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## 2009 Human Rights Report: Malawi

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

### 2009 Country Reports on Human Rights Practices

March 11, 2010

Malawi is a multiparty democracy with a population of approximately 13 million. In May Bingu wa Mutharika of the Democratic Progressive Party (DPP) was reelected president. International observers noted that the elections were an improvement compared with the 2004 elections and that they were conducted in a free and fair manner. Constitutional power is shared between the president and the 193 national assembly members. Civilian authorities generally maintained effective control of the security forces.

The government generally respected the human rights of its citizens; however, there were problems in some areas, including police use of excessive force, although the government made some efforts to prosecute abusers; occasional mob violence; harsh and life-threatening prison conditions; impunity; arbitrary arrest and detention; lengthy pretrial detention; limits on freedom of speech and the press; official corruption; societal violence against women; trafficking in persons; and child labor.

#### RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

The government or its agents did not commit any politically motivated killings; however, security forces killed one person during the year. Perpetrators of past abuses were occasionally punished, but investigations often were abandoned or were inconclusive.

On August 10, police raided a bar in the village of Karonga and, according to eyewitnesses, beat everyone present, including customer Stumai Mwalwanda. Mwalwanda was reportedly beaten unconscious, while the other individuals were arrested. Mwalwanda was later transported to the Karonga district hospital, where he was pronounced dead upon arrival. By year's end no action had been taken against the police involved in the beating.

In the August 2008 case where police officers from a rapid response unit shot and killed truck driver Yusuf Abdullah, one of the officers was convicted of manslaughter and sentenced to 12 years' imprisonment with hard labor. Three other officers were acquitted.

There were no developments in the September 2008 case of a police officer who shot and killed a 13-year-old boy during a land dispute in the Mbayani area of Blantyre. Police had not identified the responsible officer by year's end.

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There were no developments in the following 2007 cases: the January police killings of Robert Phiri and Thomas Chizenga; the June killing of six persons in a vehicular accident by Henry Msinkhu, a Blantyre police officer; the October death of Grant Chilimba while in police custody; the December killing of Wilson Master by a guard for government-owned company Admarc; and the December killing of Dinnis Mashalubu by another Admarc guard.

Mobs sometimes beat, stoned, or burned suspected criminals to death. For example, on February 9, villagers in the Nkhata Bay District beat to death village headman Pegson M'nkhwakwata Chirwa and then burned his body. Chirwa was suspected of being a practitioner of witchcraft. The police arrested several suspects, and investigation of the case continued at year's end.

During the year police arrested 16 suspects in the February 2008 killing of Laston Seunda by a mob in Thyolo. At year's end the suspects were released on bail and awaiting trial before the high court in Blantyre.

There were no developments in the following 2008 cases of mob violence: the January killing of Chimwemwe Kanyoza by a mob in Ndirande Township, Blantyre, and the June killing of Harold Yobe by a mob in Chiradzulu. Investigations continued, but no arrests had been made by year's end.

No further information was available in the following 2007 mob killings: the killing by six suspects of a man in Karonga, the killing of a man in Chiradzulu, and the stoning to death of an herbalist in Dowa.

#### b. Disappearance

There were no reports of politically motivated disappearances.

There were no developments in the 2007 disappearances of Christopher Chimbalanga and Hassan Twaliki from a Lilongwe police station.

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

The constitution and law prohibit such practices; however, police used excessive force and other unlawful techniques in handling criminal suspects. Unlike the previous year, there were no reports that police used torture. While senior officials publicly condemned prisoner mistreatment, their subordinates continued to employ unacceptable techniques. In an October 2 press release, Peter Mukhito, the new inspector general of police, publicly stated that he would not shield any police officer accused of wrongdoing. The Malawi human rights commission (MHRC) and local nongovernmental organizations (NGOs) condemned police for human rights violations several times throughout the year.

For example, on July 15, police fired into an unarmed crowd, wounding two, in the Bangwe township of Blantyre. The crowd had gathered in response to a rumor that police were shielding a man suspected of engaging in witchcraft. There were no further developments by year's end.

On August 29, Chrispin Ulemu Kam'mayani, a lawyer for the MHRC, was reportedly beaten and arrested by a police officer when he went to serve a high court order. Police denied the allegations, and there were no further developments by year's end (see section 2.d.).

On September 3, the press reported that Nthethiwa Salamba, age 17, Charles Sadick, age 16, and Alexander Sadick, age 30, were beaten by police after being arrested outside a pub in Limbe. The alleged victims were held for two days before being released. The case was under investigation at year's end.

There was no new information available regarding the March 2008 report in *The Nation* of an unknown woman being abused and rendered unconscious by a police officer outside the Chilinde police station in Lilongwe.

No further information was available regarding the alleged August 2008 beating of Aubrey Kasten by three police officers from the Kabula police station in Blantyre.

There was one instance of security forces engaging in rape and sexual abuse. On June 19, a Lilongwe magistrate's court sentenced police constable Patrick Machado to six years' imprisonment with hard labor for raping a female suspect while she was in his custody.

In the August 2008 sodomy case against Lilongwe police officer Enock Chawanda, the accused was found guilty and sentenced to five years in prison.

There were no developments in the following 2007 cases of police abuse: the use of excessive force by police to disperse demonstrators at Lengwe national park, and the machete hacking by two policemen of the back of a man's head.

#### Prison and Detention Center Conditions

Prison conditions remained harsh and potentially life threatening; overcrowding, inadequate nutrition, substandard sanitation, poor health facilities, and prisons in poor physical condition remained serious problems. A Malawi Prison Service spokesman acknowledged that conditions in the prisons were poor, but attributed this to inadequate funding. Budget allocations for the prison system were less than 20 percent of the stated need.

The prison system's 24 facilities, which were built to accommodate approximately 5,000 inmates, routinely held at least double that number. According to the prison commissioner, there were more than 11,000 inmates in the prison system at year's end. Staffing in prisons remained inadequate despite a three-year program to recruit more staff. The warden to inmate ratio improved to one warden per nine inmates.

Daily prison rations were meager. Family members were allowed to bring other food items and inmates were encouraged to grow vegetables and raise livestock; however, malnutrition in the prison population remained a problem.

Community service programs were available as alternatives to prison terms for first-time offenders convicted of less serious crimes, and who had permanent addresses.

While the exact number was not known, numerous inmates died in prison each month, largely due to HIV/AIDS, diarrhea, pneumonia, tuberculosis, and inadequate diet.

Women were not kept in separate facilities, but the more than 200 female prisoners were segregated within the prison compound and monitored by female guards. A total of 16 prison facilities housed women. Juveniles were lodged in the same facilities as adults, but were kept in separate areas. There were three juvenile detention centers (Bvumbwe, Lilongwe, and Byandzi) and two prisons with juvenile wings (Zomba and North Mzimba).

As of the end of September, according to the Malawi Prison Service, there were 571 children lodged in prisons, either serving sentence or awaiting trial. Blantyre Child Justice Court Magistrate Esme Tembenu continued to lead a program to remove children from prisons and put them into reformatory centers, but the problem continued.

Police concluded their investigation into the November 2008 Chitseko and Cosman case, where Thylo police officers allegedly arrested, handcuffed and questioned six children between the ages of four and 11. The investigation cleared the officers of any wrongdoing, but a review of the case by the Ministry of Justice continued at year's end.

The law requires pretrial detainees to be held separately from convicted prisoners, but many prisons did not comply due to inadequate facilities. The number of pretrial detainees remained greater than 2,000.

During the year the government permitted domestic and international NGOs and the media to visit and monitor prison conditions and to donate basic supplies. The International Committee of the Red Cross (ICRC) did not visit any prisons during the year.

#### d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, the government did not always observe these prohibitions in practice.

#### Role of the Police and Security Apparatus

The Malawi police service, controlled by the Ministry of Internal Affairs and Public Security, has responsibility for law enforcement and maintenance of order. Police occasionally called on the army for support to help operate roadblocks and to assist in manhunts.

The police force was inefficient and poorly trained due in part to inadequate funding. The lack of a qualified pool of candidates from which to recruit was a major barrier to improvement. Corruption continued to be a problem. Police continued efforts to improve their investigative skills, including training on internal affairs investigations, and to introduce the concept of victims' rights through workshops and other training exercises, particularly in the areas of sexual abuse, domestic violence, and trafficking in persons. Police continued to receive foreign assistance for training officials and procuring equipment.

On September 17, Casper Chalera, the head of the Malawi police service fiscal and fraud section, was charged for failing to account for 589,436 Malawi kwacha (MKW) (\$4,040) that police had collected from a suspect in an arrest at Chileka International Airport. Chalera pleaded not guilty and was released on bail awaiting trial. A hearing date had not been set by year's end.

#### Arrest Procedures and Treatment While in Detention

The law provides the accused the right to challenge the legality of detention, to have access to legal counsel, and to be released on bail or informed of charges by a court within 48 hours; however, these rights were often ignored in practice.

Most suspects were apprehended without a warrant if a police officer had probable cause. While arrest warrants were normally issued by a duly authorized official based on presented evidence in cases involving corruption or white-collar crime, poorer residents were often arrested without warrants. The use of temporary remand warrants to circumvent the 48-hour rule was widespread. Bail was frequently granted to reduce prison overcrowding rather than on the merits of the case. There were reports of officers requesting payment of a bribe for police bail, a system in which police are authorized to grant bail without a bond. During the year the MHRC received three complaints of arbitrary detention related to overstay of remand, denial of bail, and unheard appeals. The government provided legal services to indigent detainees; however, access was often delayed, since there were only 15 lawyers and seven paralegals working as public defenders.

Relatives were regularly denied access to detainees.

Arbitrary arrests remained a problem. Police regularly used "bait arrests" of relatives when a suspect could not be found to draw the wanted individual from hiding.

On March 21, security forces arrested two opposition politicians after a political rally. On November 11, United Democratic Front (UDF) Deputy Secretary General Hophmally Makande was found guilty of "proposing violence," and Malawi Democratic Party President Kamlepo Kalua was found guilty of "uttering seditious words." Both were sentenced to 20 months of hard labor but appealed their convictions. The appeal was pending at year's end.

There were no further developments in the May 2008 treason cases against nine persons, most of whom had close ties to the UDF.

There were no developments in the May 2008 treason case against former president Bakili Muluzi, who returned to the country on December 12.

Eighteen percent of the prison population were pretrial detainees, down from 25 percent the previous year. Pretrial homicide suspects were typically held in detention for two to three years, although at Maula Prison alone, there were believed to be 15 suspects who had been in jail for more than seven years awaiting trial. The longest known case was that of John Chima, who had been in Zomba Prison awaiting trial for murder for 18 years.

The center for legal assistance, an NGO that assists prisoners with legal matters, continued to provide free legal assistance to expedite the trials of detainees, with priority given to the sick and young and those subjected to long trial delays.

#### e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary, and the government generally respected this provision. However, the judicial system was inefficient and handicapped by serious weaknesses, including poor record keeping, a shortage of attorneys and other trained personnel, heavy caseloads, and lack of resources.

The law provides for a high court, a supreme court of appeal, and subordinate magistrate courts. A constitutional court (a panel consisting of three high court judges with jurisdiction over constitutional matters) also existed. The chief justice is appointed by the president and confirmed by the national assembly. The president appoints other justices, following recommendations by the judicial service commission. All justices are appointed to serve until the age of 65 and may be removed only for incompetence or misbehavior, as determined by the president and a majority of the national assembly. The military has courts martial but no military or security tribunals.

The Malawi defense force (MDF) maintains a courts martial system. Military personnel accused and tried by courts martial are afforded the same rights as persons accused in civil criminal courts. The MDF courts martial can try civilians in cases concerning military operations; however, this has not occurred.

#### Trial Procedures

Defendants are presumed innocent. By law defendants have the right to a public trial but not to a trial by jury. The Ministry of Justice continued the indefinite suspension of the use of jury trials in murder cases, although juries are used in other types of cases. The public and press accepted the suspension, since murder suspects had sometimes been incarcerated for years awaiting trial by jury. Defendants have the right to be present at their trial, are entitled to an attorney, and if indigent, to have an attorney provided at state expense. Defendants have the right to present and challenge evidence and witnesses. The law extends the above rights to all persons.

All persons have the right of appeal; however, in practice appeals were often delayed for years and sometimes never addressed by the higher court.

The judiciary's budgetary and administrative problems effectively denied expeditious trials for most defendants, although improvements were made due to increased staffing. The Department of Public Prosecutions had 15 prosecuting attorneys, an increase of two from 2008, and 11 paralegals. The paralegals served as lay prosecutors and prosecuted minor cases in the magistrate courts. Retention of government attorneys was a problem.

#### Political Prisoners and Detainees

There were no reports of political prisoners or detainees.

#### Civil Judicial Procedures and Remedies

There is an independent and impartial judiciary in civil matters, and citizens have access to a court to bring lawsuits seeking damages for, or cessation of, human rights violations. The law provides for administrative remedies as well as judicial remedies for alleged wrongs; however, a lack of resources and legal professionals restricted the number of cases pursued and resulted in a large backlog. During the year the MHRC received 132 complaints of limited access to justice and 26 complaints of unfair administrative procedures.

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

The constitution and law prohibit such actions, but the government did not always respect these prohibitions in practice.

On December 2, the parliament passed a law legalizing warrantless searches. The MHRC reported that in the period prior to the change, police regularly entered homes of poorer citizens using special police search orders, which were issued by a supervisory police officer rather than by a court.

#### Section 2 Respect for Civil Liberties, Including:

##### a. Freedom of Speech and Press

The law provides for freedom of speech and of the press; however, at times the government attempted to limit these rights. Journalists sometimes practiced self-censorship, especially at government-owned media outlets such as the Malawi Broadcast Corporation (MBC) and Television Malawi (TVM).

The independent media were active and expressed a wide variety of views; however, the government imposed some restrictions. A broad spectrum of political opinion was available in the country's newspapers. There were 11 independent newspapers, including two dailies, one triweekly, and four weeklies.

There were 22 private radio stations that broadcast only in urban areas. MBC dominated the radio market with its two stations, transmitting in major population centers. State-owned TVM was the sole television broadcaster. In the period prior to the May national elections, the news coverage and editorial content of MBC and TVM clearly favored the president and his party; coverage of other political parties was more critical, and they received less airtime. Private broadcaster Joy Radio was closed by police on polling day to prevent it from covering the elections.

Journalists were subjected to arrest, harassment, and intimidation due to their reporting.

For example, on February 24, in the period prior to the national elections, police arrested Mzimba Community Radio Station manager Sam Lwara, accusing him of violating the Communications Act. The charges were later amended to conduct likely to cause a breach of peace. Lwara was released on bail, and the case was pending at year's end.

On May 23, police arrested Gilbert Tembo, an editor employed by the information department at the Ministry of Information and civic education, accusing him of being in possession of seditious materials. Tembo was released on bail and the case was pending at year's end.

On July 7, Gabriel Kamlomo, Zodiak Broadcasting Station editor, was arrested for publishing false material likely to cause public alarm and fear. Kamlomo was released on bail, and the case was pending at year's end.

There were no developments in the 2008 arrest cases of journalists James Mphande and Mike Chipalasa.

#### Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by e-mail. According to International Telecommunications Union statistics for 2008, approximately 2 percent of the country's inhabitants used the Internet.

#### Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events.

#### b. Freedom of Peaceful Assembly and Association

##### Freedom of Assembly

The constitution and law provide for freedom of assembly, and the government generally respected this right in practice.

No action was taken against police responsible for the use of excessive force to disperse demonstrators in 2007 and 2008.

##### Freedom of Association

The constitution and law provide for freedom of association, and the government generally respected this right. The government required all organizations, including political parties, to register with the ministry of justice, and registration was routinely granted.

#### c. Freedom of Religion

The constitution and law provide for freedom of religion, and the government generally respected this right. Churches continued to exert significant political influence, particularly in rural areas.

There are no separate requirements for the recognition of religious groups, but they must register with the government. Foreign Christian missionaries experienced occasional delays in renewing employment permits; however, this appeared to be the result of bureaucratic inefficiency rather than policy.

#### Societal Abuses and Discrimination

There were no reports of societal violence, harassment, or discrimination aimed at religious groups. However, there were anecdotal complaints from religious minorities regarding limited employment and educational opportunities.

The Jewish community was very small, and there were no reports of anti-Semitic acts.

For a more detailed discussion, see the *2009 International Religious Freedom Report* at [www.state.gov/g/drl/rls/irf/](http://www.state.gov/g/drl/rls/irf/).

#### d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons

The constitution and laws provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice.

The law prohibits forced exile, and the government did not use it.

##### Protection of Refugees

The country is a party to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and the 1969 African Union Convention Governing the Specific Aspects of the Refugee Problem in Africa. Its laws provide for the government's granting of asylum or refugee status, and the government has established a system for providing protection to refugees. The government generally provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular group, or political opinion.

According to the Office of the UN High Commissioner for Refugees (UNHCR), there were two attempts of refoulement during the year. Since the UNHCR was unable to verify if the two individuals affected were under threat in their respective countries of origin, it classified the incidents as "attempts."

On August 30, Congolese national John Badesire Mitterand, who had been in country as a recognized refugee since 2004, was deported to the Democratic Republic of the Congo. The UNHCR was given no official explanation for the deportation. Upon his return to Malawi on December 14, Mitterand was arrested and, despite a court order staying another deportation until his case could be reviewed, deported again on December 25.

Also on August 30, Ethiopian national Abute Bashayu was deported to Ethiopia. Bashayu, who had been in country since February 2008, had an asylum application pending at the time of his deportation. The UNHCR was given no official explanation for the deportation.

By law the government does not accept refugees for permanent settlement. The government cooperated with the UNHCR in assisting refugees and asylum seekers but restricted refugees' ability to move freely and work outside of refugee camps.

The government provided temporary protection to approximately 752 individuals during the year who may not qualify as refugees under the 1951 Convention or the 1967 Protocol.

While no legal framework existed, the government allowed refugees to seek both employment and educational opportunities, although it restricted these activities outside the refugee camps. Refugees with professional degrees, especially those with medical training, were given work permits to pursue employment outside the camps. The UNHCR, NGOs, and the government collaborated to provide education to children in refugee camps.

Security forces sometimes intimidated refugee and asylum seekers. Police routinely performed sweeps of refugees found illegally outside of camps and returned them to camps. Local citizens often accused refugees of theft and demanded their deportation.

In July a mob reportedly killed an Ethiopian refugee accused of stealing maize from a village near the Dzaleka camp. By year's end no arrests had been made.

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

The constitution and law provide citizens with the right to change their government peacefully, and citizens exercised this right in practice through largely free and fair elections based on universal suffrage.

#### Elections and Political Participation

International election observers found the May presidential and parliamentary election an improvement on the 2004 elections; however, they identified some shortcomings. In particular, observers criticized the inequitable access to the state-owned media granted to opposition parties and candidates. Opposition parties accused the government of using public funds for campaign purposes.

The executive branch exerted considerable influence over the unicameral national assembly, which followed a hybrid parliamentary system loosely based on both the British model and a presidential-parliamentary model; all cabinet ministers were also members of the national assembly but are not required to be.

Although the government did not prevent the activities of opposition political parties, the parties alleged that the government encouraged opposition party divisions. Sporadic, minor violence occurred between supporters of rival political parties.

In 2005 the five-year term of district and municipal assemblies ended as stipulated by law. Constitutionally mandated local government elections were scheduled for May 2005, but the government did not hold the elections, citing a budgetary shortfall related to a food crisis. Civil society criticized the government for delaying the elections. In November the parliament amended the constitution, placing the timing of local elections in the hands of the president. These elections were scheduled for 2010. The future structure of local government itself was expected to be addressed in the January 2010 session of parliament.

There were 42 women in the 193-seat national assembly and 10 women in the 42-member cabinet, including the country's first female vice president. Women constituted approximately 25 percent of the civil service. There were three female justices among the 27 supreme and high court justices.

There were six members of minorities in the national assembly.

#### Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption, and the government had some success prosecuting cases; however, full implementation of the law continued to be a challenge. The World Bank's 2008 Worldwide Governance Indicators reflected that corruption was a serious problem. Public sensitivity to corruption increased due to media campaigns. President Mutharika spoke out publicly against corruption and cautioned government officials to refrain from questionable activities. Efforts to combat corruption and promote transparency continued.

The Malawi Anti-Corruption Bureau (ACB) functioned under a new director after an extended period without a permanent head. The ACB continued to bring cases and was generally seen as competent and effective, but it continued to be hampered by a lack of resources.

Indictments of former high-level government officials proceeded slowly. Many of the cases were delayed in the courts due to legal challenges by the accused. Surveys indicated that while a majority of citizens had been exposed to government anticorruption messages, only 15 percent knew how to report corruption to the ACB. The volume and quality of complaints increased during the year; investigations by the media into alleged corruption also increased. The ACB had achieved 60 corruption convictions since 2004.

The ACB's appeal of the 2008 magistrate court acquittal of Kandi Padambo, former head of the Electricity Supply Commission, was pending at year's end.

There were no further developments in the 2008 case of Information Minister Patricia Kaliati, who was accused of accepting vehicles from a foreign company in return for a concession at a national park.

A final verdict in the 2007 corruption case against former president Muluzi was pending at year's end.

The law provides for public access to government information, and the government granted access to citizens and noncitizens, including foreign media.

#### Section 5 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

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

The MHRC, an independent government agency, is charged with monitoring, auditing, promoting, and investigating violations of human rights. Continued resource shortfalls resulted in a backlog of cases, delayed production of reports, and hindered human rights monitoring. The MHRC reported that it received 560 complaints of human rights violations during the year. The government cooperated with international governmental organizations and permitted visits by UN representatives and other organizations.

UN agencies and international NGOs had offices in the country and had access to investigate human rights abuses. The ICRC delegation for southern Africa based in Harare, Zimbabwe, also covered the country.

**The Office of the Ombudsman is mandated by law to investigate and take legal action against government officials responsible for human rights violations and other abuses. The executive secretary of the Ombudsman's Office stated that government agencies usually cooperated in responding to requests for information. While activities of the ombudsman were subject to judicial review, he operated without government or party interference.**

The Office of the Ombudsman continued to lack adequate resources, having only 15 staff members to handle the investigations process for the entire country, and some recommendations were referred to parliament after being ignored or challenged by government departments and agencies. The ombudsman received fewer complaints during the year, due to the public's rising awareness that some complaints should be directed to other government agencies including the ACB, MHRC, and the Public Service Commission.

#### Section 6 Discrimination, Societal Abuses, and Trafficking in Persons

The law specifically provides for equal rights for women, forbids discrimination based on language or culture, race, disability, or social status and provides for equality and recognition before the law for every citizen. However, the capacity of government institutions to ensure equal rights for all citizens was limited.

##### Women

The law criminalizes rape with a maximum penalty of life imprisonment. Spousal rape is not explicitly mentioned but could be prosecuted under the same rape laws. The government generally enforced the law effectively, and convicted rapists routinely received prison sentences. Data on the prevalence of rape or spousal rape and conviction figures were

unavailable; however, press reports of rape arrests and convictions were an almost daily occurrence; they suggested that rape was a widespread problem.

The judiciary continued to impose penalties on persons convicted of rape, including up to 14-year prison sentences for child rape and assault.

For example, on February 12, Kingstone Kambalame was sentenced to 12 years' imprisonment for raping a 12-year-old.

In March law professor Kandako Mhone was arrested for raping a minor repeatedly since 2006. The case was pending at year's end.

On July 12, Paul Bobi was sentenced to five years in prison after pleading guilty to raping a 14-year-old girl.

Domestic violence, especially wife beating, was common, although women seldom discussed the problem openly, and victims rarely sought legal recourse. Legal experts and human rights workers attributed victims' reluctance to report their abusers to economic dependence on the abuser, lack of awareness of their legal rights, and fear of retribution and ostracism. The law provides a maximum penalty of life imprisonment for domestic violence. The law also recognizes that both men and women can be perpetrators as well as victims of domestic violence. Police regularly investigated cases of rape and sexual assault but did not normally intervene in domestic disputes. Police victims support units provided shelter to some abuse victims and dealt with human rights and gender-based violence, but officers' capacity to assist and document cases was limited.

Prostitution is legal and prevalent around hotels and bars in urban and tourist areas; however, the law prohibits living off wages earned through prostitution, owning a brothel, or forcing another person into prostitution. Loitering was the main charge under which prostituted women were arrested, resulting usually in small fines.

Sexual harassment is not specifically prohibited by law, but it can be prosecuted under existing sections of the penal code, such as indecent assault on a female, which carries up to a 14-year prison sentence, or insulting the modesty of a woman, which is a misdemeanor punishable by one year in jail. There was no available data on the extent of sexual harassment or effectiveness of government enforcement.

The government recognized the right of couples and individuals to decide freely and responsibly the number, spacing, and timing of their children. Health clinics and local NGOs were permitted to operate freely in disseminating information on family planning under the guidance of the Ministry of Health. There were no restrictions on the right to use contraceptives, but relatively few citizens had access to them. The government provided free childbirth services, but these services were unevenly distributed due to limited access to hospitals and other medical facilities in rural areas. Due to a shortage of doctors, nurses and midwives were a critical component of prenatal and postnatal care. Men and women were entitled to equal access to diagnosis and treatment of sexually transmitted infections, including HIV.

Under the law women have the right to full and equal protection and may not be discriminated against on the basis of gender or marital status, including in the workplace; however, discrimination against women was pervasive, and women did not have opportunities equal to those available to men. Women had significantly lower levels of literacy, education, formal and nontraditional employment opportunities, and access to resources to increase agricultural productivity.

Women often had less access to legal and financial assistance, and widows often were victims of discriminatory and illegal inheritance practices in which most of an estate was taken by the deceased husband's family. Women usually were at a disadvantage in marriage, family, and property rights; however, awareness of women's legal rights continued to increase, and women began to speak out against abuse and discrimination. Households headed by women were represented disproportionately in the lowest quarter of income distribution. A total of 52 percent of full-time farmers were women;

however, they had limited access to agricultural extension services, training, and credit. Gender training for agricultural extension workers and the gradual introduction of rural credit programs for women increased; however, few women participated in the limited formal labor market, where they constituted less than 5 percent of managerial and administrative staff.

The law provides for a minimum level of child support, widows' rights, and maternity leave; however, only individuals who could utilize the formal legal system benefited from these legal protections. In a few isolated areas, a widow was sometimes forced to have sex with in-laws as part of a culturally mandated "sexual cleansing" ritual following the death of her husband. In some cases she was "inherited" by a brother-in-law or other male relative. Although there are no laws specifically prohibiting these practices, the government and civil society continued efforts to abolish them by raising awareness concerning the inherent dangers of such behavior, including the risk of HIV/AIDS transmission.

The government addressed women's concerns through the Ministry of Gender, Child Development, and Community Development.

### Children

Citizenship can be derived at birth under the concept of *jus soli*--birth within the country--or *jus sanguinis*--from one's parents. In 2007 the government launched the pilot phase of the national registration and identification system, the first step in the creation of a national identification system to provide for mandatory registration of births. The system had not been fully implemented by year's end, and until it is implemented, there is no requirement for registration of births. However, there were no reports of discrimination or denial of services due to lack of birth registration.

The government provided free primary education for all children, although education was not compulsory. However, families were responsible for paying book fees and purchasing uniforms. Students from poor families had access to a public book fund. Girls, especially in rural areas, have historically been unable to complete even a primary education and therefore were at a serious disadvantage in finding employment.

Child abuse remained a serious problem. The press reported a significant number of cases of sexual abuse of children, including arrests for rape, incest, sodomy, and defilement.

A July 2008 report from the Mzuzu police victims support unit indicated that abduction, child abuse, and child rape cases had risen during the year. The Church of Central Africa, Presbyterian, paralegal department also reported an increase in child abuse and defilement cases.

A 2008 study by the safe schools program in Machinga found that 90 percent of girls and 47 percent of boys in primary schools experienced some form of violence, including sexual touching by other students, sexual abuse by teachers, corporal punishment, and verbal and psychological abuse.

Abusive practices, including the secret initiation of girls into their future adult roles, were widespread. In a few traditional communities, girls averaging 12 years of age were forced to have sexual relations with older men as part of such initiation rites. "Kupimbira," a practice that allows a poor family to receive a loan or livestock in exchange for daughters of any age, still existed in some areas. The MHRC expressed concern over reports of parents forcing their daughters into marriages for food.

The law does not specifically prohibit female genital mutilation (FGM), and it was practiced by a few small ethnic groups. In most cases FGM was performed on girls between 10 and 15 years of age, less often on 16 to 20 years. A joint government and UN Children's Fund awareness campaign against harmful cultural practices affecting children included the subject.

The widespread belief that children were unlikely to be HIV positive and that sexual intercourse with virgins can cleanse an individual of sexually transmitted diseases, including HIV/AIDS, contributed to the sexual exploitation of minors.

The Ministry of Gender, Child Development, and Community Development undertook various activities to enhance protection and support of victims. The ministry trained and paid small stipends to more than 800 community child protection personnel who worked nationally to identify victims of child abuse, underage labor, and trafficking and referred cases to district social welfare offices or the police.

The trafficking of children for sexual purposes was a problem, and child prostitution for survival without third-party involvement also occurred.

A few charitable organizations attempted to reduce the number of child beggars in urban areas; however, the problem of street children remained serious, as the number of orphans whose parents died from HIV/AIDS increased. Extended family members normally cared for such children and other orphans.

#### Trafficking in Persons

The law does not prohibit specifically trafficking in persons, and women, children, and men were trafficked to, from, through, and within the country. The government attempted to combat trafficking using existing laws. Although the age of sexual consent is 14, there is no age specified for the protection of minors from sexual exploitation, child prostitution, or child pornography.

The country is a source, transit, and destination point for women and children trafficked for sexual purposes locally and to brothels abroad, particularly in South Africa. Victims trafficked to South Africa were typically between 14 and 24 years old and were recruited with false offers of marriage, study, or employment. There were also several documented cases of young boys and men being trafficked to Tanzania. For example, in July a group of 29 trafficked Malawian men and boys were found to be working in the fishing industry in the Lake Rukwa district of Tanzania. Child trafficking for agricultural work took place around borders with Zambia and Mozambique. Also, children and a smaller number of women from Zambia, Mozambique, Tanzania, Burundi, and Zimbabwe were trafficked to Malawi for forced labor and commercial sexual exploitation.

Poverty and low educational levels contributed to such exploitation. Traffickers involved in land border trafficking to South Africa and Tanzania were typically long-distance truck drivers and minibus operators. Local businesswomen, who also travel regularly to Tanzania, South Africa, and other neighboring countries to buy clothing items for import, were identified as traffickers as well. Children were primarily trafficked internally for agricultural labor but also for cattle herding, domestic servitude, commercial sexual exploitation, and to perform menial tasks for small businesses.

A study issued in 2008 by the center for social research and Norwegian church aid found that between 500 and 1,500 women and children were trafficked within the country annually. Approximately 35 percent of those trafficked were children between the ages of 14 and 18.

The penal code contains several provisions relating to prostitution and indecency that the government has used to prosecute traffickers. During the year the government prosecuted child traffickers; most of the cases involved trafficking of children for agricultural labor and cattle herding.

International trafficking was done on valid travel documents obtained through unlawful means. The country's easily forged passport was used regularly by traffickers; the government continued attempts to remedy the misuse by recalling the passports and issuing a new type with enhanced security features. Trafficking occurred at both unmonitored crossing points and official points of entry.

Some convicted child traffickers were sentenced to prison or required to pay fines; however, trafficking was usually treated as a misdemeanor, and perpetrators often paid only a small fine.

Police and the Ministry of Gender, Child Development and Community Development handled cases brought to their attention and provided some services for victims, including counseling and reintegration assistance. The ministry repatriated victims to their home villages. Children were resettled with their families and most offenders were fined.

While the government continued to implement a multiyear strategy to protect vulnerable children from exploitation, it did not provide specific funding to combat trafficking in persons. There was no reportable progress on the development of a nationwide, interministerial plan to identify the extent of trafficking and possible solutions.

The Department of State's annual *Trafficking in Persons Report* can be found at [www.state.gov/g/tip](http://www.state.gov/g/tip).

#### Persons with Disabilities

The Employment Act prohibits discrimination in employment; however, there is no comprehensive law governing discrimination against persons with disabilities. The law provides for the support of persons with disabilities through greater access to public places, fair opportunities in employment, and full participation in all spheres of society; however, extremely limited resources prevented the government from protecting these rights in practice. Reported violations were taken seriously, and the president publicly declared that students with disabilities should have equal access to education and other government services. The government has not mandated accessibility to buildings and services for persons with disabilities.

The Ministry of Persons with Disabilities and the Elderly is responsible for protecting the rights of persons with disabilities. There were both public and privately supported schools and training centers that assisted persons with disabilities. There also were several self-supporting businesses run by and for persons with disabilities. The Malawi Rural Development Fund provided loans to persons with disabilities to support these activities.

#### Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity

Homosexual activity is defined as "carnal knowledge of any person against the order of nature." It is illegal and is punishable by up to 14 years in prison in addition to corporal punishment. On December 28, two men were arrested in Blantyre and charged with illegal carnal knowledge and committing acts of "gross indecency with another male person." The men were denied bail and were in jail awaiting trial at the end of the year.

Societal violence and discrimination based on sexual orientation occurred. The Center for Development of the People (CEDEP) reported that two cases of violence resulting in serious injury were perpetrated against gay men during the year. The victims did not report the attacks to police.

A 2008 study by CEDEP found that approximately 34 percent of gay men in the country had been blackmailed or denied services such as housing or healthcare due to their sexual orientation. Additionally, 8 percent of those surveyed said they had been beaten by police or other security forces due to their sexual orientation.

#### Other Societal Violence or Discrimination

Societal discrimination against persons living with HIV/AIDS remained an issue. Many individuals preferred to keep silent about their health rather than seek help and risk being ostracized, but campaigns by the government and NGOs to combat the stigma were having some success. The national AIDS commission stated that discrimination was a problem in both the public and private sectors.

## Section 7 Worker Rights

### a. The Right of Association

The law allows workers, except for army personnel and police, to form and join trade unions of their choice without previous authorization or excessive requirements, and workers exercised this right in practice; however, union membership was low due to the small percentage of the workforce in the formal sector, the lack of awareness of worker rights, and resistance on the part of many employees to joining unions. Union leaders estimated that 12 percent of the formal sector workforce belonged to unions; however, accurate statistics were not available. Employers, labor unions, and the government lacked sufficient knowledge of their legitimate roles in labor relations and disputes, which limited their effectiveness in implementation and enforcement of the law. The law provides for unions to conduct their activities without government interference.

Unions must register with the Registrar of Trade Unions and Employers' Organizations in the Ministry of Labor, and registration was granted routinely.

The law allows members of a registered union to strike or go through a formal mediation process overseen by the Ministry of Labor, and workers exercised this right. A strike can occur only after all settlement procedures established in a collective agreement and conciliation efforts have failed. Laws do not specifically prohibit retaliation against strikers. There is no prohibition on actions against unions that are not registered. Members of a registered union in "essential services" have a limited right to strike. Essential services are defined as services whose interruption would endanger the life, health, or personal safety of the whole or part of the population, as determined by the industrial relations court (IRC).

Arbitration rulings were legally enforceable; however, in practice, due to lack of funding and a heavy case backlog, the IRC could not monitor cases or adequately enforce the laws.

### b. The Right to Organize and Bargain Collectively

Unions have the right to organize and bargain collectively, and the government protected this right. The law requires that at least 20 percent of employees (excluding senior managerial staff) belong to a union before it can engage in collective bargaining at the enterprise level, and 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 included wage negotiation, dispute resolution, and industry-specific labor policy development. The law was not effectively implemented due to lack of human and financial resources.

There were no reports of antiunion discrimination.

A total of 24 firms held licenses to operate under export processing zone (EPZ) status, and 20 were operational. There are no special laws or exemptions from regular labor laws in export processing zones; however, many companies in the EPZs resisted union activity, and union organizers stated they had little access to workers in the EPZs.

### c. Prohibition of Forced or Compulsory Labor

The government prohibits forced or compulsory labor, including by children; however, there were reports that such practices occurred. Forced labor is punishable by a maximum fine of 10,000 MWK (\$68) or two years' imprisonment. In practice punishments were almost always limited to fines, and the modest fines imposed were not effective in discouraging labor violations.

Although the Ministry of Labor reported no cases of forced labor, forced and bonded labor involving entire families occurred under the tenancy system. Tobacco plantation tenants had exclusive arrangements, often unwritten, with the estate owners to sell their crop and to buy inputs such as fertilizer, seed, and often food. These costs, in addition to rent charges, often were greater than the amount of money received from tobacco sales, leading to a situation of debt and bonded labor to repay the input and other costs.

#### d. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum age for employment at 14 years of age, and children between the ages of 14 to 18 may not work in jobs that are considered hazardous or that interfere with their education; nevertheless, child labor was a problem.

In June 2008 the Ministry of Labor stated that more than 1.4 million children were engaged in child labor. A study in Thyolo found 41 percent of children under the age of 15 engaged in at least part-time work. Seventy-eight percent of children between the ages of 10 and 14 living on tenant farms worked at least part-time with their parents on the farm.

Child labor was common on tobacco farms, subsistence farms, and in domestic service. Many boys worked as vendors, and young girls in urban areas often worked outside of their families as domestic servants, receiving low or no wages. Child trafficking for agricultural work took place both internally and across borders with Zambia and Mozambique, and to Tanzania to work in the fishing industry.

A report issued by Plan International in June stated that children working in the tobacco industry were being exposed to high levels of nicotine poisoning, equivalent to smoking 50 cigarettes a day. The government disputed the report, arguing that Plan International's claim that 78,000 children worked in the tobacco industry was greatly inflated.

There were no further developments in the October 2008 arrest of Lilongwe restaurant owner Mohamed Abed Ali and his employee Petro Kandindi for hiring four boys to clean a septic tank used by the restaurant.

Police and ministry of labor officials were responsible for enforcing child labor laws and policies; however, labor inspectors do not have law enforcement capabilities and must cooperate with the police to pursue violators. The law specifies a maximum fine of 20,000 MWK (\$136) or five years' imprisonment for violations.

The ministry continued to conduct child labor law enforcement courses for district labor officers, district social welfare officers, police, and district magistrate court officers. During the year the ministry continued inspections, particularly on agricultural estates. There were 31 district labor officers and an estimated 150 labor inspectors at year's end. There was no information available on the number of inspections carried out during the year.

The labor ministry youth committees in rural areas continued to monitor and report on child labor. Despite these efforts enforcement by police and ministry inspectors of child labor laws was hindered by lack of funding.

#### e. Acceptable Conditions of Work

The Ministry of Labor sets separate urban and rural minimum wage rates based on recommendations of the tripartite wage advisory board (TWAB), composed of representatives of labor, government, and the private sector. However, poor functioning of the TWAB resulted in delayed and inadequate wage rate revisions. The urban minimum was 142 MWK (\$0.97) per day; in all other areas, it was 105 MWK (\$0.72) per day. Minimum wage rates did not provide a decent standard of living for a worker and family. Official minimum wages apply only to the formal sector. Wage earners often supplemented their incomes through farming activities. The Ministry of Labor lacked the resources to enforce the minimum wage effectively. However, the minimum wage was irrelevant for most citizens, who earned their livelihood outside the formal wage sector. There was no exception for foreign or migrant workers.

The maximum legal workweek is 48 hours, with a mandatory weekly 24-hour rest period. The law requires payment for overtime work and prohibits compulsory overtime. In practice these standards were not effectively enforced, and employers frequently violated statutory time restrictions.

The law includes extensive occupational health and safety standards; however, ministry enforcement of these standards was poor.

Workers, particularly in industrial jobs, often worked without basic safety clothing and equipment. 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. 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, workers were unlikely to exercise this right.

The law protects foreign workers in correct legal status. Illegal foreign workers were subject to deportation.