Home Office

Country Background Note
Malawi

Version 2.0

October 2020

Preface

Purpose

This note provides a summary of and links to country of origin information (COI) for use by Home Office decision makers handling particular types of protection and human rights claims. It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into 2 main sections: (1) general background to the country concerned, including demography and geography; and (2) issues which may be relevant to protection claims. Unlike country policy and information notes, it does **not** contain general assessments of risk, availability of protection or reasonableness of internal relocation.

Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), Researching Country Origin Information – Training Manual, 2013. Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a terms of reference which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date in the country information section. Any event taking place or report/article published after this date is not included.

All information is publicly accessible or can be made publicly available and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion.

Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the Bibliography.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the Country Policy and Information Team.

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Independent Chief Inspector of Borders and Immigration

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Globe House

89 Eccleston Square

London, SW1V 1PN

Email: chiefinspector@icinspector.gov.uk

Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the gov.uk website.

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Country information

Section 1 updated: 28 September 2020

1. Geography and demography

1.1 Key facts

Key geographical and demographic facts	
Full country name:	Republic of Malawi[1]
Area:	Total: 118,484 sq km[2] land: 94,080 sq km[3] water: 24,404 sq km[4] (for comparison, the UK has a total area of 243,610 sq km)[5]
Border countries:	Malawi has land borders with Mozambique (1498 km), Tanzania (512 km), and Zambia (847 km)[6]
Flag of Malawi	 [7]
Population:	21,196,629 (2020 US Bureau of Census estimate)[8] 17,563,749 (2018 national census)[9] See also Population distribution and density and Birth/death rate

[1] CIA, World Factbook, Malawi (Government), 10 September 2020
[2] CIA, World Factbook, Malawi (Geography), 10 September 2020
[3] CIA, World Factbook, Malawi (Geography), 10 September 2020
[4] CIA, World Factbook, Malawi (Geography), 10 September 2020
[5] CIA, World Factbook, United Kingdom (Geography), 10 September 2020
[6] CIA, World Factbook, Malawi (Geography), 10 September 2020
[7] CIA, World Factbook, Malawi (Introduction), 10 September 2020
[8] CIA, World Factbook, Malawi (People and Society), 10 September 2020
[9] National Statistical Office, '2018 Malawi Population and Housing Census…', May 2019

Capital city:	Lilongwe[10]
Languages:	See Languages
Administrative divisions:	28 districts: Balaka, Blantyre, Chikwawa, Chiradzulu, Chitipa, Dedza, Dowa, Karonga, Kasungu, Likoma, Lilongwe, Machinga, Mangochi, Mchinji, Mulanje, Mwanza, Mzimba, Neno, Ntcheu, Nkhata Bay, Nkhotakota, Nsanje, Ntchisi, Phalombe, Rumphi, Salima, Thyolo, Zomba[11]

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1.2 Languages

1.2.1 English is the official language. Other languages spoken in Malawi are Chichewa (common), Chinyanja, Chiyao, Chitumbuka, Chilomwe, Chinkhonde, Chingoni, Chisena, Chitonga, Chinyakyusa, and Chilambya[12]. In the Bantu language family (languages which are widely spoken in Malawi and south-central Africa), the prefix chi-, means "language", so Chichewa is also known as Chewa and Chinyanja is also known as inyanja[13].

1.2.2 The Encyclopaedia Britannica stated:

‘From 1968 to 1994, Chewa was the only national language; it is now one of the numerous languages used in print and broadcast media and is spoken by a majority of the population. In 1996 government policy indicated that education in grades 1–4 would be provided in the students’ mother tongue or vernacular language; from grade 5, the medium of instruction would be English, which, though understood by less than one-fifth of the population at independence in 1964, continues to be used widely in business, administrative and judicial matters, higher education, and elsewhere. Other major languages include Lomwe, Yao, and Tumbuka.’ [14]

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1.3 Ethnic groups

1.3.1 Malawi’s ethnic groups and their percentage of the national population (2018 estimate) are listed in the table below[15].

Name of ethnic group	Percentage of total population
Chewa	34.3%
Lomwe	18.8%
Yao	13.2%
Ngoni	10.4%
Tumbuka	9.2%

[10] CIA, World Factbook, Malawi (Government), 10 September 2020
[11] CIA, World Factbook, Malawi (Government), 10 September 2020
[12] CIA, World Factbook, Malawi (People and Society), 10 September 2020
[13] Mongabay, ‘Chichewa language resources’, (n.d)
[14] Encyclopaedia Britannica, ‘Malawi - Ethnic groups and languages’, (n.d)
[15] CIA, World Factbook, Malawi (People and Society), 10 September 2020

Sena	3.8%
Mang'anja	3.2%
Tonga	1.8%
Nyanja	1.8%
Nkhonde	1%
Others including foreign ethnic groups	5.2%

1.3.2 The Minority Rights Groups International (MRGI) World Directory of Indigenous Peoples stated:

'Malawi is one of the most densely populated countries in Africa. Chewa are the biggest population group and constitute around 90 per cent of people in [the] Central Region. Nyanja form the majority in the Southern Region and Tumbuka in the Northern Region.

'Three small but notable minorities reside mainly in urban areas of the Southern Region: "Asians", numbering several thousand; "coloureds" (people of mixed descent), numbering a few thousand at most; and "Europeans", numbering perhaps five or six thousand, and holding privileged managerial, social service and technical occupations, as well as disproportionate property ownership.' [16]

See also 2018 Malawi Population and Housing Census for detailed information about Malawi's ethnic demography (Series E: Social tables).

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1.4 Population distribution and density

1.4.1 The CIA World Factbook stated that the population density is highest south of Lake Nyasa. The urban population is 17.4% of the total population (2020). The annual rate of urbanisation is 4.19% (2015-20 estimate)[17].

1.4.2 The largest towns (with population estimates in 2020 in brackets) are: Lilongwe (1.1 million) and Blantyre-Limbe (900,000)[18].

See also 2018 Malawi Population and Housing Census for information about Malawi's population distribution and density.

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1.5 Birth/death rate

1.5.1 The birth rate was estimated in 2020 to be 40.1 births/1,000 population and the death rate was estimated in 2020 to be 7.2 deaths/1,000 population[19].

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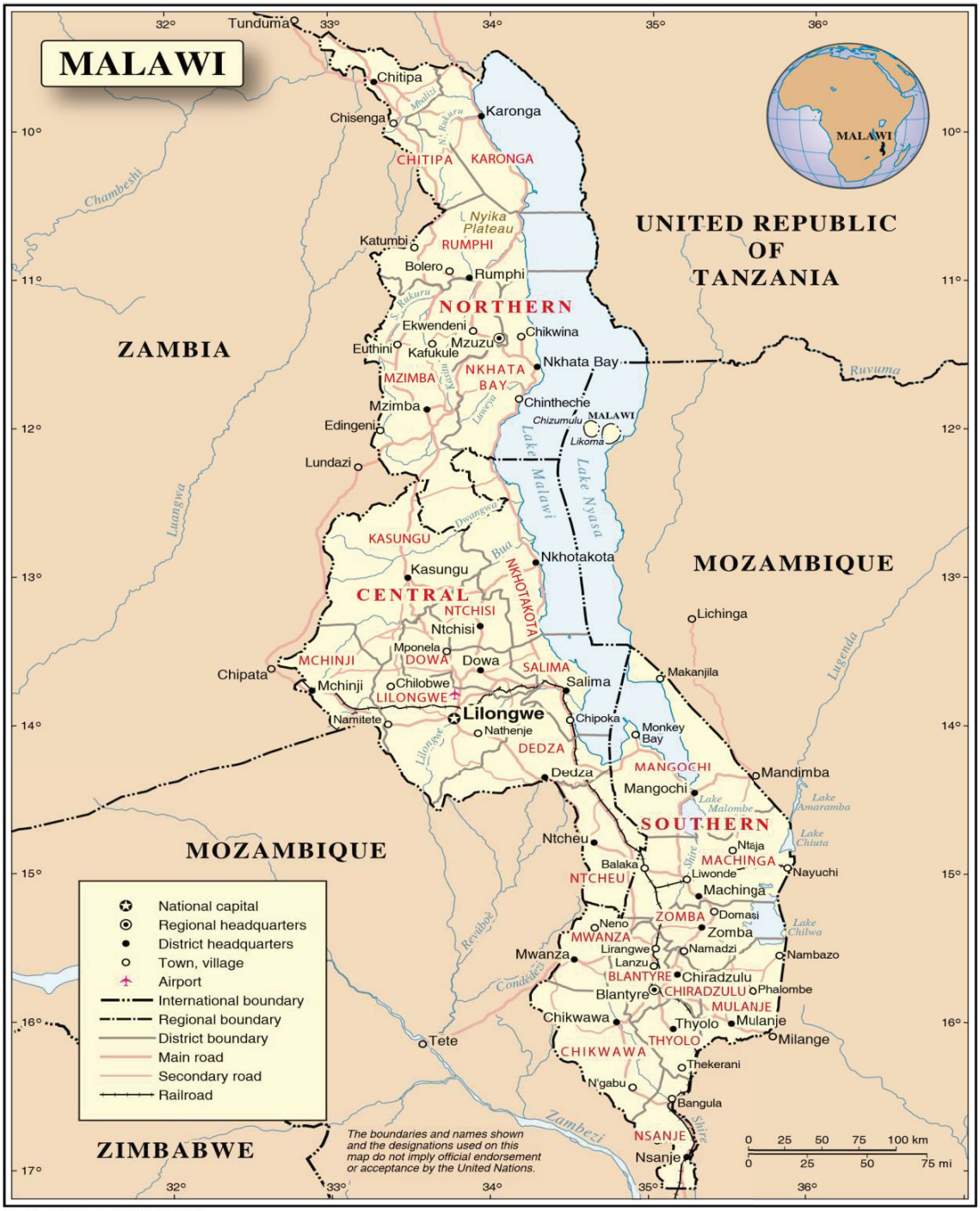
[16] MRGI, World Directory of Indigenous Peoples, 'Malawi' (n.d)
[17] CIA, World Factbook, Malawi (People and Society), 10 September 2020
[18] CIA, World Factbook, Malawi (People and Society), 10 September 2020
[19] CIA, World Factbook, Malawi (People and Society), 10 September 2020

1.6 Map

1.6.1 Political map of Malawi[20].



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[20] United Nations Cartographic Department, Map of Malawi, April 2012

1.7 Road network

1.7.1 The Encyclopaedia Britannica stated:

'Malawi has road connections to Lusaka, Zambia, by way of Mchinji and Chipata, Zambia; to Johannesburg, South Africa, by way of Mwanza and Tete, Mozambique, and Harare, Zimbabwe; and to several points on the Mozambique border. The backbone of the road system is represented by a road running from Blantyre in the south to Lilongwe in the centre and through to Mzuzu in the north, where it joins a lakeshore road that ran roughly parallel to it until that point. From Mzuzu the road continues on to Karonga and crosses the Songwe River into Tanzania, where it connects with the highway to Dar es Salaam.' [21]

1.7.2 The Malawi National Transport Master Plan stated: 'The national classified road network totals 15,451km, comprising Main (21.7%), Secondary (20.2%), Tertiary (26.7%), District (22.7%) and Urban (8.7%) roads. Only 26% of the national classified road network is paved. According to 2014 data almost 82% of the paved road network in Malawi is in a good or fair condition.' [22]

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1.8 Rail network

1.8.1 The Encyclopaedia Britannica stated: 'Of Malawi's two railway links to the sea, the first stretches from Lilongwe eastward to Salima on the Lake Malawi shore and southward through Blantyre to the port of Beira on the Mozambique coast…The second railroad joins the Salima-Blantyre line at Nkaya Junction to the south of Balaka and travels due east to link with the Mozambique Railways system at Cuamba, Mozambique, whence it continues to the port of Nacala.' [23]

1.8.2 The Malawi National Transport Master Plan stated: 'Malawi's rail network is not comprehensive and only serves the central and the southern regions of the country. Most of the network is used predominantly for freight, with only the Limbe-Balaka-Nayuchi sections offering passenger services.' [24]

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1.9 Air transport and airports

1.9.1 The Encyclopaedia Britannica stated: 'Air Malawi, the national airline, provides foreign and domestic service. There are several airports in the country, including the primary international airport at Lilongwe and the Chileka airport, situated just north of Blantyre.' [25]

1.9.2 The Malawi National Transport Master Plan stated: 'The civil aviation sub-sector in Malawi is not fully developed. There are 33 airfields in Malawi, which include two major international airports, five secondary airports with

[21] Encyclopaedia Britannica, 'Malawi – transportation …', updated 29 June 2020
[22] Ministry of Transport and Public Works, 'Malawi National Transport Master Plan', 2017
[23] Encyclopaedia Britannica, 'Malawi – transportation …', updated 29 June 2020
[24] Ministry of Transport and Public Works, 'Malawi National Transport Master Plan', 2017
[25] Encyclopaedia Britannica, 'Malawi – transportation …', updated 29 June 2020

international access, and 26 airfields with basic airstrips on grass or low-grade materials. International cargo operation by air is limited in Malawi.' [26]

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1.10 Religious demography

1.10.1 The United States State Department (USSD) 2019 Report on International Religious Freedom stated:

'According to the 2018 census, 77.3 percent of the population is Christian and 13.8 percent Muslim. Christian denominations include Roman Catholics at 17.2 percent of the total population, Central Africa Presbyterians at 14.2 percent, Seventh-day Adventist/Seventh-day Baptists (the survey groups the two into one category) at 9.4 percent, Anglicans at 2.3 percent, and Pentecostals at 7.6 percent. Another 26.6 percent fall under the "other Christians" category. Individuals stating no religious affiliation are 2.1 percent, and 5.6 percent represent other religious groups, including Hindus, Baha'is, Rastafarians, Jews, and Sikhs.

'The vast majority of Muslims are Sunni…There is also a small number of Shia Muslims, mostly of Lebanese origin.

'According to the 2018 census, there are two majority-Muslim districts, Mangochi (72.6 percent) and Machinga (66.9 percent). These neighbouring districts at the southern end of Lake Malawi account for more than half of all Muslims in the country. Most other Muslims live near the shores of Lake Malawi. Christians are present throughout the country.' [27]

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Section 2 updated: 2 September 2020

2. Political system

2.1 Organisation and structure

2.1.1 The Encyclopaedia Britannica stated:

'Malawi is a multiparty republic. Malawi's original constitution of 1966 was replaced with a provisional constitution in 1994, which was officially promulgated in 1995 and has since been amended. It provides for a president, who is limited to serving no more than two five-year terms, and up to two vice presidents, all of whom are elected by universal suffrage. The president serves as head of state and government. The cabinet is appointed by the president. The legislature, the National Assembly, is unicameral; its members also are elected by universal suffrage and serve five-year terms. The 1995 constitution also provided for the creation of an upper legislative chamber, but it was not established by the target completion date in 1999; a proposal to cancel plans for the creation of such a chamber was passed by the National Assembly in 2001.' [28]

2.1.2 The Freedom House Freedom in the World 2020 report (covering events in 2019) stated: 'The president is directly elected for five-year terms and

[26] Ministry of Transport and Public Works, 'Malawi National Transport Master Plan', 2017
[27] USSD, 2019 International Religious Freedom report, Malawi (Demography), 10 June 2020
[28] Encyclopaedia Britannica, 'Malawi' (Constitutional Framework), (n.d)

exercises considerable executive authority…The unicameral National Assembly is composed of 193 members elected by popular vote to serve five-year terms.' [29]

2.1.3 The United States State Department (USSD) 2019 Human Rights Report stated: 'Malawi is a multiparty democracy. Constitutional power is shared between the president and the 193 National Assembly members.' [30]

See also Malawi constitution.

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2.2 Political parties and opposition groups

2.2.1 A national report, dated 3 March 2020, submitted by the Malawian government in connection with a United Nations Human Rights Council universal periodic review, stated:

'15. In 2018, Malawi enacted the Political Parties Act. This Act regulates the registration, financing and functioning of political parties. The Act guarantees the freedom by all persons to form a political party; cease to be a member of a political party and prohibits the compulsion of any person to belong to a political party. The Act also promotes the principle of non-discrimination in the enjoyment of rights and privileges of membership to a political party. Further, the Act buttresses civil and political rights of women by highlighting the consideration of the principle of gender equality in political party representation.

'16. The Act further guarantees the right to freedom of assembly of political parties without unlawful interference from the State, other political parties, or any person.' [31]

2.2.2 The Freedom House Freedom in the World 2020 report stated:

'There are few significant obstacles to the formation of political parties, though the government has at times held up the registration of new groups. While several parties compete in practice, they are loosely organized, with politicians frequently moving between parties or breaking away to form their own groups. Many candidates choose to run as independents…

'Malawi has experienced peaceful transfers of power between rival groups. Opposition parties hold seats in the parliament and are generally able to campaign freely throughout the country. However, an opposition party has never defeated an incumbent party that was elected in its own right since the transition to democracy in 1994.' [32]

2.2.3 The USSD 2019 Human Rights Report stated: 'The constitution and law provide for the freedom of association, and the government generally respected this right. The government required registration of…political parties.' [33]

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[29] Freedom House, 'Freedom in the World 2020', Malawi (Political Rights), 2020
[30] USSD, 2019 Human Rights Report, Malawi (Executive Summary), 11 March 2020
[31] UNHRC, Malawian government report submitted to the UNHRC, (paras 15-16), 3 March 2020
[32] Freedom House, 'Freedom in the World 2020', Malawi (Political Pluralism and Participation), 2020
[33] USSD, 2019 Human Rights Report, Malawi (section 2a), 11 March 2020

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2.3 Political participation and elections

2.3.1 The USSD 2019 Human Rights Report stated:

‘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…

‘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.’ [34]

2.3.2 The USSD 2019 Human Rights Report also stated:

‘On May 21 [2019], 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.’ [35]

2.3.3 The Guardian report, Opposition wins rerun of Malawi's presidential election in historic first, dated 27 June 2020, stated:

‘The historic rerun of Malawi’s presidential election has been won by the opposition, the first time a court-overturned vote in Africa has led to the defeat of an incumbent leader.

‘Lazarus Chakwera’s victory was a result of months of determined street protests and a unanimous constitutional court decision that the May 2019 vote had widespread irregularities and could not stand.

‘Chakwera won with 2.6 million votes out of 4.4 million cast.

‘President Peter Mutharika, who had sought a second five-year term, called this new election flawed but has urged the country to “move on peacefully”…

‘On Saturday, electoral commission chairman Chifundo Kachale told journalists: “The commission declares that Lazarus Chakwera, having

[34] USSD, 2019 Human Rights Report, Malawi (section 3), 11 March 2020
[35] USSD, 2019 Human Rights Report, Malawi (section 3), 11 March 2020

attained 58.57% of the vote, has been duly elected as the president of Malawi."…

'A court overturned the original election last year won by Mutharika, citing widespread irregularities including the use of correction fluid on ballots. It was just the second time in Africa that a court has overturned a presidential election, following a ruling on Kenya's vote in 2017…

'The constitutional court on 3 February [2020] unanimously ordered that the vote be held again, citing "widespread, systematic and grave" evidence of irregularities and vote tampering.' [36]

See also CIA World Factbook Malawi – Government.

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Section 3 updated: 28 September 2020

3. Economy

3.1 Overview

3.1.1 The CIA World Factbook stated:

'Landlocked Malawi ranks among the world's least developed countries. The country's economic performance has historically been constrained by policy inconsistency, macroeconomic instability, poor infrastructure, rampant corruption, high population growth, and poor health and education outcomes that limit labor productivity. The economy is predominately agricultural with about 80% of the population living in rural areas. Agriculture accounts for about one-third of GDP and 80% of export revenues. The performance of the tobacco sector is key to short-term growth as tobacco accounts for more than half of exports, although Malawi is looking to diversify away from tobacco to other cash crops.' [37]

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3.1.2 Key facts

Currency:	Malawi Kwacha (MWK)[38].
Exchange rate:	1 GBP = 961 MWK[39] (correct as of 4 August 2020)
GDP growth:	1.3% (2017 estimate)[40]
GDP per capita:	$US1,200 (2017 estimate)[41]. This figure shows GDP on a purchasing power parity basis.
Labour force sectors (percentage of workforce):	Agriculture: 28.6% (2017 estimate) Industry: 15.4% (2017 estimate) Services: 56% (2017 estimate)

[36] The Guardian, 'Opposition wins rerun of Malawi's presidential election…', 27 June 2020
[37] CIA, World Factbook, Malawi (Economy), 10 September 2020
[38] XE currency converter, 'MWK Malawian Kwacha', 4 August 2020
[39] XE currency converter, 'MWK/GBP', 4 August 2020
[40] CIA, World Factbook, Malawi (Economy), 10 September 2020
[41] CIA, World Factbook, Malawi (Economy), 10 September 2020

Inflation rate (consumer prices):	12.2% (2017 estimate)
Percentage of population below the poverty line:	50.7% (2010 estimate)
Unemployment rate:	20.4% (2013 estimate)

3.1.3 Additionally:

- Malawi ranked 171 out of 189 countries in the United Nations Development Programme (UNDP) Human Development Report 2019[42]. The UNDP Human Development Index is a composite index measuring average achievement in 3 basic areas of human development - a long and healthy life, knowledge and a decent standard of living.

3.1.4 For more information, see:

- The World Bank in Malawi - Overview
- CIA World Factbook – The economy
- UN Data on Malawi

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Section 4 updated: 19 June 2020

4. History

4.1.1 For information about the key events that have occurred in Malawi, see the BBC Malawi profile[43]. See also the history section of Encyclopaedia Britannica.

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Section 5 updated: 17 June 2020

5. Media and telecommunications

5.1.1 Malawi media profile and telecommunications key facts:

Radio[44]	Malawi Broadcasting Corporation state-run, operates national Radio One, Radio Two Capital FM - private FM 101 Power - private Zodiak Broadcasting Station (ZBS) - private Radio Maria - Catholic

[42] UNDP, 'Human Development Report 2019', 2019
[43] BBC, 'Malawi profile', 19 March 2019
[44] BBC, 'Malawi profile – Media', 6 August 2019

Television[45]	Malawi Broadcasting Corporation - state-run
Press[46]	The Nation - daily The Daily Times - private Nyasa Times - online news, UK-based
International dialling code:	+265[47]
Time in Malawi:	+1 hour GMT[48]
Internet domain:	.mw[49]

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Section 6 updated: 25 June 2020

6. Citizenship and nationality

6.1.1 Malawian citizenship can be obtained by persons born in Malawi if one or both of the person's parents was/were born in Malawi. A child born outside Malawi to one or both of the parents who are Malawian citizens by birth is automatically Malawian. A woman can obtain Malawian citizenship if she is married to a Malawian man, provided she has stayed in Malawi on a valid permit for a period of not less than 5 years. Foreign nationals can apply for Malawian citizenship, subject to certain conditions being met[50].

6.1.2 The Malawi Broadcasting Corporation (MBC) article, Malawi adopts Dual citizenship concept, dated 13 December 2019, stated:

'Malawi Parliament on Wednesday [11 December 2019] made amendment to the Citizenship Act to accommodate the much campaigned dual citizenship concept.

'Homeland Security Minister Nicholas Dausi has since touted the amended piece of legislation as "progressive". The approved changes to the Malawi Citizenship and Immigration Act of 1966 will allow Malawians to be citizens of another country. Before the amendment, Malawi Republican Constitution did not allow Malawian citizens and foreign nationals of Malawian descent above the age of 18 to hold dual citizenship.' [51]

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Section 7 updated: 2 September 2020

7. Corruption

7.1.1 The United States State Department 2019 Human Rights Report stated:

[45] BBC, 'Malawi profile – Media', 6 August 2019
[46] BBC, 'Malawi profile – Media', 6 August 2019
[47] Country Code, 'Malawi', (n.d)
[48] World Time Server, 'Current Time in Malawi', (n.d)
[49] 101domain, 'Malawian Domains', (n.d)
[50] Malawian Department of Immigration and Citizenship Services, 'Categories of citizenship', (n.d)
[51] MBC, 'Malawi adopts Dual citizenship concept', 13 December 2019

'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.' [52]

7.1.2 The Transparency International Corruption Perceptions Index 2019, published in 2020, stated that Malawi had a score of 31 in the 2019 CPI[53].

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Section 8 updated: 3 August 2020

8. Official documents

8.1 Registration of births and the issuing of birth certificates

8.1.1 Under the terms of the National Registration Act of 2010, all births in Malawi must be registered within 6 weeks of the birth. Birth certificates are issued within 10 days of the registration. The registration process is free but there is a charge for the birth certificate. The central authority is the National Registration Bureau[54].

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8.2 Registration of marriages and the issuing of marriage certificates

8.2.1 Under the terms of the Marriage, Divorce and Family Relations Act 2015, all marriages in Malawi must be registered with the National Registration Bureau within 3 months of the marriage. The legal age of marriage is 18 years old. The husband and wife are required to be present for the registration of the marriage and must be able to prove their date of birth or age. Registration takes place at the District Registration Office or place of marriage. There is no fee for the registration process or for the marriage certificate[55].

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8.3 Registration of deaths and the issuing of death certificates

8.3.1 Under the terms of the National Registration Act of 2010, all deaths in Malawi must be registered with the National Registration Bureau within 6

[52] USSD, 2019 Human Rights Report, Malawi (section 4), 11 March 2020
[53] Transparency International, Corruption Perceptions Index 2019, 2020
[54] UNICEF, 'Malawi – birth registration', December 2017
[55] UNICEF, 'Malawi – marriage registration', December 2017

weeks of the death. Death certificates are issued within 10 days of the registration. The registration process is free and there is no charge for the death certificate. To register a death, a medical certificate and ID documents must be provided[56].

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8.4 National identity documents

8.4.1 In October 2016, a national registration system was launched by the Malawian government. A registration campaign was rolled out nationally in May 2017, and later in 2017, the first national identity cards were issued by the National Registration Bureau to persons who qualified[57].

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8.5 Passports

8.5.1 The Department of Immigration and Citizenship Services (DICS) issue passports to Malawian citizens. Ordinary passports are valid for ten years. A child's passport is valid for 5 years and is issued to children under the age of 10 years. Diplomatic passports are valid for ten years. Service passports are issued to senior government officials[58].

See also e-passports coming to Malawi in 2020.

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8.6 Fraudulent documents

8.6.1 CPIT could not information about the use of fraudulent documents from information sources in the public domain (see Bibliography for the list of sources used).

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Section 9 updated: 29 September 2020

9. Healthcare

9.1 The healthcare system

9.1.1 An article about the healthcare system in Malawi, published on the US National Library of Medicine National Institutes of Health (US NLM NIH) website, stated:

'Health services in Malawi are provided by the public, private for profit (PFP) and private not for profit (PNFP) sectors. The following governmental departments provide public services: the Ministry of Health (MOH), district, town and city councils, Ministry of Defence and Ministry of Internal Affairs and Public Security (Police and Prisons). These departments work in collaboration with the MOH; however respective funding is planned and disbursed individually.

'The PFP sector is small, but growing, and includes an array of private hospitals and clinics that range from group to solo practices. Except for a few

[56] UNICEF, 'Malawi – death registration', December 2017
[57] UNDP, 'NRB Issues the First National Identity Cards to Malawians,' 9 November 2017
[58] DICS, Malawi e-passport system, 'Types of passport', (n.d)

larger organisations, most PFP facilities are rudimentary, lacking adequate coordination and regulation. PFP entities are usually solo practices that are staffed by clinical officers or general practitioners. Mostly, PFP sector offers curative services with minimal laboratory support. Another important component of our health care system is the traditional healers and birth attendants who would be considered part of the PFP sector.

'The PNFP sector comprises of religious institutions, non-governmental organisations (NGOs), statutory corporations and companies. The major religious providers are organised under the Christian Health Association of Malawi (CHAM) which provides approximately 29% of all health services. Most PFP and PNFP services charge user fees. Government, through the ministry of health (MOH), enters into different service level agreements with the PNFP sector to provide essential services, such as maternal and child health care, especially in rural and remote areas.

'Public sector provision of health care is free and organised into three tiers, primary, secondary and tertiary levels.

'There are four tertiary hospitals, which are expected to offer advanced, specialised care, but in reality 70% of services offered at the tertiary level are for conditions that should be treated at primary care or district hospitals. This is partly because of poor gatekeeping mechanisms at the lower tiers of care.

'The 26 district hospitals are often rural and act as referral centres for the primary care facilities. District hospitals offer outpatient and inpatient services, surgical procedures like caesarean sections, herniorrhaphy and other emergency life-saving surgeries. District hospital bed capacity can reach up to 300. Each district hospital has an array of 11 to 40 health centres in its drainage area. Some districts have an intermediary level of community hospitals that are with PFP and PFNP facilities. District hospitals serve populations ranging from 140 000 to 1400 000.

'The primary care level includes health centres with their constituent clinics, dispensaries and village clinics. Health centres offer ambulatory and maternity services. Health centres are meant to serve an average population of 10 000 people; however, some urban facilities serve up to 237 000 people. Primary care facilities are meant to link with community-based services, although there is often fragmentation between facility-based curative and community-based preventive activities.' [59]

9.1.2 The UK Foreign, Commonwealth and Development Office in its travel advice for British nationals observed: 'General medical facilities throughout Malawi are unable to provide the same standard of healthcare as in the UK, with sophisticated equipment and intensive care facilities being very limited.'[60] Similarly, the USSD Overseas Security Advisory Council Crime and Safety report written for US citizens, observed: 'Medical facilities are rudimentary, lack resources, and are not comparable with those in the U.S. Many rural

[59] US NLM NIH, 'Delivery of primary healthcare in Malawi', 21 June 2018
[60] UK FCDO, 'Foreign travel advice – Malawi' (Health), updated 9 September 2020

areas have no access to nearby medical care…Many medications are not available.' [61]

9.1.3 The US Embassy (in Malawi) and British High Commission (in Malawi) websites list healthcare facilities and providers for the use of their nationals.

9.1.4 Malawi has relatively high rates of HIV/AIDS prevalence. For more information about this and treatments, see the Avert website.

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9.2 Personnel

9.2.1 See World Health Organisation Malawi Country Profile, and USAID Malawi Country Profile for details of medical personnel.

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9.3 Mental healthcare

9.3.1 The Nyasa Times article, Poor Funding Crippling Mental Health Services in Malawi, dated 5 November 2018, stated:

'A mental health specialist says inadequate funding is one of the factors which is crippling delivery of mental health services in the country.

'Speaking last week at Chiwaza in Nkhata Bay District during World Mental Health Commemoration Day, Director of Zomba Mental Hospital, Immaculate Chamangwana said her department does not have adequate psychiatric drugs and infrastructure required for management of the mentally ill patients.

'"These challenges are attributed to low funding toward mental health services," said Chamangwana. She said that mental cases are on the increase in the country hence the need for government to consider providing enough resources for improved mental health services.'"Mental health services are only allocated four percent of the total budget meant for the Ministry of Health and Population," she explained.

'She disclosed that Zomba Mental Hospital is always overwhelmed with increased number of patients, saying most of them are youths. "In a day we receive over 30 patients and many of these patients, are youths and this a worrisome development to the nation," Chamangwana said.' [62]

9.3.2 An academic study about mental healthcare in Malawi, published by the International Journal of Mental Health Systems in January 2020, stated:

'Malawi is one of the most poorly resourced countries in Africa in relation to mental health. There are only three main specialist psychiatric institutions located in each of its three regions with a total number of 400 psychiatric beds (2.56 beds per 100,000 population). These institutions are Zomba Mental Hospital (ZMH) in the south, Bwaila Psychiatric Unit in the centre and St John of God in the north. Currently, Malawi has only three psychiatrists and four psychologists for a population of 18.6 million people. ZMH has only 1 occupational therapist and no professional social worker. Trained psychiatric nurses find that once in post, the majority of their time is often

[61] USSD OASC, 'Malawi 2020 Crime & Safety Report' (Medical emergencies), 14 April 2020
[62] Nyasa Times, 'Poor Funding Crippling Mental Health Services…', 5 November 2018

spent on other urgent clinical activities, with few able to work full time providing mental health care. The few health workers who are able to provide mental health care in primary care settings are usually hindered by medication shortages and transportation problems.' [63]

9.3.3 The Mental Health in Malawi report, by Philippa Lilford, provided information about her experience as a doctor in Malawi, published in the BJPsych International Journal, May 2020:

'Malawi is one of the poorest countries in the world and, with a population of 16 million, had just two qualified psychiatrists; neither doctor was Malawian. I was based in the out-patient department of the Queen Elizabeth Hospital in Blantyre…The clinic was staffed by three psychiatric nurses, in addition to the two permanent consultant psychiatrists…

'Around 40 patients would arrive at the clinic daily, many walking for hours from distant villages. There is very little public transport in Malawi, and patients from further afield would come by small private vans. The clinic and medication are free and are funded by the government or by private donors. However, transport costs are borne by the patient and their families, and those costs often meant that patients could not return as often as the service required…

'Zomba Mental Health Hospital [is] the only state-funded in-patient psychiatric hospital in Malawi, which is situated about an hour's drive from Blantyre. Zomba Mental Health Hospital is run by clinical officers who have studied for 3 years and then undertaken a Bachelor of Sciences in Mental Health…

'Resources are incredibly scarce and mental health is not a prioritised service in Malawi…there are now two recently qualified Malawian doctors who are working as consultant psychiatrists in that country.' [64]

9.3.4 See also the World Health Organisation Mental Health Atlas 2017.

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[63] Kokota, D, Lund, C, Ahrens, J. et al. 'Evaluation of mhGAP…' (Background), 20 January 2020
[64] Lilford, Philippa, BJPsych International Journal, 'Mental Health in Malawi', May 2020

Key issues relating to protection claims

Section 10 updated: 28 September 2020

10. Children

10.1 Child rights and protection

10.1.1 A national report submitted by the Malawian government to the United Nations Human Rights Council (UNHRC) in 2015, in connection with a universal periodic review, stated:

'The Child Care, Protection and Justice Act (CCPJA) of 2010 sets the foundation for a number of important children rights. The CCPJA, is the most comprehensive piece of legislation for children in Malawi. Currently, the Ministry responsible for the implementation of the Act, the Ministry of Gender, Children, Disability and Social Welfare (MOGCDSW) has developed subsidiary legislation to facilitate the smooth implementation of the CCPJA. It has also developed a costed implementation plan that will facilitate resource mobilization and implementation of the CCPJA.' [65]

10.1.2 The national report submitted to the UNHRC, in connection with a UNHRC Universal Periodic Review, also stated:

'34. The Malawi Police Service has developed the Child Protection Policy which includes detailed guidelines for police officers to follow when handling cases involving children both as victims and offenders. One of the objectives of the policy is to ensure promotion and protection of children's rights including victims of trafficking regardless of their circumstances. Police, through the Community Policing Branch, also conducts awareness campaigns on child rights throughout Malawi targeting areas where children are being exploited and trafficked. Under Community Policing, 71 Police Victim Support Units has been established. Police continues providing both in-service and pre-service training for its officers in child protection.

'35. At the Ministry of Education, a number of important developments have been undertaken to ensure that children rights are protected and promoted. The curriculum for primary education has [a] life skills component that empowers school children to protect themselves against any forms of violations to their rights. The sector has also conducted studies in both primary and secondary school which assessed the form of violence taking place and how success forms of violence can be mitigated. A Special Needs Directorate has been set up in the Ministry to specifically deal with special needs school children.' [66]

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[65] UNHRC, Malawian government national report, 4 February 2015
[66] UNHRC, Malawian government national report, 4 February 2015

10.2 Education

10.2.1 A national report, dated 3 March 2020, submitted by the Malawian government in connection with a United Nations Human Rights Council universal periodic review, stated:

'78. The MoEST has adopted the National Education Standards to enhance the quality and access to education in primary and secondary schools. There are twenty-six standards which specify the expected outcomes for students which should be delivered by all education providers in public and private institutions. They also identify the leadership, management and teaching processes which are essential in the achievement of the outcomes. The formal education system in Malawi follows an 8–4–4 structure: 8 years of primary, 4 years of secondary and 4 years of tertiary level education. Tertiary education is provided by an array of education institutions including primary and secondary teacher training colleges (TTCs), Technical and Vocational Education Training (TVET) schools, and university colleges.' [67]

10.2.2 The USSD 2019 Human Rights Report stated: '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.' [68]

Further information on education can be found in Encyclopedia Britannica - Malawi.

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10.3 Child labour

10.3.1 The USSD 2019 Human Rights Report stated:

'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…

'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

[67] UNHRC, Malawian government report (para 78), 3 March 2020
[68] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020

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.' [69]

See also US Department of Labor report 2018 Findings on the Worst Forms of Child Labor

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10.4 Early marriage and forced marriage

10.4.1 A national report, dated 3 March 2020, submitted by the Malawian government in connection with a United Nations Human Rights Council universal periodic review, stated:

'25. The 2017 Constitutional amendment setting the age of a child at 18 from 16 reinforced Malawi's commitment to end child marriages. Furthermore, Malawi adopted the Marriage, Divorce and Family Relations Act 2015 which prohibits marriage of persons under the age of 18. At the policy level, the Ministry of Gender, Disability and Social Welfare (MGCDSW) adopted a National Strategy on Ending Child Marriages (2018-2022). By December 2018, the population of children married between the ages of 12 and 14 was 4228. 1,678 children are recorded to have been married by the age of 12, 1,337 children were married at the age of 13, and 1,213 were married at the age of 14.' [70]

10.4.2 The USSD 2019 Human Rights Report stated: '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.' [71]

10.4.3 The Organisation for Economic Cooperation and Development (OECD) Social Institutions and Gender Index (SIGI) covering events up to 2018 stated:

'The prohibition of child marriage is underscored in several pieces of legislation, including of the Child Care, Protection and Justice Act 2010 (Section 81 and 82) which prohibits child marriages as well as the betrothal and pledge of a child; and the Marriage, Divorce and Family Relations Act 2015 which sets the universal minimum age for marriage at 18 years old for women and men. The Government of Malawi amended the Constitution in 2017 to reflect the minimum age of marriage as defined in the Marriage, Divorce and Family Relations Act to 18 years old for women and men with no expectations. This amendment now bans the former provision of allowing parental consent for marriage for girls and boys between the ages of 15 to 18 years...

'Despite these legal prohibitions, child marriage and related harmful practices continue to be practiced. Under customary and religious tradition,

[69] USSD, 2019 Human Rights Report, Malawi (section 7c), 11 March 2020
[70] UNHRC, Malawian government report submitted to the UNHRC, (para 25), 3 March 2020
[71] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020

puberty is commonly used as a marker to determine whether a person is ready for marriage…In some communities, the ritual of initiating girls into womanhood may be practiced. The ritual serves to prepare girls for marriage by training them on how to engage in sexual acts, where some as young as 10 years old are forced to have sexual relations with older men…A contributing factor in the perpetuation of child marriage tends to be the economic situation of families. Often in rural areas, girls will be married at very young ages to improve a family's financial situation, to repay a debt, or to receive a loan or livestock (a practice otherwise known as "Kupimbira")…' [72]

10.4.4 The UNICEF Child Marriage in Malawi factsheet, published in July 2018, stated:

'Child marriage is a serious problem in Malawi…About 46 per cent of girls are married before the age of 18, and 9 per cent before the age of 15. The main drivers of child marriage are poverty, cultural and religious traditions, and peer pressure…UNICEF is working with the Government of Malawi to protect girls and boys from sexualized violence including child marriage and other harmful traditional practices. An important aim of UNICEF's Child Protection Programme is increased knowledge and understanding among communities of harm associated with child marriage. UNICEF works to abolish practices and behaviours harmful to children, while ensuring they have access to child protection services…

'UNICEF is partnering with traditional and religious leaders to break social norms that enable child marriages. Social and cultural beliefs relating to sexuality, child marriage, corporal punishment and the position of girls in society, contribute to the normalization of violence against children and gender-based violence. Substantial investment is required to change social norms and help break the silence around practices that harm children. This includes building an evidence base around child marriage and harmful traditional practices.' [73]

See also Girls Not Brides – Malawi.

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10.5 Physical and sexual abuse

10.5.1 UNICEF in Child Protection Statistics in Malawi, published in 2018 noted:

'A large number of young children experience violence, and in some cases their caregivers are the perpetuators of the violence.

- 21.8% girls and 14.8% boys experienced at least one incident of sexual violence before turning 18.
- 65% of girls and 35% of boys experience child abuse in their life time.
- 82.8% of girls under the age of 18 identified their husband as the perpetrator of physical abuse

[72] OECD, SIGI 2019, 'Malawi', 8 March 2019
[73] UNICEF, 'Child Marriage in Malawi' (factsheet), July 2018

- Three-quarters of all children under the age of 4 experience psychological aggression and/or physical punishment by their caregivers.' [74]

10.5.2 The USSD 2019 Human Rights Report stated:

'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.' [75]

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10.6 Female genital mutilation (FGM)

10.6.1 The OECD SIGI 2019 stated: 'To date, there is no specific legislation addressing Female Genital Mutilation (FGM). The Child Care, Protection and Justice Act (2010) does prohibit harmful cultural practices, which it broadly defines as "social or customary practice that is harmful to the health or general development of the child", but it does specifically include FGM.' [76]

10.6.2 The USSD 2019 Human Rights Report stated: '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.' [77]

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10.7 Children's social care and support organisations

10.7.1 A number of children's NGOs are active in Malawi providing social care and support services tor vulnerable children and children with special needs,

[74] UNICEF, 'Child Protection Statistics in Malawi', 2018
[75] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020
[76] OECD, SIGI 2019, Malawi, 8 March 2019,.
[77] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020

such as Save the Children[78], Open Arms Malawi[79], Global Giving[80], and Hope for Autism Foundation in Malawi[81].

See also Compilation on Malawi Report of the Office of the United Nations High Commissioner for Human Rights, 9 March 2020.

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Section 11 updated: 2 September 2020

11. Criminal justice system

11.1 Penal code

11.1.1 Malawi's penal code states what acts are crimes and what the penalties are for these crimes[82].

See also Constitution.

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11.2 Police and security forces

11.2.1 The United States State Department (USSD) 2019 Human Rights Report stated:

'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.' [83]

See also Malawi Police Service and the Law on police use of force worldwide, Malawi,

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11.3 Effectiveness

11.3.1 The United States State Department (USSD) Overseas Security Advisory Council (OSAC) Malawi 2020 Crime & Safety Report stated: 'The capabilities of the Malawi Police Service are growing, but its abilities to deter and investigate crimes, assist victims, and apprehend criminals are extremely limited. The police lack basic equipment (particularly transportation), are poorly funded, and do not receive sufficient training. Public support for the police has continued to drop, due in part to alleged corruption and ineffectiveness in deterring criminal activity.' [84]

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[78] Save the Children, 'Malawi' (n.d)
[79] Open Arms Malawi, homepage (n.d)
[80] Global Giving, 'Explore Projects in Malawi', (n.d)
[81] Autism Connect, Directory, Hope for Autism Foundation in Malawi (n.d)
[82] Malawi Legal Information Institute, Penal Code of Malawi, (n.d)
[83] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020
[84] USSD, OSAC, 'Malawi 2020 Crime & Safety Report', 14 April 2020

11.4 Human rights abuses

11.4.1 The Freedom House Freedom in the World 2020 report, commenting on events in 2019, stated: 'Police brutality and extrajudicial killings are not uncommon. In a December 2019 report from the Centre for Human Rights Education, Advice, and Assistance, researchers confirmed that the victims in 28 of the 43 alleged extrajudicial killings they investigated had been shot by the police and died in "very suspicious circumstances."' [85]

11.4.2 The USSD 2019 Human Rights Report stated:

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

'The constitution and law prohibit such practices [torture, inhuman and degrading punishment]; however, police sometimes used excessive force and other unlawful practices, including torture, to extract confessions from suspects…

'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 [Malawi Human Rights Commission] 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.' [86]

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11.5 Avenues of redress

11.5.1 The USSD 2019 Human Rights Report stated: 'In some cases the government took steps to prosecute officials who committed abuses, but impunity remained a problem.' [87]

11.5.2 The same report noted: 'Perpetrators of past abuses were occasionally punished administratively, but investigations often were delayed, abandoned, or remained inconclusive.' [88]

11.5.3 The University of Pretoria's (UofP) Law on the Police use of Force Worldwide website, observed:

'The national Police Service Commission was established under Chapter XV of the Constitution to "exercise disciplinary control" over members of the Police Service. A similar body, the Prisons Service Commission, was established under Chapter XVII of the Constitution with respect to prisons.

'In addition, the mandate of the Malawi Human Rights Commission "is to protect and promote human rights in Malawi in the broadest sense possible

[85] Freedom House, 'Freedom in the World 2020', Malawi (Rule of Law), 2020
[86] USSD, 2019 Human Rights Report, Malawi (section 1a/1c), 11 March 2020
[87] USSD, 2019 Human Rights Report, Malawi (Executive Summary), 11 March 2020
[88] USSD, 2019 Human Rights Report, Malawi (section 1b), 11 March 2020

and to investigation violates of human rights on its own motion or upon complaints received from any person, class of persons or body." The Commission was established under Chapter XI of the Constitution as an independent national institution. The independence of this body is further guaranteed by the Human Rights Commission Act.' [89]

11.5.4 A national report submitted by the Malawian government to the United Nations Human Rights Council (UNHRC) in 2015, in connection with a universal periodic review stated:

'The Internal Affairs Unit investigates all cases of human rights violations while the [Malawi Police] Service is still working on the establishment of the Police Complaints Commission as provided in the Police Act. The Lay Visitors Scheme which comprises paralegal officers and local leaders in the vicinity of all Police Stations is fully operational. Members of the Scheme visit cells and inspect conditions of detention and attend to complaints of detainees. All complaints into the allegations of torture or physical abuse are thoroughly investigated; officers involved are usually interdicted to pave way for investigations. Special inquiry teams are sometimes instituted depending on the gravity of the matter with a view to bring to justice everyone suspected to have committed acts of torture and other human rights violations amounting to criminal offence. The Internal Affairs has so far handled 407 cases out of which 349 cases have been investigated.' [90]

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11.6 Prison and detention centre conditions

11.6.1 The USSD 2019 Human Rights Report stated:

'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…

'Inadequate infrastructure remained a serious problem. Prisons and detention centers had no provisions for temperature control other than wood fires.' [91]

11.6.2 The USSD 2019 Human Rights Report stated:

'Overcrowding and malnutrition remained problems. On December 3, the Malawi Prison Service reported a total prison population of 14,060 in space

[89] UofP, 'Law on Police use of Force Worldwide', Malawi, updated: June 2020
[90] UNHRC, Malawian government national report, 4 February 2015
[91] USSD, 2019 Human Rights Report, Malawi (section 1c), 11 March 2020

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…

'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.' [92]

11.6.3 The USSD 2019 Human Rights Report also stated:

'During the year the [Malawi Human Rights Commission] 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.' [93]

See also documents contained in the United Nations Office of the Human Rights Commissioner for Human Rights (OHCHR) UN Treaty Body Database (Malawi).

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11.7 Independent monitoring of prisons

11.7.1 The USSD 2019 Human Rights Report stated: '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.' [94]

See also Malawi Prisons Service.

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11.8 The judiciary and courts system

11.8.1 The Commonwealth Governance website provided an overview of the judiciary in Malawi:

'The 1994 constitution contains a bill of human rights (although it retains the death penalty) and protects the independence of the judiciary.
The High Court sits in Blantyre, Lilongwe, Mzuzu and Zomba, and has original jurisdiction to hear and determine any civil or criminal proceedings.

[92] USSD, 2019 Human Rights Report, Malawi (section 1c), 11 March 2020
[93] USSD, 2019 Human Rights Report, Malawi (section 1c), 11 March 2020
[94] USSD, 2019 Human Rights Report, Malawi (section 1c), 11 March 2020

It is generally presided over by a single judge but for constitutional cases there are at least three judges. The Industrial Relations Court deals with labour disputes and other issues relating to employment. The magistrates' courts have original jurisdiction to hear and determine most civil or criminal cases and are located in cities and towns throughout the country. They include the Child Justice Court, which deals with child abuse and offences committed by those under the age of 16.

'Appeals from the magistrates' courts are heard by the High Court and those arising from the High Court by the Supreme Court of Appeal in Blantyre, which is the final court of appeal.' [95]

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11.9 Independence

11.9.1 The USSD 2019 Human Rights Report stated:

'The constitution and law provide for an independent judiciary, and the government generally respected judicial independence and impartiality…

'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.' [96]

11.9.2 The Freedom House Freedom in the World 2020 report, commenting on events in 2019, stated: 'Judicial independence is generally respected, particularly in the higher courts, though judges sometimes face political pressure. The appointment process for judges lacks transparency, and the judiciary is underfunded, which can also undercut judicial autonomy.' [97]

11.9.3 The Bertelsmann Stiftung Transformation Index (BTI) 2020 Malawi Country Report (covers the 1 February 2017 – 31 January 2019 period) stated:

'By and large, the Malawi judiciary is independent. It remains the branch of government that inspires the highest level of confidence among the public.

'The judiciary in Malawi is guaranteed independence through several provisions in the constitution, including section 103. The constitutional provisions give a solid foundation on which the judiciary has based its operational independence since 1994. Generally, the judiciary has been willing to review executive decisions for compliance with the constitution and other laws. In appropriate instances, the judiciary has been able to overturn government actions for contravening the constitution or other applicable laws. However, the judiciary has struggled to maintain its independence due to a lack of financial autonomy.' [98]

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11.10 Effectiveness

11.10.1 The Bertelsmann Stiftung's Transformation Index (BTI) 2020 Malawi Country Report stated: 'The executive provides its [the judiciary] funding through

[95] Commonwealth Governance, 'Judicial System in Malawi', (n.d)
[96] USSD, 2019 Human Rights Report, Malawi (section 1e), 11 March 2020
[97] Freedom House, 'Freedom in the World 2020' Malawi (Rule of Law), 2020
[98] BTI 2020, Malawi Country Report (section 3 – Rule of Law), 2020

allocations in the state budget. However, the common complaint is that the judiciary is perennially underfunded, constraining its ability to perform its constitutional checks on the executive. While there have been rumors of some judicial officers being swayed in their rulings, to date no judge has been publicly disciplined for corruption or any other form of dereliction of duty.' [99]

11.10.2 A national report, dated 3 March 2020, submitted by the Malawian government in connection with a United Nations Human Rights Council universal periodic review, stated:

'70. The Malawi Judiciary has witnessed improved service delivery during the reporting period. These include the introduction of specialised high court divisions, introduction of e-case management system, developing capacity of judicial officers and members of staff especially that of magistrates in areas such as gender, establishment of a committee to address outstanding court judgements, expediting the process of confirmation of criminal cases from magistrate courts, revamping camp courts, and facilitating the establishment of the Malawi Institute of Legal Education.' [100]

11.10.3 The USSD 2019 Human Rights Report stated:

'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.' [101]

See also Malawi judiciary.

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Section 12 updated: 31 July 2020

12. Freedom of movement

12.1.1 The USSD 2019 Human Rights Report stated: 'The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.' [102]

12.1.2 The Organisation for Economic Cooperation and Development (OECD) Social Institutions and Gender Index (SIGI) 2019 stated: 'The Constitution also provides both women and men the freedom of movement and residence, including the authority to obtain passports and other travel documents for themselves and their children (section 39, 2004). It should be noted however that for married women passports may be issued upon the production of a marriage certificate indicating their husband's name.' [103]

[99] BTI 2020, Malawi Country Report (section 3 – Rule of Law), 2020
[100] UNHRC, Malawian government report submitted to the UNHRC (para 70, page 15), 3 March 2020
[101] USSD, 2019 Human Rights Report, Malawi (section 1e), 11 March 2020
[102] USSD, 2019 Human Rights Report, Malawi (section 2d), 11 March 2020
[103] OECD, SIGI 2019, 'Malawi', 8 March 2019

12.1.3 The Freedom House Freedom in the World 2020 report, commenting on events in 2019, stated: 'The constitution establishes freedom of internal movement and foreign travel, which are generally respected in practice for Malawians. However, according to the United Nations, the government's policy of confining refugees to designated camps restricts their freedom of movement and impairs their ability to earn a living. Police frequently round up those found outside of the camps and return them.' [104]

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Section 13 updated: 7 August 2020

13. Sexual orientation, gender identity and expression

13.1 Demography

13.1.1 The Other Foundation, a NGO based in South Africa, undertook 'a survey of public attitudes to homosexuality and gender non-conformity in Malawi' interviewing 1,300 individuals between July and September 2018[105]. Of the respondents, 3.5% identified as LGBTI (which the reports extrapolates to 186,000 people in the total population)[106].

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13.2 Legal rights

13.2.1 The USSD 2019 Human Rights Report stated:

'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.' [107]

13.2.2 The Human Dignity Trust (HDT) (undated) report, Injustice Exposed – The Criminalisation of Transgender People and Its Impact, stated:

'The criminalisation of sexual activity between men under Section 156 [Penal Code] and the crime of "Unnatural Offences" in Section 153 [Penal Code] were enacted in the early 1960s. In 2011, Malawi adopted Section 137A, which criminalises sex between women. During a period in which the global trend has been towards decriminalisation, this expanded criminalisation was a concerning backwards step by Malawian lawmakers and authorities…

'In 2012, Malawian Justice Minister Ralph Kasambara announced a moratorium on laws criminalising same-sex activity while Parliament debated repealing such provisions. In July 2014, Solicitor General Janet Chikaya-

[104] Freedom House, 'Freedom in the World 2020', Malawi (Personal Autonomy…), 2020
[105] The Other Foundation, 'Under Wraps' (page 33), 2019
[106] The Other Foundation, 'Under Wraps' (page 14), 2019
[107] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020

Banda re-affirmed the moratorium to the UN Human Rights Committee, pending the review of a constitutional challenge of the laws by the Centre for the Development of People and the Malawi Law Society before the High Court. However, news reports from April 2018 suggest that Sections 156 and 153 are still being used to arrest and harass people.' [108]

13.2.3 The Organisation for Economic Cooperation and Development (OECD) Social Institutions and Gender Index (SIGI) 2019 stated:

'Same sex marriage is yet to be recognised in the country. In 2011, the president approved an amendment in the penal code that criminalizes same sex relations between consenting adults, placing a punishing of up to five years in imprisonment (Joint Malawi Civil Society Organisations, 2015). Further, under the amended Marriage Act, marriage is defined as a union between two persons of the opposite sex, as is also stated in the Constitution (Section 22) (The Marriage, Divorce and Family Relations Act, 2015).' [109]

13.2.4 The Freedom House Freedom in the World 2020 report, commenting on events in 2019, stated: 'The constitution explicitly guarantees the rights of all humans. However, consensual sexual activity between same-sex couples remains a crime punishable by up to 14 years in prison.' [110]

See also Penal Code.

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13.3 State treatment

13.3.1 The Freedom House Freedom in the World 2020 report, commenting on events in 2019, stated: 'LGBT+ people are subject to arbitrary arrest and detention and are sometimes physically assaulted while in custody.' [111]

13.3.2 The Human Rights Watch (HRW) 2018 report, 'Let Posterity Judge' – Violence and Discrimination against LGBT people in Malawi, stated:

'Several interviewees told Human Rights Watch that despite the moratorium on arrests and prosecutions for consensual same-sex conduct, they had experienced police abuse, arbitrary arrest and detention. Under international human rights law, besides arbitrary arrests and detentions, also unlawful are arrests and detentions as punishment for the legitimate exercise of human rights, arrests on discriminatory grounds, and those with elements of inappropriateness or injustice, that lack predictability and due process of law, or elements of reasonableness, necessity and proportionality…

'Several LGBT individuals interviewed by Human Rights Watch said the anti-homosexuality laws inhibited them from reporting abuses due to fear of arrest. Those who do report may be further victimized by the police. Justice, a 26-year-old transgender man and human rights defender, told Human Rights Watch that in December 2017 he went to Likuni sub-station in Lilongwe to report a burglary and attempted robbery by a well-known

[108] Human Dignity Trust, 'Injustice Exposed – The Criminalisation of Transgender…', (page 52), (n.d)
[109] OECD, SIGI 2019, 'Malawi', (Discrimination in the family), 8 March 2019
[110] Freedom House, 'Freedom in the World 2020', Malawi (Rule of Law), 2020
[111] Freedom House, 'Freedom in the World 2020', Malawi (Rule of Law), 2020

"gangster" in the area. Not only did the police refuse to open a case, according to Justice, they also told him to pay 50000 Kwacha [US$69] to avoid arrest under homosexuality charges.' [112]

13.3.3 The UN compilation on Malawi for the UN Human Rights Council as part of the Universal Periodic Review process, March 2020, compiled by the Office of the UN High Commissioner for Human Rights stated:

'Noting the criminalization of same-sex relations, the United Nations country team stated that lesbian, gay, bisexual, transgender, queer and intersex persons experienced violence and discrimination. In addition, the challenges that such persons faced had been further exacerbated by the lack of clarity and divergent opinions regarding the legality of a moratorium on arrests and prosecutions for consensual homosexual acts, issued by the Ministry of Justice and Constitutional Affairs in 2012.' [113]

See also the 14 March 2020 76crimes report, Judge grants bail for 3 arrested Malawi dissidents, and the 19 December 2018 76crimes report, Gay arrests in Malawi: More mixed signals on gay rights.

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13.4 Societal treatment and discrimination

13.4.1 The Amnesty International 2017/18 Report stated:

'Harassment of and attacks against LGBTI people continued. In January [2017] the People's Party spokesman, Kenneth Msonda, publicly said that "gays are worse than dogs and must be killed". Activists brought a case against him for inciting violence against gay and lesbian people. The Constitutional Court was considering whether charges should be brought against him at the end of the year.

'In August, a 12-year-old boy stopped going to school after he faced repeated harassment and attacks, such as people throwing stones at him and urinating on him. He and his family lived in fear that he might be killed.' [114]

13.4.2 There were no reports of attacks or harassment against LGBTI persons in the Amnesty International Malawi 2019 report, published in 2020[115].

13.4.3 The HRW 2018 report, 'Let Posterity Judge' – Violence and Discrimination against LGBT people in Malawi, stated:

'LGBT individuals and human rights defenders in Malawi told Human Rights Watch that because of the pervasive homophobia and transphobia and the criminalization of same-sex conduct, they live in constant fear of abuse because of their real or perceived sexual orientation and gender identity. The abuse takes many forms, including intimidation, beatings by members of the public and some police officers, arbitrary arrests and detention, lack of access to justice, and discrimination in healthcare settings…

[112] HRW, '"Let Posterity Judge" – Violence and Discrimination…', Chapter 2, 26 October 2018
[113] OUNHCHR, 'Compilation on Malawi' (para 24), 9 March 2020
[114] Amnesty International Report 2017/18, 'Malawi', 2019
[115] Amnesty International, 'Malawi 2019', 2020

‘Human Rights Watch heard how LGBT people are often victims of mob attacks, physical assault, arbitrary arrest and detention simply because of their presumed sexual orientation, and discrimination in access to health care on the grounds of sexual orientation or gender identity. Several human rights activists told Human Rights Watch that the combination of the anti-homosexuality laws and the religiously and socially conservative Malawian context contributes to the commission of these abuses and deters many LGBT victims of violence from seeking redress, thereby contributing to a culture of impunity.’ [116]

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13.5 Societal attitudes

13.5.1 The Reuters report, Malawians conflicted over LGBT+ rights, tolerance, research finds, dated 22 November 2019, stated:

‘Nearly all Malawians think LGBT+ human rights should be protected, yet the same number could not accept a gay or lesbian family member, according to a first-of-its kind report released this week.

‘A third said transgender people deserve human rights and should be protected from violence, while half said they had reported gender non-conforming people to authorities, said the report by the South Africa-based LGBT+ rights group The Other Foundation.

‘The research was the first country-wide survey of attitudes to sexual and gender nonconformity in Malawi, a southeastern African country of nearly 19 million people…

‘The findings in Malawi showed contrasts swinging from tolerance to violence toward LGBT+ people, said Alan Msosa, lead researcher and an academic with the University of Bergen in Norway…

‘“For example, 80% believe that homosexual sex is wrong, but one in three believe God loves people in same-sex relationships,” he told the Thomson Reuters Foundation...

‘Researchers surveyed 1,300 Malawians in-person, and the questions were answered anonymously and explained in local languages, he said.

‘The study found 87 percent supported constitutional protection of LGBT+ human rights.

‘But 90 percent said they could not accept a gay man or lesbian woman in their own family, and almost one in four said they might be violent toward gender non-conforming people in the future.

‘It also found 3.5% of Malawians identified as homosexual, bisexual, transgender or intersex, more than double that of South Africa, where gay marriage is legalized.’ [117]

13.5.2 The Other Foundation 2019 report, Under Wraps, stated:

‘The Malawi National Attitudes Survey (MNAS), the first nationally representative survey of attitudes towards LGBTI (lesbian, gay, bisexual,

[116] HRW, ‘“Let Posterity Judge” – Violence and Discrimination…’, Chapter 2, 26 October 2018
[117] Reuters, ‘Malawians conflicted over LGBT+ rights, tolerance…,’, 22 November 2019

transgender and intersex) people in Malawi, confirms many of the common assumptions people have about homophobia and transphobia in Africa, and calls others into question.

'It shows that large majorities of Malawians have strongly negative views and misconceptions about gay men, lesbians, and bisexuals. However, it also shows that attitudes towards transgender people are significantly less hostile and that attitudes towards intersex people are broadly positive and accepting. These findings offer LGBTI groups and all people who value freedom, equality, and social inclusion in Malawi, and in Africa in general, some important pointers to chart a path towards acceptance of all sexual and gender minorities.

'A majority of Malawian's endorse sharing spiritual beliefs and experiences with LGBTI people, reject violence against LGBTI people, and support programmes to assist sexual and gender minorities. This ought to mean that Malawians should not oppose formal human rights protections for lesbian, gay, and bisexual people.' [118]

13.5.3 The Other Foundation 2019 report also stated:

'The strongest support for acceptance of gay, lesbian, and bisexual people was found among Malawians living in and around major urban centres who identified with major church denominations (Roman Catholic, Church of Central African Presbyterian [CCAP], Seventh Day Adventist, and Baptist/Apostolic). The greatest hostility was found among men in the Southern Region and members of the Assemblies of God, Jehovah's Witnesses, and Apostle Twelve churches.

'Hostility towards transgender individuals was only slightly less intense. Eighty-five percent said they would not accept a transgender family member, and about three quarters agreed that a transgender person should not take part in Malawian cultures and traditions. Nearly a third (30 percent) agreed that their communities victimized transgender people and rejected families with transgender members, and 66 percent said their communities should not be encouraged to protect transgender people from violence – yet almost nine out of ten (89.1 percent) said they would not advise a transgender family member to keep their gender identity a secret. At the same time, 64 percent said transgender people do not deserve the same human rights as other Malawians, and almost 60 percent said that the human rights of transgender people should not be protected by the constitution. Once again, the strongest hostility was found among men living in the Southern Region, people with only a primary education, and Jehovah's Witnesses. The least hostility was found in the Central Region and among those belonging to the dominant Christian denominations.

'Close to 80 percent of respondents considered sex between two men "just plain wrong," and almost the same number (77.7 percent) said it was "disgusting." Almost three quarters (73.2 percent) agreed or strongly agreed that it was "unnatural." For sex between women, the responses varied only slightly.

[118] The Other Foundation, 'Under Wraps' (page 13), 2019

‘Lesbian sex was called wrong by 77.2 percent, disgusting by 78.5 percent, and unnatural by 74.2 percent. Those who felt that sex between men or between women was natural, not disgusting, and not wrong, was consistent at around 15 percent, which indicates that the potential base for acceptance of LGB people is firm, though small.’ [119]

13.5.4 The Other Foundation 2019 report further stated:

‘The contrast between attitudes towards intersex and transgender people on the one hand and towards gay men, lesbians, and bisexual people on the other appears to be based on a perception that intersex identities and, to a lesser extent, transgender identities, are natural or God-given anomalies but that same-sex sexualities are sinful or perverse lifestyle choices. Malawians are more willing to accept “abnormal” identities and behaviours they believe occur naturally, even if they see them as ‘unpleasant’ or ‘shameful’. This may explain why a majority would accept intersex people in their families but would still want to keep it a secret. Malawians are less willing to accept identities and behaviours they believe have been chosen, even though they may generally feel no animosity towards the individuals. This may explain why substantial percentages of respondents, while condemning same-sex relationships, said they believe ‘God loves’ the people involved in them.

‘A large majority of Malawians therefore accept intersex people and think their rights should be protected. Many also recognize gender diversity as a fact of life and say gender non-conforming people should be accepted in families and communities. And although same-sex sexual relationships are viewed with repulsion by the great majority of Malawians, there is much greater acceptance of same-sex intimacy beyond physical intimacy, such as spiritual and emotional forms of connection and sharing.’ [120]

13.5.5 The USSD 2019 Human Rights Report stated:

‘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 [2019], 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.’ [121]

13.5.6 France 24, in the article ‘Fear and stigma mark life for gays in conservative Malawi’, published on 15 June 2019, noted:

‘Sammy McJessie, 28, a lesbian who is also intersex, meaning there is no self-assignment to gender, said everyday tasks in Malawi were like walking on eggshells.

[119] The Other Foundation, ‘Under Wraps’ (page 59), 2019
[120] The Other Foundation, ‘Under Wraps’ (page 65), 2019
[121] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020

"I'm scared of being attacked, even in public spaces," McJessie said. "You go to the bank, they look at your ID...you have to prove that you're this particular sex that was assigned to you at birth."

'McJessie has a three-month-old relationship with a local woman but said, "I cannot take her to the local market to buy vegetables because that's going to start another issue."' [122]

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13.6 Access to healthcare services

13.6.1 The HRW report, 'Let Posterity Judge' – Violence and Discrimination against LGBT people in Malawi, stated:

'Punitive legal environments constitute a significant barrier to guaranteeing access to sexual health treatment and services for gay and bisexual men and other MSM. The combination of stigma and discrimination based on sexual orientation and gender identity in a criminalized context creates an environment in which these groups of people are deterred from or fearful of seeking prevention, testing, and treatment services. Those whose sexually transmitted infections (STIs) go untreated are at increased risk not only of developing complications, but also of contracting HIV; and those who face barriers accessing HIV testing and treatment due to stigma and discrimination are more likely to die of AIDS…

'Several interviewees told Human Rights Watch that health care professionals subjected them to homophobic remarks and discriminatory treatment, particularly in government hospitals. Peer educators who tried to help gay men and other MSM in accessing health care also reported hospitals turning away their clients…

'The African Commission noted that in Malawi, more than 80 percent of MSM have not disclosed their same-sex sexual practices to a health practitioner, with serious implications for providing health-care services.

'The Malawian authorities have made some efforts to improve the inclusiveness of health services. Malawi's 2015-2020 National Strategic Plan for HIV and AIDS (NSP) expressly includes MSM, recognizing that criminalization of same-sex conduct and persistent stigma and discrimination against marginalized groups hinder the country's HIV response. The NSP outlines a series of programs aimed at addressing these challenges and protecting the human rights of key populations, including MSM: "Stigma and discrimination reduction; provision of HIV related legal services; monitoring and reforming laws, regulations and policies relating to HIV; provision of legal literacy ("know your rights") services; sensitization of law-makers and law enforcement agents; training for health care providers on human rights and medical ethics related to HIV and; reducing discrimination against women in the context of HIV."' [123]

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[122] France 24, 'Fear and stigma mark life for gays in conservative Malawi', 15 June 2019
[123] HRW, 'Let Posterity Judge" – Violence and Discrimination…' Chapter 2, 26 October 2018

13.7 Civil society/NGOs

13.7.1 The Nyasa Rainbow Alliance, RISE Malawi, and CEDEP are all LGBTI NGOs active in Malawi, supporting LGBT persons.

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Section 14 updated: 6 August 2020

14. Women

14.1 Legal rights

14.1.1 Chapter IV Human Rights: Section 24 of the Constitution of the Republic of Malawi sets out the 'Rights of women'[124].

14.1.2 Malawi ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 12 March 1987[125].

14.1.3 The Organisation for Economic Cooperation and Development (OECD) Social Institutions and Gender Index (SIGI) 2019 stated:

> 'There are several protections under the law against discrimination of all forms in the workplace. These include the Malawi Constitution 2004, the Employment Act 2000, and Gender Equality Act 2004. These protections include the prohibition of discrimination in the recruitment, training, terms and conditions, promotion and termination of an employee, the provision of equal remuneration for equal work, and allowances for pregnant women. With regard to the latter, the Employment Act entitles female employees at least eight weeks of maternity with full income paid by the employer, but limits this to every three years. It also guarantees the women full benefits and entitlements during as well job security during her leave (Section 47, 2000).' [126]

14.1.4 The same report also noted:

> 'Under the state's constitution, women and men have the right to own, acquire and maintain property, individually or jointly with others, regardless of their marital status (section 24, 2004). Further, the National Law Policy 2002 identifies women as a vulnerable group whose land rights have been "denied on the basis of customs and traditions that are no longer relevant, or they are totally disregarded due to prejudice and lack of effective representation". Yet, the Policy does not offer further provisions to protect women's right to land. In principle, the state's Constitution is the ultimate authority in the interpretation of all laws, including common and customary law. However, in practice, customary law continues to be practice in some communities. With respect to customary lands, Malawi has a dual matrilineal and patrilineal ownership structure, in which both reinforce discriminatory practices against women.' [127]

For information on legal rights in respect of marriage, divorce and inheritance, see the OECD Social Institutions and Gender Index.

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[124] Republic of Malawi, Constitution (Chapter IV Human Rights: Section 24), 1994
[125] UN OHCHR, 'Ratification Status for Malawi', (n.d)
[126] OECD, SIGI 2019, 'Malawi', (Workplace rights), 8 March 2019
[127] OECD, SIGI 2019, 'Malawi', (Secure access to land and assets), 8 March 2019

See also Official documents and State protection for victims of SGBV.

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14.2 Statistics

14.2.1 The UN in its Human Development Index provides statistical data describing the position of women compared to men in Malawi. The last national Demographic and Health Survey was undertaken in 2015/16 and provides data on women's empowerment, health and domestic violence.

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14.3 Discrimination

14.3.1 The OECD SIGI 2019 stated:

'…women continue to experience discrimination the labour market in Malawi (CEDAW, 2015). In large part, women occupy the informal sector where there is low pay, no social protections and high job insecurity. Some women are blocked from specific industries, such as manufacturing, and on the whole women remain in lower income jobs compared to men, partly due to the lack of enforcement of policies relating to equal pay. This lack of enforcement also extends to laws relating to maternity leave, where there is evidence that some women have lost their jobs due to their pregnancy, but under the guise of another justification…' [128]

14.3.2 The USSD 2019 Human Rights Report stated:

'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.' [129]

14.3.3 The Freedom House Freedom in the World 2020 report, commenting on events in 2019, stated: 'All…gender groups have full political rights under the law. However, women remain underrepresented in politics despite gradual gains, and according to Afrobarometer, they are less likely than men to become politically involved. The 2019 elections featured increased participation by women, with 44 winning seats in the National Assembly. In June, Catherine Gotani Hara became the body's first woman speaker.' [130]

14.3.4 A national report submitted by the Malawian government to the United Nations Human Rights Council (UNHRC) in 2015, in connection with a universal periodic review stated:

'In the agriculture sector, women provide 70 percent of the workforce and produce 80 percent of food for home consumption. However, there are disparities between men and women in their access to and control over agriculture production resources such as land, credit, extension services,

[128] OECD, SIGI 2019, 'Malawi' (Workplace rights), 8 March 2019
[129] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020
[130] Freedom House, 'Freedom in the World 2020', Malawi (Political Pluralism and Participation), 2020

farm implements and inputs. Furthermore, the participation of women in decision-making in the sector is also limited as the process is dominated by men. Women, especially widows, are most affected as they generally experience agricultural related property-grabbing including land, oxen, ploughs and inputs. They also have limited access to agricultural markets due to lack of transport, technology and price negotiation skills.' [131]

See also the Reuters 25 September 2018 report, Malawian women struggle for land rights despite equality drive.

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14.4 Sexual and gender-based violence (SGBV)

14.4.1 The Amnesty International 2017/18 Report stated: 'Gender-based violence continued; seven women were reported to have been murdered in August and September alone. On 14 September, around 150 women participated in a national march to protest against the alarming levels of gender-based violence.' [132]

14.4.2 The USSD 2019 Human Rights Report stated: '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.' [133]

14.4.3 The Freedom House Freedom in the World 2020 report, commenting on events in 2019, stated: 'Domestic violence is common, but victims rarely come forward, and police generally do not intervene in domestic violence cases.' [134]

14.4.4 The OECD SIGI 2019 stated: 'Factors contributing to its prevalence [SGBV] include corruption and lack of training in enforcement agencies, prevailing religious and cultural beliefs that discriminate against women, and ingrained stereotypes and patriarchal attitudes regarding the roles and responsibilities of women and men in the family and in society…' [135]

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14.5 Trafficking

14.5.1 The USSD 2020 Trafficking in Persons report stated: 'As reported over the past five years, human traffickers exploit domestic and foreign victims in Malawi...Traffickers exploit most Malawian victims within the country, generally transported from the southern part of the country to the central and northern regions for forced labor in agriculture (predominantly the tobacco industry), goat and cattle herding, and brickmaking.' [136]

14.5.2 The USSD 2020 Trafficking in Persons report also stated:

'The government demonstrated mixed law enforcement efforts. The 2015 Trafficking in Persons Act criminalized sex trafficking and labor trafficking,

[131] UNHRC, Malawian government national report (para 48), 4 February 2015
[132] Amnesty International, 'Amnesty International Report 2017/18', 'Malawi', 2019
[133] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020
[134] Freedom House, 'Freedom in the World 2020', Malawi, (Personal…/...Rights), 2020
[135] OECD, SIGI 2019, 'Malawi', (Violence against women), 8 March 2019
[136] USSD, '2020 Trafficking in Persons Report', Malawi, 25 June 2020

and prescribed punishments of up to 14 years' imprisonment for offenses involving an adult victim and up to 21 years' imprisonment for those involving a child victim. These penalties were sufficiently stringent and, with regard to sex trafficking, commensurate with punishments prescribed for other serious crimes, such as kidnapping. In 2019, the Malawi Police Service (MPS) reported anti-trafficking law enforcement data from 11 of Malawi's 34 district-level police stations, compared with data from seven district-level police stations during the previous reporting period. MPS reported it arrested 48 suspects, prosecuted 30 alleged traffickers, and convicted 30, compared with 32 suspects arrested, 16 traffickers prosecuted, and 16 convicted during the previous reporting period...

'The government increased protection efforts. The government identified 140 trafficking victims, a slight increase from 132 identified during the previous reporting period; of these victims, 65 were children and 75 were adults. The government referred all child victims to an NGO in Lilongwe and three adult victims to another NGO shelter, where they received counseling, medical care, food, and livelihood training, where appropriate. Local law enforcement outside of Lilongwe worked closely with NGOs to improve coordination and ensure victims were safely referred and received care. The Ministry of Homeland Security launched SOPs and an NRM for victim identification and assistance. In 2017, the government launched an anti-trafficking fund and allocated 150 million Malawian kwacha ($197,370) to the fund in 2019, compared with allocating the same amount in 2018.

'The Ministry of Homeland Security collaborated with an international organization to host an event to raise funding for the construction of a trafficking shelter, during which they raised 11 million Malawian kwacha ($14,470). For the first time, monies from the anti-trafficking fund were used to repatriate victims in coordination with the Government of Nepal. The government did not provide in-kind or financial support for most NGO services, including those offered at the only dedicated shelter for trafficking victims in the country, which was operated by an international NGO.' [137]

14.5.3 A national report, dated 3 March 2020, submitted by the Malawian government in connection with a United Nations Human Rights Council universal periodic review, stated:

'26. The Constitution of Malawi, under section 27 prohibits slavery, servitude, and forced labour. This provision is further fortified by the Trafficking in Persons Act which was passed in 2015. It protects children against exploitation, abuse, slavery, servitude and forced labour by criminalising such acts…

'27. Furthermore, the Malawi Police Service (MPS) through their Child Protection Section in the Community Policing Services Branch, plays a crucial role in protecting children from trafficking. In 2017, the MPS rescued 121 victims of trafficking. Out of this number, 35 were children.

'28. Traditional leaders, members of the public and Community Policing Structures are also playing a vital role in identifying trafficking perpetrators and rescuing victims. Phalombe and Mchinji districts are among the districts

[137] USSD, '2020 Trafficking in Persons Report', Malawi, 25 June 2020

with strengthened community policing structures assisting in curbing trafficking in persons.' [138]

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14.6 State protection for victims of SGBV

14.6.1 The USSD 2019 Human Rights Report stated:

'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.' [139]

14.6.2 The USSD 2019 Human Rights Report also stated:

'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…

'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.' [140]

14.6.3 The OECD SIGI 2019 stated:

'The protection of the rights of women with regard to their physical wellbeing is provided for in the state Constitution (section 13, 24, and 2004). Moreover, the Penal Code 1930 (section 137) states that any person who unlawfully and indecently assaults any woman or girl shall be liable to imprisonment for fourteen years. In 2006, the government passed the Domestic Violence Act, and in 2010, the Child Care, Protection and Justice Act; both key pieces of legislation that provide protections for women and young girls, including physical, sexual, psychological, or financial abuse as well as any "social or customary practice that is harmful to the health or general development of the child", thus providing the potential for wide protections…

'Further, there is a lack of adequate services and protection for survivors of violence, including weak reporting mechanisms and the absence of

[138] UNHRC, Malawian government report, (paras 26-28, page 9), 3 March 2020
[139] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020
[140] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020

awareness campaigns to sensitize women about their rights, allowing violence against women to thrive…' [141]

14.6.4 The OECD SIGI 2019 also stated:

'In 2006, the government passed the Prevention of Domestic Violence Act, wherein it defines "domestic violence" as "includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, child, any other person who is a member of the household, dependant or parent of a child of that household". The Act also recognizes domestic relationships that are or have been in existence of more than 12 months. To further support the law, the state developed the National Plan of Action to Combat Gender-Based Violence in Malawi 2014 – 2020, which makes provisions to ensure integrated services for survivors of violence, including shelters, health, psychosocial and legal services…

'Sexual Violence, and in particular rape, is criminalized by law under the state's Penal Code (section 132) as well as in Marriage, Divorce and Family Relations Law (Section 62)…The offence [rape] is punishable with death or imprisonment for life with or without corporal punishment (Penal Code, 1930)…

'Marital Rape is not specifically mentioned in the penal code, however women can seek justice through other state legislation, including the Prevention of the Domestic Violence Act (2006), which considers sexual abuse by an intimate partners as a form of domestic violence; as well as the Marriage, Divorce and Family Relation Law (2015), which protects women undergoing judicial separation from their husbands. Still, by not explicitly regulating spousal rape, the law remains unclear and is at the discretion of the courts to interpret the law, which allows for inconsistencies in its application and thus women unprotected (Center for Reproductive Rights, 2015).' [142]

14.6.5 The UN Resident Coordinator for Malawi noted in November 2019:

'The Government of Malawi has shown great commitment to eliminate Gender Based Violence. Malawi is party to the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). The country's Constitution also prohibits discrimination of persons in any form and obliges the State to promote gender equality. The Malawi Government has also adopted several policies and legal frameworks to address gender-based violence issues, including the National Gender Policy and National Action Plan to Combat Gender Based Violence in Malawi (2014-2020); Gender Equality Act, Domestic Violence Act, Deceased Estate: Wills and Inheritance Act among others. Although, this is the case, Sexual and Gender Based Violence remains a serious problem in Malawi.' [143]

[141] OECD, SIGI 2019, 'Malawi' (Violence against women), 8 March 2019
[142] OECD, SIGI 2019, 'Malawi' (Domestic violence), 8 March 2019
[143] UN, 'Eliminating Gender Based Violence is Possible', 25 November 2019

14.6.6 A national report submitted by the Malawian government to the United Nations Human Rights Council (UNHRC) in 2015, in connection with a universal periodic review stated:

'In February, 2013, the National Assembly passed the Gender Equality Act. The Gender Equality Act has provided for protection of women from harmful practices; against sexual harassment and sex discrimination…

'The Gender Equality Act also prohibits "harmful practices" defined as a social, cultural, or religious practice which, on account of sex, gender or marital status, does or is likely to undermine the dignity, health or liberty of any person; or result in physical, sexual, emotional, or psychological harm to any person.' [144]

See also Legal rights.

14.6.7 The USSD 2019 Human Rights Report stated:

'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.' [145]

14.6.8 The OECD SIGI 2019 stated:

'The Gender Equality Act (2012) makes clear that sexual harassment in all forms of "unwanted verbal, non-verbal or physical conduct of a sexual nature" is prohibited, in the public space and work place. The Act further stipulates that the offence is subject to fines and imprisonment. Civil Society organisations in Malawi report that sexual harassment is often underreported due to the fear of losing one's job and the lack of mechanisms in place to report sexual harassment in the work place (Joint Malawi CSOs, 2015).' [146]

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14.7 Single women/mothers

14.7.1 CPIT could not information about the treatment of single women/mothers from information sources in the public domain (see Bibliography for the list of sources used).

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[144] UNHRC, Malawian government national report, (paras 36 and 37), 4 February 2015
[145] USSD, 2019 Human Rights Report, Malawi (section 6), 11 March 2020
[146] OECD, SIGI 2019, 'Malawi', (Sexual Harassment), 8 March 2019

14.8 Access to support and services

14.8.1 A number of women's NGOs are active in Malawi providing care and support services to vulnerable women, such as the Malawi Women's Association[147], WOLREC[148], and Women's Hope for Change[149].

See also State protection for victims of SGBV and Civil society/ NGOs

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[147] Global Hand, 'Malawi Women's Association (MAWA)', (n.d)
[148] WOLREC, homepage, (n.d)
[149] Women's Hope for Change, homepage, (n.d)

Terms of reference

A ‘Terms of Reference’ (ToR) is a broad outline of what the background note seeks to cover. They form the basis for the country information section. The Home Office’s Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular background note, the following topics were identified prior to drafting as relevant and on which research was undertaken:

Country overview:

- Geography and demography
  - Key geographical and demographic facts
  - Population distribution, density and birth/death rate
  - Transport links
  - Languages
  - Ethnic groups
  - Religious demography
- Political system
  - Constitution
  - Organisation and structure
  - Political freedom, political parties and elections
- Economy
  - Overview
  - Key economic facts
- History
- Media and communications
- Citizenship and nationality
- Official documents
  - Registration of births, marriages, and deaths
  - Identity cards and passports etc
  - Fraudulent documents
- Healthcare
  - Organisation and personnel
  - Availability
  - Mental healthcare
- Children
  - Education

        - Child labour
        - Child marriage/forced marriage
        - Female genital mutilation
        - Children's social care and support organisations
    - Key issues relevant to protection claims
        - Criminal justice system
            - Police
            - Effectiveness
            - Human rights abuses
            - Oversight bodies
            - criminal law
            - constitution/penal code
            - The judiciary
            - Effectiveness and independence
            - Prison conditions
        - Freedom of movement
            - External/internal movement
        - Women
            - Legal, social and economic rights
            - Discrimination
            - Sexual harassment
            - SGBV
            - State and legal protection for victims of SGBV
            - Trafficking
            - NGO support services for women
            - Single women/mothers
        - Sexual orientation, gender identity and expression
            - Legal rights
            - State treatment
            - Societal treatment and discrimination
            - Civil society/NGOs

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Version control

Clearance

Below is information on when this note was cleared:

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