20 following promotions from lower grades to minimum grade for an officer to be eligible to conduct labor inspections. The ministry trained all 85 labor inspectors on child trafficking, labor legislation, and labor exploitation. The training on child trafficking was a follow-up to the designation of labor officers as enforcement officers of the trafficking in Persons Act and was carried out with assistance by the United Nations Office on Drugs and Crime. The ministry also carried out inspections focusing on the agricultural sector and domestic workers. The ministry worked with police and the social welfare department in the Ministry of Gender, Children, Disability and Social Welfare to investigate, prosecute, convict, and sentence persons convicted in cases of labor violations. The government acknowledged programs and activities continued largely based on the legal and regulatory framework that existed in 2018 except for the incorporation of labor officers as enforcement officers of the trafficking in persons act. The government, however, in collaboration with social partners and other stakeholders, developed several strategic documents to scale up interventions on ending child labor by 2025, and modern slavery and forced labor by 2020. Government reviewed the National Action Plan on Child, reviewed the Malawi Decent Work Country Program, and proposed abolition of tenancy labor in the employment amendment act. On November 7, the government ratified four ILO instruments, namely ILO C.029 protocol of 2014 to the forced labor convention 1930, ILO C187 promotional framework for occupational safety and health convention 2006, ILO C155 occupational safety and health convention 1981 and ILO C184 safety and health in agriculture convention 2001. These conventions are expected to be in force by November 7, 2020. Most public education activities and programs on child labor 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 Labor Survey* found 38 percent of children ages five to 17 were involved in child labor. Child labor was most prevalent on farms and in domestic service. 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 their families as domestic servants, receiving low or no wages. Children who worked in the tobacco industry risked working with hazardous chemicals and sometimes suffered from nicotine poisoning. On February 22, the Tobacco Industry Act came into force. The act requires tobacco growers to report on efforts to eliminate child labor in tobacco farming.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

#### **d. Discrimination with Respect to Employment and Occupation**

The employment law prohibits discrimination against any employee or prospective employee but does not cover sexual orientation or gender identity, and 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 composed of representatives of labor, government, and employers. The minimum wage was set below the World Bank's poverty income level. In 2018 the World Bank estimated 69 percent of citizens lived below the poverty line. There is no requirement that persons employed in the informal sector receive a minimum wage.

The Ministry of Labor did not effectively enforce the minimum wage. Because the law is limited to the formal sector, it did not apply to the more than 88 percent of the population that worked in the informal sector. Wage earners often supplemented their incomes through farming activities. No government programs provided social protections for workers in the informal economy.

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, however, lack these protections and 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 conviction of violations, but these penalties were not sufficient to deter offenders, and no reports of jail terms were ever reported.

The law includes extensive occupational health and safety standards that are appropriate for the main industries in the country. 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, these processes were not widely publicized, and workers were unlikely to exercise these rights. Authorities did not effectively protect employees in this situation.