

# **MALAWI 2018 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.

Human rights issues included extrajudicial killings; torture; arbitrary detention, the preceding abuses all committed by official security forces; harsh and life-threatening prison and detention center conditions; criminal libel; corruption; lack of investigation and enforcement involving cases of violence against women, including rape and domestic violence, partly due to weak enforcement; criminalization of same-sex sexual conduct; and child labor, including worst forms.

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.

Media reported that, between January and August, 43 suspects had died at the hands of police. For example, on June 16, after police arrested 11 persons in Blantyre, four individuals, Humpfrey Sakhumwa, Dave Sembele, Dave Gondwe, and Ashbu Daiton, were separated from the group to be transferred to another facility. Later that day officers dropped their bullet-riddled bodies at the local hospital mortuary. A reputable nongovernmental organization (NGO) and the United Nations carried out a preliminary investigation into several of the deaths that included interviews with family members and witnesses and found the allegations generally credible and warranting a more in-depth inquiry. Media

reported during the year that police were also suspected of responsibility for at least 70 other deaths in 2017.

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 Malawi Human Rights Commission (MHRC) stated in its annual report that torture was widespread in prisons.

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

One allegation of sexual abuse by a Malawian peacekeeper deployed in MONUSCO and 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 the Inspectorate of Prisons, the government remained largely noncompliant with the High Court's 2009 requirement to improve prison conditions. A December 2017 MHRC prisons and police cells monitoring tour covering more than half of the prisons and police cells in the Central, Southern and Eastern regions 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 October 3, the Malawi Prison Service reported a total prison population of 13,929 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. IOM also claimed improved channels of communication with prison staff, and easier access to detention facilities.

As of October, according to the prison service, 33 inmates had died in prison. Leading causes of death were meningitis (seven), hypovolemic shock (four), anemia (three), and HIV/AIDS-related (three).

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 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 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 Malawi Police Service (MPS). The MPS, under the Ministry of Home Affairs and Internal Security, has responsibility for law enforcement and maintenance of order. The 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.

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 2017 the defendants, who were out on bail, pled not guilty to the charges. The trial had yet to conclude by year's end. In June a leaked ACB investigation report revealed that MPS officials subverted procurement practices to award an overpriced food ration procurement contract to a company that made a sizable donation to the ruling party. At the request of civil society activists, the courts froze accounts linked to the transaction. No arrests have been made in the case, nor has an official case been opened, and the civil servants identified in the report have yet to face any kind of disciplinary action.

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 trained officers on internal investigations, victims' rights, sexual abuse, domestic violence, and trafficking in persons. Police received 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 release. During the year CHREAA reached out to 18,565 detainees, 18,450 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 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 January 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 April 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 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 13,929 inmates, approximately 2,500, or 18 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, recusals, and lawyers and witnesses not being present on trial dates, undermined the government’s ability to dispense justice.

In October 2017 police arrested and charged Vincent Wandale, a land reclamation advocate, with “publishing false news” after he declared himself the leader of an independent state in the south of the country. In November 2017, although he was not a danger to himself or others, he was involuntarily committed to a mental institution based on a report on his mental health requested by the prosecution. Wandale was forcibly medicated for mental illness until his release on bail in February after a local NGO challenged his detention. He remained on bail with no date set for his trial.

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 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



September 17, there were only 418 licensed legal practitioners in a country of more than 18 million.

#### **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: The government sometimes used antiseditious and breach of peace laws to stifle criticism. On August 21, police arrested Manes Hale, an American citizen of Malawian origin, while she was boarding an airplane departing the country. The government charged her with insulting the president under section 4 of the Protected Flag, Emblems, and Names Act for critical remarks she wrote concerning the president on Facebook. On August 23, she was released on bail; on August 27, the government dropped the charges, and Hale flew to the United States the following day.

Violence and Harassment: Authorities sometimes attempted to intimidate journalists who reported criticism of the ruling party. On May 4, during the president's State of the Nation Address at the Parliament, ruling party cadres assaulted a cameraman of privately-owned Times Television. Despite the information minister apologizing for the incident, there were no signs police had undertaken an active investigation. On July 2, two ruling party cadres assaulted newspaper columnist Idris Ali Nassah for his criticism of the Mutharika

administration. 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 (MBC). Government agencies sometimes selectively targeted prominent media houses critical of the government for enforcement actions. On June 1, the Malawi Revenue Authority sealed Times Group offices due to unpaid VAT arrears of Malawian kwacha (MWK) 550 million (\$756,000). Similarly, on August 22, Zodiak Broadcasting was raided by MRA for MWK 1.7 billion (\$2,337,000) in unpaid taxes. In contrast the equally tax delinquent progovernment MBC owed MWK 4.5 billion (\$6,187,000) in back taxes but operated without any impediment.

### **Internet Freedom**

The Electronic Transactions and Cyber Security Act became law in June 2017. The 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 MWK (\$2,500) and imprisonment for up to five years. 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 national elections scheduled for 2019. 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. According to the International Telecommunication Union, 13.8 percent of the population used the internet in 2017, 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.

Government officials used their positions to thwart protests or gatherings by opposition figures through the selective use of permits. In September, after a coalition of NGOs critical of the government announced its intent to hold a protest, the ruling party sought and quickly obtained a permit for a competing event, forcing the activists to reschedule.

In September 2017, 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 had yet to be tried by 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.

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. The government, however, had yet to introduce these drafts into parliament.

## **c. Freedom of Religion**

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://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. As of September 30, there were 35,938 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. In November, UNHCR turned over the Luwani Camp, located in the southern region, to the government after the remaining Mozambican asylum seekers returned home voluntarily. After multiple cancelled Tripartite Agreement signing ceremonies scheduled for December 2017 and again in March and September, the Malawian government and UNHCR collaborated to provide documentation and financial support to assist the remaining 2,567 Mozambicans to return home.

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, 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 MWK 100,000 (\$138), an approach authorities adopted during the year.

UNHCR received asylum seekers claiming to be lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals. Asylum seekers traveled irregularly from Kakuma Refugee camp in Kenya and from Uganda. The government has placed a ban on registration of perceived LGBTI persons' cases on the basis that it is against the law of the country. UNHCR was still negotiating with the Ministry of Home Affairs to reverse its decision and consider registration and processing of all arrivals, including LGBTI cases.

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 35,500 individuals. Asylum seekers primarily came from the Great Lakes Region of Africa. A majority of them remained designated as asylum seekers, with fewer than 14,000 recognized as refugees.

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.

From January to August, the MHRC received one complaint 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. The Dzaleka camp housed almost 36,000 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.

During the year the government committed to include refugees in national systems, as recognized in the Malawi Development and Growth Strategy III (MDGS III). The government has also indicated a willingness to adopt the UN's Comprehensive

Refugee Response Framework that would lead to the inclusion of refugees in the provision of health and education services.

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. International observers characterized those elections as generally peaceful, free, credible, and transparent. 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 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.

Since 2014 the country has held several by-elections for vacated seats; the next tripartite elections are scheduled for May 2019, with political parties already actively campaigning. Media regularly reported that the ruling Democratic Progressive Party (DPP) diverted state resources for partisan events. The DPP sometimes requisitioned national or local government vehicles to ferry supporters to partisan events. In 2017 representatives from several government-affiliated entities attended a DPP fundraising event held at the presidential palace, with their respective institutions paying the bill.

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 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 35 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.

Corruption: The ACB 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 ACB reported it completed 105 investigations of the 141 cases scheduled in the 2017/18 financial year, representing a 74 percent completion rate. There were seven corruption cases prosecuted as of October, resulting in five convictions, and the ACB was appealing one of the unsuccessful prosecutions.

The investigation and prosecution of approximately 70 individuals, primarily midlevel 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. In March he was freed on bail pending an appeal. 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 grounds for dismissal, and individuals who knowingly provide inaccurate information may be fined, dismissed, and imprisoned.

In October 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 year's end.

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 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 17 investigators who were assisted by 11 government interns. During the year its civic education team conducted public rallies and awareness campaigns in five of the country's 28 districts. 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 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 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 more information, see Appendix C.

Other Harmful Traditional Practices: The Gender Equality Act of 2013 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 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.

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 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 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, had access to the legal system, and thus benefited from these legal protections. In August the government launched its cross-sectoral National Strategy for Adolescent Girls and Young Women (AGYW) that aims at improving outcomes in education and health and reducing the incidence of gender-based violence among AGYW.

## **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 included 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 Marriage, Divorce, and Family Relations Act sets the minimum age for marriage at 18. In April 2017 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 for 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 <https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data.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 [www.state.gov/j/tip/rls/tiprpt/](http://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 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 for which conviction is punishable by up to 14 years in prison, including hard labor. The penal code, a legacy from the British colonial era, outlaws “unnatural offenses” and “indecent practices between men.” 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.

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. On March 16, in the southernmost district of Nsanje, police arrested brothers Fatsani Litikhoya and Watson Litikhoya for kidnapping and attempting to kill Masiteni Losi, a person with albinism. As of October the brothers were in custody at Chichiri Prison in Blantyre awaiting trial. Earlier in the year, police in Mulanje District opened an investigation into the exhumation of bones from the grave of Ndiuzayani Mwathunga, a deceased person with albinism; as of October the investigation continued.

## **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.

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 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, 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. 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. Conviction of forced labor is punishable by fine of MWK 10,000 (\$13.60) or two years' imprisonment, which was 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 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/](http://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 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. 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 it made little progress in implementing the now-expired *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 Labor Survey* found that 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. Children who worked in the tobacco industry risked working with hazardous chemicals and

sometimes suffered from nicotine poisoning. 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/](http://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 composed of representatives of labor, government, and employers. The minimum wage was 962 MWK (\$1.28) per day as of July 2017, 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 conviction of 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.