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U.S. Department of State

Malawi Country Report on Human Rights Practices for 1998

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MALAWI

The Republic of Malawi held its first democratic, multiparty elections since independence in 1994, following 30 years of authoritarian, one-party rule. Constitutional power is shared between the popularly-elected president and the 177-member National Assembly. President Bakili Muluzi leads the United Democratic Front (UDF) party, which holds an 83-seat plurality in the National Assembly, but has built a voting majority through alliance with independent and "rebel" opposition members of the Assembly. The opposition Malawi Congress Party (MCP), formerly the sole legal party, holds 45 seats, while the opposition Alliance for Democracy (AFORD) holds 28 seats. Seven AFORD "rebel" Members of Parliament (MP's) and eight former MCP MP's sit as independents. Seven seats are vacant. The legislature demonstrated only limited independence from the executive. The 1997 High Court ruling that cabinet ministers could not sit as MP's at the same time has not been implemented. The Government respects the constitutional provisions for an independent judiciary; however, the judicial system is inefficient and lacks resources.

The National Police, headed by the Inspector General of Police under the Ministry of Home Affairs, are responsible for internal security. The police occasionally called on the army for support. While violence and common crime have become frequent, there was no indication of violence organized 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.

The country is a very poor, with a narrow economic base characterized by a small and highly concentrated industrial sector, low levels of foreign and domestic investment, and few mineral

resources. Agriculture dominates the economy, contributing about 87 percent of export earnings, 36 percent of gross domestic product, and employing over 80 percent of the labor force. Three crops--tobacco, tea, and sugar--generate about 78 percent of export earnings, with tobacco providing the largest share. There is little industry and mining, and no known economically viable deposits of gemstones, precious metals, or oil. The country is a landlocked nation, and transport costs constitute over 40 percent of its imports--a serious impediment to economic development and trade. While the country has followed a series of structural adjustment programs since the early 1980's, major progress towards economic liberalization, particularly in agriculture, did not occur until the 1990's. The Government continues to divest its ownership of public enterprises. Wealth remains concentrated in the hands of a small elite. In 1997 per capita income was approximately \$220 and average annual inflation dropped from 15 percent to 9.2 percent. However, a 55 percent currency devaluation in August resulted in a substantial economic shock.

The Government generally respected the human rights of its citizens in many areas, but serious problems remained. There were instances of deaths of detainees while in, or shortly after release from police custody. While the number of incidents declined, the police continued to abuse detainees and to use excessive force in handling criminal suspects. Prison conditions remained harsh and life threatening. Lengthy pretrial detention, an inefficient and understaffed judicial system, and limited resources called into question the ability of defendants to receive a timely, and in some cases, fair trial. High levels of common crime prompted angry mobs to execute summarily alleged criminals.

The state-controlled Malawi Broadcasting Corporation continued to broadcast on two radio channels and controlled broadcast news coverage and editorial content. In addition to a private station that broadcasts religious programming, a second private station began broadcasting in August. By contrast the print media continued to report freely. Parliament passed legislation in June on membership and procedures for the Human Rights Commission, which is mandated by the constitution to explore human rights violations. In December five public members were appointed to the commission. 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. On two separate occasions, the Government prevented the Malawi Congress of Trade Unions from holding large public meetings.

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. For example, in September in the town of Namitete, a bus driver in police custody allegedly was beaten to death. He was buried without his family being allowed access to the body.

A large number of prisoners died largely due to harsh 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 police identified over 40 such cases in the first quarter of the year and made some attempts--largely unsuccessful--to identify and arrest those responsible.

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 abuse detainees physically. There have been some marginal improvements resulting from training in investigative interviewing skills and from workshops aimed at changing officers' attitudes. However, limited resources for training and facilities have resulted in very slow process. While higher ranking officials demonstrated familiarity with new standards for the humane treatment of prisoners, their subordinates commonly employed unacceptable techniques. According to the October 1997 Inspectorate of Prisons report, unacceptable techniques used by police included beatings, physical assault, and the use of wire instead of handcuffs to restrain prisoners and 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 harsh and life threatening. Overcrowding, inadequate nutrition, and substandard sanitation and poor health facilities remained serious problems. According to the Inspectorate of Prisons report, harsh conditions and inadequate health care contributed to the deaths from disease of over 200 inmates over a 20-month period from January 1996 to August 1997. While not kept in separate facilities, women are segregated within the prison compound and tended by female guards. Only four prisons have separate facilities for juveniles. In the other prisons, juveniles are incarcerated with adults.

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 obtain information necessary to their case. In cases where the court determines that a defendant cannot afford to supply his own counsel, legal services are 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. At year's end, approximately 30 percent of the 6,800 prison inmates were detainees awaiting trial.

The Government does not use forced exile.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government respects this provision in practice. However, the judicial system is handicapped by serious weaknesses, including poor record

keeping, shortage of attorneys and trained personnel, a heavy caseload, and a lack of resources.

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 the President and a majority of the Parliament.

By law defendants have the right to a public trial but not to a trial by jury. In murder cases, the High Court nevertheless used juries of 12 persons from the defendant's home district. Defendants are also entitled to an attorney, the right to present 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, receive some training in court procedure and the body of law that they administer. The High Court also began a training program for lay magistrates.

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 recognizes their age and the possibility for rehabilitation, and to be exempt from the punishment of life imprisonment without the possibility of release. However, while they are treated and tried as juveniles, many juvenile offenders are incarcerated with adults.

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 former practice of opening and inspecting private correspondence.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedoms of speech and of the press, and the Government generally respected these rights in practice. The Government 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 January six army soldiers, allegedly upset over an article about HIV/AIDS in the military forces, entered an opposition newspaper office, assaulted journalists and damaged equipment. The army investigated the incident, and the army commander apologized publicly in July, stating that the raid had been the act of individuals and had not been authorized by the army. There is no record of any action being taken against the soldiers.

Malawi has four radio stations. One private station began broadcasting in Blantyre in August, and only broadcasts music and entertainment. A second station broadcasts only religious programming and is not permitted to broadcast news. In addition the Government has issued licenses for another private station,

which has not begun broadcasting, a second religious station, and a community radio station based in Mangochi district. 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 broadcast paid public announcements of labor union events. In November Parliament passed a communications bill that established an independent communications regulatory authority responsible for issuing licenses for radio, television, and Internet service providers.

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. However, despite being properly notified by the Malawi Congress of Trade Unions (MCTU), police prevented the MCTU from holding large open meetings in January and February.

The Government requires organizations, including political parties, to register with the Registrar General in the Ministry of Justice. There were no reports of groups being denied registration during the year.

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, despite the Government's revision of its policy and procedures on temporary employment permits (TEP's) in 1997 (see Section 2.d).

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 where Asians could live, there have been few Asians or other expatriates who have relocated 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 900 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 asylum status. In February 1997, 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 against many of the Rwandans and Congolese who either had requested asylum in another country or had the opportunity to do so. Although there were no reports of bona fide refugees seeking first asylum being turned away, nongovernmental organization (NGO) sources continue to express 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.

Although the Government introduced a new policy for temporary employment permits (TEP) for foreigners in 1997, the slow and inconsistent processing of TEP applications caused concern and

sometimes hardship to businessmen, teachers, health workers, and missionaries (see Section 5). In a case characterized by a lack of due process, an expatriate director of a relief and development NGO was ordered to leave the country after apparently offending a politically well-connected member of the Board of the Malawi Congress of Nongovernment Organizations (CONGOMA). Business residence permits are readily granted to new investors.

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 in 1997 and 1998 by-elections.

President Muluzi, Vice President Justin Malewezi, and a 34-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 1997 the Minister of Local Government announced that, to hold down costs, local government elections would be postponed. In December Parliament passed legislation which provides for elected councils in each of the 26 districts. The Electoral Commission announced that local government elections would be held 3 months after presidential and parliamentary elections scheduled for May 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 women are ministers, and there are nine women in the National Assembly.

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. The work of the Ombudsman's office was hampered when the Ombudsman was dismissed in August by the Public Appointments Committee for alleged financial malfeasance following a thorough investigation by the Auditor General. A new Ombudsman was scheduled to be appointed in January 1999. 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 adjudicate claims of criminal and civil liability against the former government. As of August 1997, 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. Very few claims were settled during the year due to a lack of funds. 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. In June

Parliament passed legislation on membership and procedures for the constitutionally mandated Human Rights Commission, which is entrusted with monitoring and protecting against violations of constitutional rights. In December five public members were appointed to the Commission but it had not begun to operate by year's end.

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 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 Constitution, women have the right to full and equal protection by law and may not be discriminated against on the basis of 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 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 finding employment. In education accepted economic and social practice hampers the ability of women and girls to succeed. The literacy rate among women aged 15-to45 is less than 35 percent. Male literacy in the same age group is about 45 percent. Girls drop out of school more frequently than boys do, and in the final year of primary school, only about 25 percent of 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 entered first grade in the same proportion as boys this year, and 39 percent of secondary school entrants are girls.

Women often have less 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 lowest 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 comparable 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 programs for women. The participation of women in the limited formal labor market is particularly constrained. Women make up less than 5 percent of the managerial and administrative staff.

Women face significant health problems. Malawi has a high maternal mortality rate. HIV/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 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 1997 Parliament passed an affiliation bill that raised the minimum level of child support. In June Parliament passed a wills and inheritance bill that increased widows' rights.

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 1997. 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 one-third of children have easy access to safe drinking water. Infant mortality 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, 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 secret, new information suggests 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 1997, 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 in the Constitution is to support the disabled through greater access to public places, fair opportunities in employment, and full participation in all spheres of society. There are both public and privately supported schools and training centers, which assist individuals with disabilities. There are also several self-supporting businesses run by and for persons with disabilities. In December President Muluzi established a new cabinet position, the Minister Responsible for the Welfare of People with Disabilities.

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.).

Section 6 Worker Rights

a. The Right of Association

The 1996 Labor Relations Act (LRA) entered into force in 1997. Workers have the legal right to form and join trade unions, but unions must register with the Registrar of Trade Unions and Employers' Organizations in the Ministry of Labor and Vocational Training (MOLVT). Army personnel and police may not belong to trade unions, but other civil servants are allowed to form unions. There are no unusually difficult registration procedures. 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. Statistics on the numbers of union members are not available. Unions are independent of the government, parties and other political forces.

The LRA allows members of a registered union to strike only after all dispute settlement procedures established in a collective agreement and conciliation procedures have failed. The law requires a notice in writing to the employer and the MOLVT at least 7 days before a strike. The law also forbids temporary replacement of labor, and allows peaceful picketing during strikes. However, members of a registered union in "essential services" do not have the right to strike. Essential services are specified as services whose interruption would endanger the life, health, or personal safety of the whole or part of the population; they are determined by the industrial relations court upon application by the Minister of Labor. The law provides similar procedures for lockouts.

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 have the right to affiliate with and participate in international workers' organizations with the permission of the government. Although there are no restrictions on the number of union federations, Malawi has only one, the MCTU. All unions are affiliated with it.

b. The Right to Organize and Bargain Collectively

Unions have the right to organize and bargain collectively. The LRA requires at least 20 percent of employees (excluding senior managerial staff) to belong to a union before such union can engage in collective bargaining at the enterprise level. The LRA requires at least 15 percent union membership for collective bargaining at the sector level. The law provides for the establishment of industrial councils in the absence of collective agreements for sector-level bargaining. Industrial council functions include wage negotiation, dispute resolution, and industry-specific labor policy development. Collective agreements are legally binding, and must be deposited by both parties with the Registrar of Trade Unions.

The law prohibits antiunion discrimination by employers, and requires that employers reinstate workers dismissed because of union activities.

Parliament approved legislation to establish export-processing zones (EPZ's) in 1995. As of September,

15 companies held licenses to operate under EPZ status, and 10 were operational. The full range of labor regulations applies to the EPZ's.

c. Prohibition of Forced or Compulsory Labor

The Constitution prohibits forced labor, and such labor is not employed. The law does not specifically prohibit forced and bonded labor by children, but such practices are not known to occur. Significant child labor in agricultural work and domestic service occurs largely as a function of extreme poverty and longstanding cultural tradition.

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

The Constitution defines children as people less than 16 years of age. It prohibits the employment of children in work that is hazardous, harmful, or interferes with their education. The law does not specifically prohibit forced and bonded labor by children, but such practices are not known to occur. Primary education is free and universal, but not compulsory. Budgetary constraints largely preclude minimum work age and child labor law enforcement by police and Ministry of Labor and Vocational Training inspectors. There is significant child labor on tobacco and tea farms, subsistence farms, and in domestic service. There is no special legal restriction on children's work hours.

e. Acceptable Conditions of Work

The Ministry of Labor and Vocational Training sets separate urban and rural minimum wage rates based on recommendations of the Tripartite Wage Advisory Board comprised of representatives of labor, government, and the private sector. The urban minimum wage amounts to about \$0.59 per day (MK24.80), including \$0.07 for rent; in all other areas it is roughly \$0.42 (MK17.50) per day, including \$0.04 for rent. The minimum wage rates, revised in August, are insufficient to provide a worker and family with a decent standard of living. Wage earners tend to supplement their incomes through farming activities. The MOLVT lacks resources to effectively enforce the minimum wage. However, the minimum wage largely is 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 compulsory overtime. In practice employers frequently violate statutory time restrictions. The law protects foreign workers in correct legal status. Illegal foreign workers are subject to deportation.

The Workers' Compensation Act includes extensive occupational health and safety standards. Enforcement of these standards by the MOLVT is erratic. Workers--particularly in industrial jobs--often work without basic safety clothing and equipment. 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 have the right to file a complaint at the labor office or sue the employer for wrongful dismissal.

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