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U.S. Department of State

Malawi Country Report on Human Rights Practices for 1997

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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 opposition Alliance for Democracy (AFORD) split over the UDF-AFORD coalition and the continued presence of AFORD Members of Parliament (M.P.'s) in the Cabinet, reducing AFORD's number of MP's to 27. Seven former AFORD M.P.'s and two former MCP M.P.'s sit as independents. AFORD and MCP ended their 9-month boycott of Parliament in March. The legislature demonstrated only limited independence from the executive. In October a High Court judge ruled that cabinet ministers could not also sit as Members of Parliament, potentially affecting 21 seats. The judiciary has demonstrated independence in several high profile political cases, although there are frequent 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.

Malawi is small, densely populated, and landlocked. The 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 privatizing the ownership of public enterprises. The economy was expected to grow by 7 percent in real terms; the inflation rate was about 15 percent. Annual per capita income is below \$200. Wealth remains concentrated in the hands of a small elite.

The Government generally respected the human rights of its citizens in many areas, 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 execute summarily alleged criminals.

The Malawi Broadcasting Corporation inaugurated its second channel, and the Government granted two broadcast licenses, one to a station broadcasting only religious programming and one to a private station scheduled to begin broadcasting in early 1998. By contrast the print media continued to report freely. The Human Rights Commission mandated by the Constitution to explore human rights violations made little progress. Women continued to experience severe societal discrimination, and violence against women and children remained a problem. The Government took steps in its economic development programs to assist disadvantaged women. The Government intimidated civil servant strikers, dispersed them with tear gas, prohibited their peaceful assembly, and arrested, suspended, or transferred strike leaders in an effort to break the union.

RESPECT FOR HUMAN RIGHTS

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

a. Political and Other Extrajudicial Killing

There were no reports of political killings. There were incidents of deaths of detainees while in, or shortly after release from, police custody. These deaths involved possible use of excessive force or possible negligence, as in the June death of one of the suspects in a bank fraud case.

Several prisoners died largely due to poor prison conditions (see Section 1.c.).

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 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 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 1996 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 continued to seek 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. Poor conditions contributed to the deaths of several prisoners following an outbreak of tuberculosis at the prison in Zomba. While not kept in separate facilities, women are segregated within the prison compound and tended by female guards.

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. December statistics indicated that approximately 35 percent of the 5,950 prison inmates were detainees awaiting trial.

Exile is not used.

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. The judicial system is also handicapped by serious weaknesses, including poor record shortage of trained personnel, and a heavy caseload.

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.

Traditional court judges, absorbed into the magistrate court system, received some 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 addressed the ambiguities in the Constitution and proposed legislation on women to bring Malawi's laws 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.

Malawi has three radio stations. A small private station broadcasts only religious programming and is not permitted to broadcast news. In October the Government granted a license for a second private radio station. State-owned Malawi Broadcasting Corporation (MBC), which broadcasts on two channels, 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 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 any more 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. Missionaries experienced occasional difficulties in renewing employment permits. While the Government announced a new policy and procedures on temporary employment permits, there were lengthy delays involved in securing renewals of permits (see Section 5).

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. Despite the lifting of restrictions on the movement of Asians, 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 hosted over 1,700 refugees, primarily from Somalia and the Great Lakes region, at the country's refugee center. Although the Government grants refugee status, it does not accept refugees for resettlement and does not permit them to work or study. 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 Congolese--were rejected because of poor quality translation or ambiguous questions that trapped or misled otherwise qualified refugees. There were no reports of forced return of persons to a country where they feared persecution.

There was a sharp increase in the number of Rwandan and Congolese asylum seekers during December 1996 and the first quarter of the year. The Government is increasingly wary of those who travel long distances to seek asylum in Malawi. In February the Government decided that no further applications for asylum from Rwandans would be considered. The Government also invoked the principle of first country of asylum, as many of the Rwandans and Congolese either had requested asylum in another country or had the opportunity to do so. In August refugees at the center were told that they could choose to go home voluntarily or they would be required to demonstrate fear of persecution on an individual basis. Many registered their willingness to repatriate. In August security personnel turned up at the center, and even though they did not interact with the refugees, approximately 600 refugees fled, fearing forced repatriation. After additional assurances that any repatriation would be voluntary, some refugees returned to the camp. By mid-September 57 Rwandans had registered their willingness to repatriate, and a screening process had begun for those unwilling to repatriate.

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 and intimidation during by-elections.

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. In November 1996, the Minister of Local Affairs reaffirmed the Government's commitment to the ongoing reorganization of local government structures, but the Government has taken no steps to date to organize local elections, raising the possibility of further postponement. In July the Minister of Local announced that, to hold down costs, local government elections would be postponed and would be held

concurrently with the May 1999 presidential and parliamentary elections. Since that announcement, debate over representative local government has intensified among the Cabinet, opposition parties, NGO's, and the electoral commission. The commission has questioned the postponement, arguing that there would be confusion if local and national elections were held simultaneously in 1999. 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. 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. The Parliamentary Women's Caucus has worked effectively with the Law Reform Commissioner on draft legislation to bring laws 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 is mandated by the Constitution to investigate and take legal action against government officials responsible for human rights violations and other abuses. 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 August, the NCT estimated that it would need \$35 million to cover the estimated 7,000 filed claims; to date, only 15 percent of these claims have been resolved. Other large sums were disbursed to settle non-NCT lawsuits against the Government for similar human rights violations. However, the prominence of many of the 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.

The Inspectorate of Prisons and local organizations monitor police behavior and prison conditions without government interference.

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 have significantly lower levels of literacy, education, political representation, formal and nontraditional employment opportunities, and access to resources to increase agricultural productivity.

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. In education, accepted economic and social practice hampers the ability of women and girls to succeed. In the 15-45 age group, female literacy is less than 35 percent. Male literacy is about 45 percent. Girls drop out of school more frequently than boys, and in the last year of primary school, only about 25 percent of all students are girls. Despite recent significant gains in girls' education, large gaps remain between girls' and boys' achievement. Still, there have been signs of improvement in education for girls. Girls are now entering first grade in the same proportion as boys, and 39 percent of the secondary school entrants are girls.

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. Female-headed households are disproportionately represented in the bottom quarter of income distribution. In a country where 85 percent of the population is rural, 70 percent of the rural female population farm full-time. Typically, women work more hours than men to complete the same farm tasks because they rarely have the improved tools and equipment and remain responsible for all household tasks. Women have limited access to agricultural extension services, training, and credit. Some progress has been made in all of these areas with gender training for agricultural extension workers and the gradual introduction of rural credit schemes for women. The participation of women in the limited formal labor market is particularly constrained. Women make up less than 5 percent of the country's managerial and administrative cadres.

Women face significant health challenges. Malawi has a high maternal mortality rate. AIDS is a major threat, and females in the 15 to 24 age bracket are six times more likely to be HIV positive than men.

The Law Reform Commissioner has undertaken a review of legislation that discriminates against women and has proposed legislation to bring the law into compliance with new constitutional standards. In November Parliament passed an affiliation bill that raised the minimum level of child support.

The Government addresses women's concerns through the Ministry of Women, Youth, and Community Services. The National Commission on Women in Development coordinates government and NGO activities. The inaugural meeting of the Gender Initiative Network (GIN) was held in March. The GIN attempts to bring together the largely urban women's rights activists and the overwhelming rural majority to discuss common interests.

Children

The Constitution provides for equal treatment of children under the law, and the Government greatly increased spending on children's health and welfare. The Government established free primary education for all children in 1994, although education is not compulsory. Well over half of the country's children

live in poverty, mostly in rural areas. Children in rural, female-headed households are among the poorest. 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. In 1995 there were an estimated 140,000 children who had lost their mother to AIDS, and this is expected to increase to 300,000 by 2000.

Only a third of children are within relatively close access to safe drinking water. The infant mortality rate is high. Child malnutrition is a serious problem.

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 rites to initiate girls into their future adult roles are still shrouded in secrecy, emerging data suggest that abusive practices are widespread and more damaging than previously believed. Also the belief that children are unlikely to be HIV positive contributes to the sexual abuse of minors. National data on AIDS cases show that adolescent girls are three to four times more likely than adolescent boys to be HIV positive or to suffer from AIDS.

In November Parliament passed an affiliation bill, which raised the minimum level of child support.

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. The Ministry of Education has expressed interest in beginning special education programs, but funding to implement them is uncertain. 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. Former restrictions on where Asians could live and work are now unconstitutional. (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 May 1996, the Labor Relations Act did not enter into force because the Ministry failed to publish a notice establishing the date the legislation was to take effect. 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 Labor 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 percentage 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 percentage of the work force are union members. 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 Labor. The Trade Union Act requires that labor disputes in essential services be reported in writing to the Minister of Labor, 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 several strikes, especially in the public sector, with no clear agreement on which ones were legal. As the Trade Union Act requires that unions must approve strikes by secret ballot, all the strikes may have been illegal.

In April the Government intimidated civil servant strikers by, among other things, dispersing them with tear gas and police dogs, prohibiting them from assembling peacefully outside their places of work, arresting activists on dubious grounds, and suspending or transferring strike leaders in an effort to break the union. The civil servants returned to work without resolving any of the outstanding issues. Through the end of the year, the Government and union continued to talk sporadically.

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 Labor 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 export processing zones (EPZ's); six 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 Government does not specifically prohibit forced and bonded labor by children, but there were no reports that it occurred outside the agricultural sector (see Section 6.d.). The new Constitution prohibits forced labor, and such labor is generally not employed.

d. Status of Child Labor Practices and Minimum Age for Employment

The Government does not specifically prohibit forced and bonded labor by children, but there are no reports that it occurred outside the agricultural sector. 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. Less than 20 percent of children finish primary school, which runs from age 6 to age 13. 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. The urban minimum wage is roughly \$0.68 (MK11.85) per day, including \$0.05 for rent; in all other areas it is roughly \$0.49 (MK8.50) per day, including \$0.05 for rent. These wages are insufficient to support a worker and family. Moreover, 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. Wage earners tend to supplement their incomes through farming activities carried out through the extended family network.

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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