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U.S. Department of State

Malawi Country Report on Human Rights Practices for 1996

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MALAWI

The Republic of Malawi held its first democratic, multiparty elections since independence in May 1994. President Bakili Muluzi principally relies on the ruling United Democratic Front (UDF), which holds 82 of the 177 seats in the National Assembly. The opposition Malawi Congress Party (MCP), formerly the sole legal party, holds 52 seats. The Alliance for Democracy (AFORD) split over the UDF-AFORD coalition and the continued presence of AFORD Members of Parliament (MP) in the Cabinet, reducing AFORD's number of MP's to 27. Six former AFORD MPs and one former MCP MP sit as independents. Both the MCP and AFORD opposition alleged government corruption; AFORD also protested Muluzi's appointment of AFORD members as ministers without consulting with the party leadership. In July the MCP and AFORD withdrew from the National Assembly, arguably depriving that body of its quorum. The parties referred the political impasse to the judiciary for resolution. The judiciary has demonstrated independence in several high profile political cases, although there are frequent, but unproven, allegations that its decisions result from political bias or bribery.

The National Police, headed by the Inspector General of Police under the Ministry of Home Affairs, is responsible for internal security. Although the army is apolitical, the police occasionally called on the army for support. While violence and common crime have become frequent, there was no indication of organized activity in Malawi or abroad by remnants of the Malawi Young Pioneers (MYP), formerly the MCP's paramilitary wing. Despite notable improvements, there continued to be credible allegations of human rights abuses by the police.

Small, densely populated, and landlocked, Malawi's economy is predominately agricultural. Over 85

percent of the population derives its income from agriculture. Tobacco remains the primary foreign exchange earner; other cash crops include tea, coffee, and sugar. Foreign aid remains a critical source of income. The Government continued to extend market pricing in the agricultural sector and began privatizing the ownership of public enterprises. The high inflation that has plagued Malawi for several years abated toward the end of 1996, following the country's first good rainy season in several years. The economy was expected to grow by 11 percent in real terms. Per capita income is below \$200. Wealth remains concentrated in the hands of a small elite, many of whom remain aloof from national politics.

The Government generally respected the human rights of its citizens, but serious problems remained. The police continued to abuse detainees and to use excessive force in handling criminal suspects. There were instances of deaths of detainees while in, or shortly after release from, police custody. In implementing reforms the Inspector General of Police stressed public accountability and transparency. Prison conditions remained poor. Lengthy pretrial detention, the inefficient and understaffed judicial system, and limited resources called into question the ability of defendants to receive a timely and, in some cases, a fair trial. High levels of crime prompted angry mobs to summarily execute alleged criminals.

The Government remained in control of the broadcast content of the nation's radio stations. It delayed consideration of proposed legislation on the reform of the Malawi Broadcasting Corporation and did not issue any new broadcasting licenses. By contrast the print media continued to report freely. The Human Rights Commission mandated by the Constitution to explore human rights violations was established but made very little progress. Women continued to experience severe societal discrimination, and violence against women and children remained a problem. The Government has taken steps to assist disadvantaged women in its economic development programs.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom from:

a. Political and Other Extrajudicial Killings

There were incidents of deaths of detainees while in, or shortly after release from, police custody. Most serious were the March 5 deaths from suffocation in severely overcrowded cells of 17 prisoners. The Government and police responded to this incident of police negligence by promptly laying out the facts of the incident. Although the police normally do not issue statements on deaths in custody, the Inspector General released on March 7 a statement to the press describing this incident and announcing an inquiry. A presidential inquiry as well as a joint Inspectorate of Prisons/Human Rights Commission inquiry were subsequently announced on March 7 and 8. (Of the three, only the Inspectorate/Human Rights Commission inquiry eventually delivered its report. The report acknowledged the full cooperation and helpful assistance of the Inspector General, who made witnesses and records available.) The station officer and officer in charge were indicted, and the prison officials on duty were suspended on March 8. During the course of the inquiry, the Inspector General of Police informed the Inspectorate/Human Rights Commission that an internal inspectorate had been established to address these and other issues. During a September followup visit, the Inspectorate of Prisons noted that many of the recommended improvements to the facility had been carried out and that prison recordkeeping was much improved.

The inquest into the April 1995 shooting of former Army Commander Manken Chigawa revealed not only sketchy police investigation into his death, but serious inconsistencies between police and witness accounts of the deaths while in police custody of his two alleged killers. These accounts and the

apparent attempts by some police subordinates to hide deaths or incidents of mistreatment prompted the Inspector General to establish the internal inspectorate to address issues of police misconduct.

Frustrated by inadequate law enforcement and rising crime, angry mobs sometimes resorted to vigilante justice in beating, stoning, or burning suspected criminals to death. The Government made no discernible effort to punish individuals who carried out these abuses.

b. Disappearance

There were no reports of politically motivated disappearances.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The Constitution prohibits torture and other cruel, inhuman, or degrading treatment. Although that provision is generally respected, the Inspectorate of Prisons, an investigative body mandated by the Constitution, confirmed that the police continued to physically abuse detainees. However, the incidence of abuse has dropped. While higher ranking officials demonstrated familiarity with new standards for the humane treatment of prisoners, their subordinates commonly employed unacceptable techniques. According to an October Inspectorate of Prisons report, unacceptable techniques included beatings, whippings, dog attacks, knifings, and the intentional deprivation of food, water, toilet facilities, and medical care to force confessions. These abuses are sometimes hidden by keeping a prisoner in police custody until wounds heal before turning the prisoner over to the prison system for remand. The mistreatment is partly due to the mistaken belief of many police officers that the law requires them to present a case (not just charges) to the court within 48 hours of arrest. The Government also sought community involvement in its comprehensive reform of the police.

Prison conditions remained poor. Overcrowding, inadequate nutrition, and substandard sanitation and health facilities remained serious problems. While not kept in separate facilities, women are segregated within the prison compound and tended by female guards. The Inspectorate of Prisons and local organizations monitor police behavior and prison conditions without government interference.

d. Arbitrary Arrest, Detention, or Exile

The law permits the accused to challenge the legality of detention, to have access to legal counsel, and to be released or informed of charges by a court of law within 48 hours. In an effort to comply with the 48-hour rule, police occasionally resorted to beatings in order to extract information necessary to their case. In cases where the court determines that a defendant cannot afford to supply his own counsel, legal services are supposed to be provided by the Government. With few persons able to afford legal counsel, the country's four public defenders were not sufficient to meet the needs of indigent detainees. Bail is frequently granted to reduce prison overcrowding. Its use often bears only a tenuous relation to the merits of an individual's situation. September statistics indicate that approximately 35 percent of the 4,887 prison inmates are detainees awaiting trial.

On August 29, William Phakamisa and two others were arrested for allegedly conspiring to kill key government and UDF officials. Police officials subsequently told his family that Phakamisa had been released from custody when in fact he was being held incommunicado at police facilities. Phakamisa claimed that the detention was intended to extract his cooperation in implicating opposition leaders in a plot.

Exile is not used as a means of political control. However, against the directive of its own High Court,

the Government acquiesced in the exile to Malawi of Zambian political dissidents.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government respects this provision in practice. The judiciary demonstrated a high degree of independence from elected officials in several high profile political cases. Allegations that individual judges were corrupt or politically biased were common but unproven.

The Constitution provides for a High Court, a Supreme Court of Appeal, and subordinate magistrate courts. The Chief Justice is appointed by the President and confirmed by the National Assembly. Other justices are appointed by the President following a recommendation by the Judicial Service Commission. All justices are appointed until the age of 65 and may be removed only for reasons of incompetence or misbehavior, as determined by a majority in Parliament and the President.

By law defendants have the right to a public trial but not to a trial by jury. In dealing with murder cases, the High Court nevertheless used juries of seven persons from the defendant's home district. Defendants are also entitled to an attorney, the right to adduce and challenge evidence and witnesses, and the right of appeal. However, the judiciary's budgetary and administrative problems effectively denied expeditious trials for many defendants. No murder trials by jury have been conducted before the High Court since December 1995. Nevertheless, prisoner deaths and the release of those held on the basis of weak evidence decreased the backlog of homicide cases.

The judicial system is also handicapped by serious weaknesses, including poor record keeping, shortage of trained personnel, and a heavy caseload. Traditional court judges, absorbed into the magistrate court system, received training to acquaint them with court procedure and the body of law they are now expected to administer.

Many of the country's old repressive laws were superseded by the new Constitution. The High Court overturned old laws that were in conflict with the Constitution. In consultation with nongovernmental organizations (NGO's) and parliamentarians, the Law Commissioner undertook to clarify ambiguities in the Constitution and to bring legislation on women into compliance with new constitutional standards.

Juvenile offenders have special rights under the Constitution, including the right to be separated in custody from adults, to be treated in a manner that accounts for age and the possibility for rehabilitation, and to be exempted from the punishment of life imprisonment without the possibility of release.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

Government authorities generally respected the constitutional right to privacy regarding person, family, home, and private communications. However, army and police forces, in carrying out sweeps for illegal weapons, did not obtain search warrants as required by law. Postal authorities have apparently ceased their past practice of opening and inspecting private correspondence.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The new Constitution superseded old laws restricting the press and now provides for freedoms of speech and press. The Government generally respected these rights in practice. The Government also generally tolerated the broad spectrum of political and ideological opinion presented in the country's two dozen newspapers. However, media representatives complained about government secrecy and periodic verbal threats against members of the press by government officials. In May the Government launched its own official weekly newspaper.

Malawi has two radio stations. A small private station broadcasts only religious programming and is not permitted to broadcast news. State-owned Malawi Broadcasting Corporation (MBC), however, is the most important medium for reaching the public. MBC programming was dominated by reporting on the activities of senior government figures and official government positions. Parties and groups opposed to the Government largely were denied access to the broadcast media. MBC reporters were disciplined or fired for their reporting on opposition parties. News stories were pulled in midbroadcast and press conferences heavily edited to avoid politically sensitive material. MBC refused to air paid public announcements of labor union events. The Government effectively blocked consideration of legislation to make MBC a more independent public broadcasting entity and continued to deny applications to establish new private radio stations.

There were no restrictions on academic freedom.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly and association, and the Government respects these rights in practice. Authorities routinely granted official permits, which are required by law for large meetings. The Government requires organizations, including political parties, to register with the Registrar General in the Ministry of Justice. Despite frequent lengthy delays, there were no reports of groups being denied registration.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government respects this right in practice. Religious groups must register with the Government.

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

Citizens have freedom of movement and residence within the country, and the right to leave and return. The National Assembly took the final steps to lift the remaining restrictions on where Asians, whether citizens or not, could reside and work. To date there has been little movement by Asians and other expatriates from cities and towns to rural areas.

The Government cooperated with the Office of the United Nations High Commissioner for Refugees (UNHCR) in managing the refugee community. According to the UNHCR, Malawi now hosts approximately 1,500 refugees. There were 200 new cases in December alone, primarily due the crisis in the Great Lakes region of Africa. This influx had not diminished by year's end. Approximately 1 million refugees from Mozambique left Malawi in 1995. Although the Government grants refugee status, it does not accept refugees for resettlement and does not permit them to work or study. There were no reports of forced return of persons to a country where they feared persecution. Approximately 1,500 refugees, primarily from Somalia and the Great Lakes region, are housed at Malawi's Refugee Center. Asylum applicants are granted hearings to make their case for refugee status. Although there were no reports of bona fide refugees seeking first asylum being turned away, NGO sources have expressed concern that

some of those found not to be bona fide refugees--primarily Zaireans--were rejected because of poor quality translation or ambiguous questions that trapped or misled otherwise qualified refugees. The Government is increasingly wary of those who travel long distances to seek asylum in Malawi. Foreign Minister George Ntafu, responding to reports of a Great Lakes refugee trek to Malawi, declared in December that the refugees would not be permitted into the country. In that month, nine Rwandan refugees were intercepted and returned to Tanzania after illegally crossing into Malawi, but hundreds more have succeeded in making their way into the refugee camp.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Citizens are generally able to exercise this constitutional right. Malawi has universal suffrage for citizens 18 years of age and older. There were allegations of vote buying, intimidation, and the misuse of government assets during by-elections, which were common practices under the Banda regime. In one case where voters were permitted to cast ballots despite allegedly selling or losing their registration cards, the Electoral Commission determined that the violation did not affect the outcome of the election and declined to strike down the election result.

President Muluzi, Vice President Justin Malewezi, and a 25-member Cabinet exercise executive authority. The Second Vice Presidency remains vacant following the resignation of Chakufwa Chihana and the collapse of the UDF-AFORD coalition. While the executive and the legislature were elected in free, democratic elections, the executive in fact exerted considerable influence over the legislature. Local elections have been postponed due to a lack of funds, effectively preventing the citizenry from selecting new local leadership. However, in November the Minister of Local Affairs reaffirmed the Government's commitment to the ongoing reorganization of local government structures. Although the Government does not prevent the operation of opposition political parties, the parties have alleged that the Government utilizes bribery and other inducements to encourage opposition party divisions and defections of key personnel to the UDF.

There are no laws that restrict the participation of women or minorities in the political process. In practice, however, there are very few women in prominent government positions. Only two ministers and two deputy ministers are women, and there are nine women in the National Assembly. Despite the small number of female parliamentarians, the parliamentary women's caucus has worked effectively with the Law Reform Commissioner on draft legislation to bring the law into compliance with constitutional guarantees protecting women.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of local and international human rights groups operated without government restriction, training civic educators, advocating changes to existing laws and cultural practices, and investigating and publishing their findings on human rights cases. Government officials are generally cooperative and responsive to their views.

The Ombudsman, mandated by the Constitution to investigate and take legal action against government officials responsible for human rights violations and other abuses, began functioning. However, the Ombudsman's freedom of action was circumscribed by legislation that requires a warrant and a 3-day waiting period to gain access to certain government records. The Constitution also provides for a National Compensation Tribunal (NCT) to entertain claims of criminal and civil liability against the former government. As of September the NCT had awarded nearly \$200,000 to 200 claimants. Other large sums were disbursed to settle non-NCT lawsuits against the Government for similar human rights

violations. However, the prominence of many of both the NCT and non-NCT recipients raised concerns of favoritism. With two members named, the constitutionally mandated Human Rights Commission, also entrusted with monitoring and protecting against violations of constitutional rights, had barely begun to function by year's end and awaits further legislation on membership and procedures.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The Constitution specifically provides for equal rights for women; forbids discrimination based on language, culture, or religion; and generally provides every citizen the right to equality and recognition before the law. In practice the capacity of government institutions to assure equal rights for all citizens is limited.

Women

Spousal abuse, especially wife beating, is common. Malawian society has begun to take problems of violence against women more seriously. The press published more frequent accounts of rape and abuse, and the judiciary imposed heavier penalties on those convicted of rape. However, domestic violence is not discussed openly by women, reportedly even among themselves, and there are no confidential shelters or facilities for treatment of women who suffer physical or sexual abuse. Police do not normally intervene in domestic disputes.

Under the new Constitution, women have the right to full and equal protection by law and may not be discriminated against on the basis of their sex or marital status. In practice, however, discrimination against women is pervasive, and women do not have opportunities equal to those available to men. Women, especially in rural areas, historically have been unable to complete even a primary education and are therefore at a serious disadvantage in the job market. Women often do not have equal access to legal and financial assistance, and wives are often victims of discriminatory inheritance practices in which the majority of the estate is taken unlawfully by the deceased husband's family. Women are usually at a disadvantage in marriage, family, and property rights but have begun to speak out against abuse and discrimination. The Law Reform Commissioner took steps to bring legislation on women into compliance with new constitutional standards (see Section 1.e.).

The Government addresses women's concerns through the Ministry of Women and Children Affairs and Community Development. The National Commission on Women in Development (NCWID) coordinates Government and NGO activities. After the President remarked that he wished to appoint more women but did not know of suitable candidates, the NGO Women's Voice prepared a book for him containing resumes of 250 prominent women. The book subsequently served as a source for recent appointments to boards of parastatal (state-owned) organizations.

Children

The Constitution provides for equal treatment for children under the law, and the Government greatly increased spending on children's health and welfare. The Government has established free primary education for all children, although education is not compulsory. A few charitable organizations attempted to reduce the number of child beggars in urban areas and find alternative care for them. The problem of street children worsened as the number of orphans whose parents died from HIV/AIDS increased.

There are societal patterns of abuse of children. A few small ethnic groups practice female genital mutilation (FGM), which is widely condemned by international health experts as damaging to both

physical and psychological health. The media have also begun to report on the sexual abuse of children, especially in relation to traditional practices of initiation. While still shrouded in secrecy, emerging data on rites to initiate girls into their future adult roles suggest that abusive practices are widespread and more damaging than previously believed. Also, the common belief that sex with children reduces the risk of AIDS contributes to the sexual abuse of minors.

People with Disabilities

The Government has not mandated accessibility to buildings and services for the disabled, but one of the national goals listed in the new Constitution is to support the disabled through greater access to public places, fair opportunities in employment, and full participation in all spheres of society. Special schools and training centers, which assist individuals with disabilities, and several self-supporting businesses run by and for the disabled have existed for some time.

National/Racial/Ethnic Minorities

Malawians of African heritage are members of indigenous tribes and are not discriminated against by government or society. Although former restrictions on where Asians could live and work are now unconstitutional, only a few Asians tested the new policy (see Section 2.d.).

The Government considered various proposals on temporary employment permits for expatriates but has yet to clarify its policy and procedures. The Government's decision not to automatically renew the permits caused concern and sometimes hardship to businessmen, teachers, health workers, and missionaries. Business residence permits are readily granted to new investors.

Section 6 Worker Rights

a. The Right of Association

Although signed into law in June, the Labour Relations Act of 1996 did not enter into force. Thus, labor issues continue to be covered by the old legislation. Workers have the legal right to form and join trade unions, but unions must register with the Ministry of Labour and Manpower Development (MOLMD). Unionization is on the rise, but resistance on the part of many employers remained. Army personnel and police may not belong to trade unions, but other civil servants are allowed to form unions. There were 13 registered trade unions. Given the low percent of the work force in the formal sector (about 12 percent), plus the lack of awareness of worker rights and union benefits, only a minuscule percent of the work force are union members. Statistics on the numbers of union members are not available. Unions are independent of the Government, parties, and other political forces. Although there are no restrictions on the number of union federations, Malawi has only one, the Malawi Congress of Trade Unions (MCTU). All unions are affiliated with it. According to the MOLMD, there are no unusually difficult registration procedures that would prevent a trade union from registering.

Members of registered unions in "essential services" have the right to strike after having carried out prescribed procedures. Essential services are nowhere specified; they are determined by the Minister of Labour. The Trade Union Act requires that labor disputes in essential services be reported in writing to the Minister of Labour, who then attempts to negotiate a settlement. He may refer the case to a tribunal within 28 days of receiving the dispute report if it is not possible to reconcile the parties. The law implies that if a trade dispute has gone through this process, and if it has not been resolved or referred to a tribunal, workers in essential services may strike. There were a handful of strikes, with no clear agreement on which strikes were legal. As the Trade Union Act requires that unions must approve

strikes by secret ballot, all the strikes may have been illegal.

The laws do not specifically prohibit retaliation against strikers. There is no prohibition on actions against unions that are not legally registered. Arbitration rulings are legally enforceable.

Unions may form or join federations and affiliate with international organizations with government permission.

b. The Right to Organize and Bargain Collectively

Unions have the right to organize. The right to bargain collectively, although practiced, is only implied and not expressly protected by law.

The Ministry of Labour sets minimum wage rates based on recommendations of the Tripartite Wages Advisory Board.

The law prohibits antiunion discrimination by employers, but there are no effective mechanisms for resolving complaints, and there is no legal requirement that employers reinstate workers dismissed because of union activities.

In August 1995, Parliament approved legislation to establish six export processing zones (EPZ's); four were operational by year's end. The full range of labor legislation applies to the EPZ's.

c. Prohibition of Forced or Compulsory Labor

The new Constitution prohibits forced labor, and such labor is not employed.

d. Minimum Age for Employment of Children

The Constitution defines children as those under the age of 16 years and prohibits the employment of children in work that is hazardous, harmful, industrial, or interferes with their education. However, while primary education is now free and universal, it is not compulsory. Enforcement by police and labor inspectors in the MOLMD is not effective because of budgetary constraints. There is significant child labor on tobacco and tea estates, subsistence farms, and in domestic service. There is no special legal restriction on children's daytime work hours.

e. Acceptable Conditions of Work

There are two legislated minimum wage rates, but the administratively set minimum wages are insufficient to support a worker and family. Wage earners tend to supplement their incomes through farming activities carried out through the extended family network. The urban minimum wage is roughly \$0.78 (MK11.85) per day, including \$0.08 for rent; in all other areas it is roughly \$0.56 (MK8.50) per day, including \$0.07 for rent. The MOLMD is unable effectively to enforce the minimum wage. The prescribed minimum wages are largely irrelevant for the great majority of citizens who earn their livelihood outside the formal wage sector.

The maximum legal workweek is 48 hours, with a mandatory weekly 24-hour rest period. The laws require payment for overtime work and prohibit excessive compulsory overtime. However, labor inspections are more the exception than the rule, and the statutory restrictions are frequently violated.

The Workers' Compensation Act includes extensive occupational health and safety standards. Enforcement of these standards by the MOLMD is erratic, and workers--particularly in industrial jobs--often work without basic safety clothing and equipment. MOLMD officials say that workers have the right to remove themselves from dangerous work situations without jeopardy to continued employment. However, given the low level of education of most workers and the high level of unemployment, they are unlikely to exercise this right. Workers dismissed for filing complaints about workplace conditions can theoretically file a complaint with the nearest labor office or sue the employer for wrongful dismissal.

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