



U.S. DEPARTMENT of STATE

Malawi

Country Reports on Human Rights Practices - [2006](#)

Released by the Bureau of Democracy, Human Rights, and Labor

March 6, 2007

Malawi is a multiparty democracy with a population of approximately 12 million. In 2004 citizens elected Bingu wa Mutharika of the ruling United Democratic Party (UDF) as president, and the UDF won a majority in the parliament. Constitutional power is shared between the president and the 193 National Assembly members, of whom 187 were elected in 2004. International observers noted substantial shortcomings in the elections, including inequitable access to the state owned media, the ruling party's use of state resources to campaign, and poor planning and administration by the Malawi Electoral Commission (MEC). In 2005 President Mutharika resigned from the UDF to form the Democratic Progressive Party (DPP). During the year there was a failed attempt to impeach the president for alleged legal violations, and he was widely criticized for failing to observe constitutional procedures in his efforts to remove high-ranking officials, including the vice president. While civilian authorities generally maintained effective control of the security forces, there were some instances in which elements of the security forces acted independently of government authority.

The government generally respected the human rights of its citizens; however, there were problems in some areas. Police use of excessive force, occasional mob violence, and harsh and life-threatening prison conditions continued. Arbitrary arrest and detention, including an upsurge in politically motivated arrests, and lengthy pretrial detention were problems. The government restricted freedoms of speech, press, and assembly. Societal violence against women, child abuse, trafficking in persons, restricted worker rights, and forced child labor also existed.

During the year the government took significant steps to punish human rights abusers and investigate corruption; however, these efforts stopped after the president dismissed the country's two top prosecutors, and it had just resumed at year's end. Parliament passed domestic violence legislation to address the rising incidence of gender-based violence in the country.

RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

There were no confirmed reports of politically motivated killings by the government or its agents; however, police use of excessive force resulted in at least one death. For example, on January 10, a policeman in Thyolo shot and killed a man suspected of stealing cattle and other property.

There were no developments in the June 2005 case in which a 12 year old boy arrested on suspicion of stealing money from a fellow bus passenger died in police custody in Ngabu. The boy's mother, whom police subsequently beat during interrogation, claimed that he had been tortured and assaulted by police (see section 1.c.). An autopsy indicated the boy had ingested cypermethrine. Police charged that the boy had died as a result of the pesticide, which they claimed he had ingested at his mother's house while accompanying police on a search of the premises five days after his arrest. The police officer charged with the killing remained in custody awaiting trial at year's end; an investigation was ongoing.

There were no developments in the June 2005 case in which police shot and killed a 16 year old boy at a demonstration in Ngabu (see section 2.b.). The government promised to conduct an investigation of the incident but had taken no action by year's end.

The investigation was ongoing into the August 2005 case in which police allegedly shot and killed a 28 year old man in Machingi while he was cutting trees for firewood. The police claimed that the man was struck by a stray bullet fired by police to disperse an angry mob of illegal loggers.

In November the President's Office called on former president Muluzi to explain his role in the 2003 death of Kalonga Stambuli, a former private business advisor to Muluzi who died of poisoning and strangulation; Muluzi declined to respond. There were allegations that Stambuli may have had potentially damaging information about the business activities of the former president.

Mobs sometimes resorted to vigilante justice, and beat, stoned, or burned suspected criminals. For example, in December a mob beat to death two foreigners who reportedly had robbed a man at gunpoint.

Police continued to investigate the July 2005 case in which a mob beat a mentally ill man to death in Chitipa after he reportedly killed another

man with a pounding stick.

No trial date had been set in the November 2005 case in which a man was beaten to death in Kasungu by villagers protesting the appointment of a village headman; 11 persons were arrested.

Police took no action in any of the 2004 cases of mob killings.

b. Disappearance

There were no reports of politically motivated disappearances.

An investigation was ongoing into the 2004 disappearance of Peter Mulamba, a key witness in a high level corruption case; some reports indicated he committed suicide, while others stated he was out of the country.

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. While higher-ranking officials demonstrated familiarity with standards for the humane treatment of prisoners and publicly condemned prisoner mistreatment, their subordinates continued to employ unacceptable techniques. A study released during the year by the Malawi Human Rights Commission (MHRC) found that police frequently subjected suspects to torture and other serious abuse when conducting investigations. Some police mistakenly believed that the law required them to present a case (not just charges) to the court within 48 hours of arrest, and resorted to beatings to obtain information within that time limit. Lack of financial resources for appropriate equipment, facilities, and training contributed to mistreatment. In 2005 the MHRC called for the introduction of a compensation fund to assist victims of police abuse and relatives or persons who died in police custody; however, no such fund had been established by year's end.

On January 11, in Blantyre, a policeman named Nchingula forced a 29-year-old man out of a pub and shot him in the legs after discovering that both men were dating the same barmaid. The policeman was reassigned, but no further action was taken.

On May 12, police reportedly harassed, beat, and barred entry to 17 UDF members attempting to attend the bail hearing for Vice President Cassim Chilumpha (see sections 1.d. and 3). No action was taken against police, who denied the allegations.

On June 10, a policeman named Kasinja allegedly assaulted a pregnant woman in her home and later at the police station for frustrating the officer's attempts to make advances on her friend. The woman later miscarried. The policeman was arrested and awaiting trial at year's end.

On September 28, four policemen allegedly entered the house of a man suspected of selling fuel illegally, beat his wife, and then shot the man six times as he fled the scene. The man sustained injuries in both legs, and threatened to take the police to court after his discharge from the hospital.

The MHRC reported several instances of police torture, including a case in which two policemen in Lilongwe broke a suspect's leg and tortured several other persons with a machete, club, and hammer to obtain confessions during interrogations. The man whose leg was broken claimed that police did not take him to a hospital until five days after the injury.

There were no developments in the June 2005 case in which the mother of a 12 year old boy who died in police custody that month (see section 1.a.) alleged that police brutally beat her and two of her children during interrogation. James Kachala, the police inspector who was charged with assaulting and wounding the mother, remained in police custody at year's end.

Police beat refugees during the year (see section 2.d.).

Police violently dispersed demonstrations during the year; however, unlike in the previous year, no deaths resulted (see section 2.b.).

Prison and Detention Center Conditions

Prison conditions remained harsh and life threatening. Overcrowding, inadequate nutrition, substandard sanitation, and poor health facilities remained serious problems. The prison system, which was meant to accommodate approximately 7,000 inmates, held approximately 11,000 prisoners. Inmates were encouraged to grow vegetables and raise livestock; however, they complained that they did not receive enough food. Construction of a new prison was completed in November; the main Mzuzu Prison was subsequently designated as a remand center. Community service programs were available as alternatives to prison terms.

During the year an average of 20 inmates died in prison each month, mostly due to HIV/AIDS. There were no available statistics on prison deaths at year's end.

In October the press reported that Justice Mbekeani, a prisoner serving an eight-year sentence for robbery, had sued the attorney general, the minister for home affairs, the minister for internal security, and the commissioner of prisons, claiming that he and fellow prisoners had been subjected to torture and cruel, inhumane, and degrading treatment contrary to the constitution. The case was discontinued during the year.

Although women were not kept in separate facilities, they were segregated within the prison compound and monitored by female guards. In the four maximum security prisons, there were separate facilities for juveniles; however, the separation was inadequate, and there were reports of sexual and physical abuse of juvenile prisoners. In the other prisons, juveniles were routinely incarcerated with adults. The law requires pretrial detainees to be held separately from convicted prisoners; however, many prisons did not comply with this law due to lack of space and inadequate facilities.

The government permitted the Inspectorate of Prisons, domestic nongovernmental organizations (NGOs), and international NGOs to visit and monitor prison conditions and to donate basic supplies during the year. The Prison Reform Committee worked in collaboration with the Ministry of Home Affairs and the Inspectorate of Prisons to visit prisons.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention; however, the government did not observe these prohibitions in practice, and there was a growing trend toward politically motivated arrests and prosecutions.

Role of Police and Security Apparatus

The National Police, controlled by the Ministry of Home Affairs and Internal Security, has responsibility for law enforcement and maintenance of order within the country. Police occasionally called on the army for support.

The country's police force was inefficient and poorly trained due to inadequate funding. Corruption was widespread, and impunity was a problem. Police continued efforts to improve investigative skills 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 (see section 5). The government continued to seek community involvement in its comprehensive reform of the police, and civil society groups conducted workshops for the police on crowd control. The country also received foreign assistance to train officials and procure equipment.

Arrest and 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 of law within 48 hours; however, these rights were seldom respected in practice. The use of temporary remand warrants to circumvent the 48 hour rule was widespread (see section 1.c.). The government provided legal services to indigent detainees; however, access was often delayed since there were only seven public defenders. Detainees were allowed access to relatives. Bail frequently was granted to reduce prison overcrowding rather than on the merits of an individual case. In 2005 the MHRC received 663 complaints of arbitrary detention; most related to overstay of remand, denial of bail, and unheard appeals.

During the year security forces arrested a number of opposition politicians, primarily from the UDF, on a range of charges. While government actions generally were legal in the strictest sense, courts dismissed or suspended by injunction the majority of these cases. Many of those arrested were charged under antiquated dictator-era laws such as criminal libel and the Protected Names, Flags and Emblems Act, which local legal scholars viewed as unconstitutional.

In January security forces arrested and charged two UDF activists with treason for allegedly plotting to overthrow the government. The court dismissed the treason charges, but the government filed sedition charges against one defendant, McDonald Symon, who was later convicted and sentenced to nine months' imprisonment.

On April 15, three senior UDF leaders were arrested for insulting the president during a rally. The men were denied bail and remained on remand at Zomba Prison awaiting trial at year's end.

Between April 28 and May 3, security forces arrested Vice President Chilumpha and 13 other opposition leaders for allegedly plotting to assassinate President Mutharika (see section 3). Chilumpha's lawyers asserted that the case should be dismissed since the government failed to identify the alleged assassins or provide any evidence to the defense. Nevertheless, Chilumpha was held under house arrest in Blantyre until November 21, when his bail terms were relaxed, allowing him to travel within the country (provided he informed authorities of his plans) and abroad (provided he obtained permission from the High Court). The arrest and detention of Chilumpha's codefendants coincided with the controversial four-day visit of Zimbabwean President Robert Mugabe and was widely perceived as an effort to prevent the group from protesting the visit. Within hours of Mugabe's departure, 11 of the suspects were released for lack of evidence. Chilumpha and the two other defendants were released on bail on May 15 and remained suspects at year's end.

Also in May security forces arrested Malawi Democratic Party President Kamlepo Kalua and seven others who had threatened to protest during Mugabe's visit. No charges were filed. The men were released after seven days and told they had "no case to answer."

Police arrested journalists, demonstrators, and Muslim leaders during the year (see sections 2.a., 2.b., and 2.c.).

Twenty three percent of the prison population were pretrial detainees. Pretrial homicide suspects were typically held in detention for two to three years. Other suspects were held an average of two to three months pending trial.

The Center for Legal Assistance continued to provide free legal assistance to expedite the trials of detainees, with priority given to the sick and young and those subjected to trial delays.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary, and the government generally respected this provision in practice. However, the judicial system was inefficient and handicapped by serious weaknesses, including poor record keeping, a shortage of attorneys and 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 a recommendation by the Judicial Service Commission. All justices are appointed to serve 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 National Assembly.

Trial Procedures

By law, defendants have the right to a public trial but not to a trial by jury; however, in murder cases, the High Court uses a jury of 12 persons from the defendant's home district. Defendants also are entitled to an attorney, and if indigent, to an attorney provided at state expense. Defendants also have the right to present and challenge evidence and witnesses, the right of appeal, and the presumption of innocence.

The judiciary's budgetary and administrative problems effectively denied expeditious trials for most defendants. The Department of Public Prosecutions had eight prosecuting attorneys and four paralegals. The paralegals served as lay prosecutors and prosecuted minor cases in the magistrate courts. Lack of funding and a shortage of attorneys created a backlog, mainly in murder cases.

Political Prisoners and Detainees

Vice President Chilumpha was held under house arrest following his April 28 arrest on treason charges although no evidence was presented in the case (see sections 1.d. and 3). At year's end, Chilumpha was challenging a High Court ruling that blocked him from traveling to the United Kingdom for medical care. There were no other 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 paucity of resources and legal professionals restricted the number of cases pursued and resulted in a large backlog. During the year the MHRC received 146 complaints related to limited access to justice and 34 complaints related to unfair administrative justice. Resource limitations also restricted the government's ability to enforce domestic court orders.

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

The constitution and law prohibit such actions, and the government generally respected these prohibitions in practice; however, there was one case in September in which four policemen allegedly entered the house of a man suspected of selling fuel illegally and beat his wife (see section 1.d.).

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 limited this right. Journalists and government critics were arrested, and one reporter was convicted of criminal libel for writing a derogatory article concerning a high-ranking politician. These government actions prompted self censorship on the part of journalists. Private individuals were generally free to criticize the government without fear of reprisal.

There were no developments in the 2005 case of the man arrested for making derogatory comments about the president at a gas station in Blantyre.

The 2005 case of former DPP vice president Gwanda Chakuamba, whom the government arrested, charged with insulting the president, and released on bail, remained pending at year's end; Chakuamba had referred to the president as a "brute" and a "drunkard." Chakuamba's arrest occurred two weeks after he was dismissed from the cabinet.

The independent media was active and expressed a wide variety of views. A broad spectrum of political and ideological opinion was available in the country's newspapers. Ten independent newspapers were available, including two independent dailies, four biweeklies, and four independent weekly papers.

The government restricted press freedoms during the year, particularly before and during the controversial May visit of Zimbabwean President Robert Mugabe.

Government press officers barred The Chronicle newspaper from covering Mugabe's May 2 arrival ceremony, presumably out of fear that the paper's coverage would be negative.

On May 9, the press reported that Ministry of Information officials held a closed-door meeting to decide the fate of Don Napuwa, acting managing editor for the Malawi News Agency, and Thom Khanje, reporter for the Malawi Broadcasting Corporation's (MBC) Lilongwe Bureau, who were reported to have asked Mugabe "sensitive" questions during a May 6 press conference. According to press reports, Khanje was subsequently barred from covering presidential functions and Napuwa was demoted and threatened with dismissal.

On May 8, security forces arrested The Chronicle editor-in-chief Robert Jamieson, editor Dickson Kashoti, and reporter Arnold Mnelemba and charged them with criminal libel for publishing a May 2 story that accused former attorney general Ralph Kasambara of theft; The Chronicle frequently criticized President Mutharika and his administration. The three journalists were detained overnight and released on bail. In November staff of The Chronicle began operating in hiding after hearing reports that the government intended to confiscate the newspaper's computers. The Chronicle closed the following week after senior staff members were offered positions that quadrupled their salaries at The Guardian, which was managed by Duwa Mutharika, the president's daughter. The Chronicle editor Jamieson charged that Duwa had deliberately poached key staff--including Mnelemba, who still had criminal libel charges pending at year's end--to squelch The Chronicle. The media sector viewed these actions against The Chronicle as an attack on press freedom.

In May former attorney general Ralph Kasambara threatened to sue Mabvuto Banda, a reporter for the independent newspaper The Nation, if he did not reveal his sources for a story linking three cabinet members to an alleged assassination plot for which Vice President Chilumpha and 13 others were arrested (see sections 1.d. and 3). The president fired Kasambara a few days later.

On May 29, Health Minister Hetherwick Ntaba sued Jika Nkolokosa, the general manager of Blantyre Newspapers Limited, and one of his reporters, Maxwell Ng'ambi, for publishing an article that alleged that Ntaba was being investigated for failing to account for public funds. On September 3, Ng'ambi was convicted of criminal libel and required to pay a fine; Nkolokosa was acquitted. The State House subsequently barred Ng'ambi from interviewing the president or attending any state functions, saying that it felt "unprotected to have Ng'ambi covering the state president and other senior officials."

There had been no court action by year's end against The Nation journalists Raphael Tenthani and Mabvuto Banda, who in 2005 were arrested and detained for 24 hours after they published articles alleging that the president had moved out of his residence for fear that ghosts haunted the building. By year's end neither journalist had complied with the president's demand that they apologize and retract the story.

During the year former attorney general Ralph Kasambara obtained several court injunctions against The Nation to prevent it from publishing antigovernment stories. One such story involved a married woman who claimed that Kasambara had impregnated her and failed to support her financially.

There were 15 private radio stations with limited coverage and broadcasting only in urban areas. MBC dominated the radio market with its two stations, transmitting in major population centers throughout the country. Government owned Television Malawi (TVM) was the sole television broadcaster. News coverage and editorial content of MBC and TVM clearly favored the president and his party, while coverage of other political parties was more critical and received less airtime.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chatrooms. Individuals and groups could engage in the peaceful expression of views via the Internet, including by electronic mail. The Internet was accessed by less than 15 percent of the population via a few Internet cafes and offices in the major cities; few individuals could afford Internet access in their homes.

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; however, there were instances in which police limited this right. Authorities at times interfered with opposition party political functions or used violence to disperse crowds. Police were routinely criticized for failing to act impartially with regard to political demonstrations.

Freedom of Assembly

On February 7, a man sustained minor injuries when he was accidentally shot by police who fired live ammunition into the air to subdue hundreds of street vendors protesting government orders to move into organized fee-charging market areas; several civilians, including two small children, were injured when they were trampled. The vendors also assaulted a police officer.

On February 24, in Lilongwe, police shot at Muslim demonstrators protesting cartoons depicting the Prophet Muhammad. A 16 year old boy

was injured, but no responsibility was assigned to police.

In March security forces arrested and briefly detained several Muslim leaders sympathetic to Vice President Chilumpha on charges of unlawful assembly.

On May 12, police reportedly harassed, beat, and barred entry to 17 UDF members attempting to attend the bail hearing for Vice President Chilumpha (see section 1.d.).

No investigation or trial was conducted during the year into the June 2005 killing of a 16 year old boy; police had fired live ammunition at unarmed villagers who were protesting the death in police custody of another boy (see section 1.a.).

An investigation continued into the December 2005 case in which Lenjasani Medison, a security guard, opened fire on a crowd at a government food distribution center, injuring a man and a 13-year-old boy. Medison was on bail awaiting trial at year's end.

There were no developments in the any of the 2004 cases in which police used of excessive force to disperse demonstrations.

Freedom of Association

The constitution and law provide for freedom of association, and the government generally respected this right in practice. 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 in practice. Churches continued to be a significant source of political influence, particularly in rural areas.

There are no separate requirements for the recognition of religions, but religious groups 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 a deliberate government policy. Missionaries and charitable workers paid lower fees for employment permits than did other professionals.

In March security forces arrested several Muslim leaders sympathetic to Vice President Chilumpha on charges of unlawful assembly (see section 2.b.).

Societal Abuses and Discrimination

There were generally amicable relations among the various religious communities.

There were no reports of societal religious discrimination or of anti Semitic acts. The Jewish community was very small.

For a more detailed discussion, see the [2006 International Religious Freedom Report](#).

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

The constitution and law provide for these rights, and the government generally respected them in practice.

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

Protection of Refugees

The law provides for the granting of asylum or refugee status in accordance with the 1951 UN Convention relating to the Status of Refugees or its 1967 protocol, and the government has established a system for providing protection to refugees. In practice, the government provided protection against refoulement, the return of persons to a country where they feared persecution; however, there was one case in which the government mistreated a group of refugees and forcibly deported them. The government granted refugee status or asylum; however, there were long delays in the process. By law, the government does not accept refugees for permanent resettlement. The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) in assisting refugees and asylum seekers, but restricted refugees' ability to move freely and work outside of refugee camps.

On April 22, security forces raided a UNHCR safe house in Mangochi, beat the 15 refugees residing there, and forcibly deported them for a second time to the Mozambican border. The group included 11 Congolese, three Burundians, and one Rwandan, all of whom had previously lived in the Dzaleka refugee camp and had accused the refugee camp administrator, other government representatives, and the UNHCR of corruption in 2001. Mozambican authorities denied the refugees entry and returned them to the Mangochi police station, where police rearrested and allegedly beat the men. UNHCR staff were allowed to visit the group at Maula Prison, where they were later held, and were permitted to provide food and medical assistance; however, the government denied a UNHCR request to transfer the group to a safe house, claiming they posed a threat to national security. The men remained in prison until resettlement; between July and October, a total of 80

persons, including the 15 imprisoned refugees and their dependents, were resettled in Sweden.

In November 2005 the government revoked the refugee status of these same men, claiming they had written a letter threatening the lives of the president and the refugee commissioner, a claim that police investigators determined to be unfounded in 2003. Authorities raided the camp, beat the men, and detained them at Maula Prison for 10 days before forcibly deporting them to the Mozambican border. The men managed to return to the country, where they obtained a High Court order restraining the government from deporting them and granting them the right to apply for judicial review of the refugee committee's decision to revoke their refugee status. Fearing for their safety, the group went into hiding in the "no man's land" along the border with Mozambique in February and later stayed in a UNHCR safe house in Mangochi until the April 22 raid.

Although largely peaceful, there were some reports of ethnic clashes among asylum seekers.

The government provided temporary protection to individuals who may not qualify as refugees under the 1951 convention and 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 of the camps. The UNHCR, NGOs, and the government collaborated to provide education to children in refugee camps.

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 periodic, free, and fair elections held on the basis of universal suffrage for citizens 18 years of age and older.

Elections and Political Participation

International election observers found the May 2004 presidential and parliamentary elections to have substantial shortcomings, including inequitable access to the state owned media and poor planning by the MEC. The ruling party frequently monopolized resources and used public funds for campaign purposes. Voter turnout was low compared with the two previous presidential elections. With approximately 36 percent of the popular vote, President Mutharika, chosen by former president Muluzi as the UDF candidate, was elected to serve a five year term. Election discrepancies prevented parliamentary candidates from taking seats in six constituencies. By elections for these vacancies took place in January 2005. Observers declared them free and fair and better organized than the national elections. The president and vice president hold parliamentary seats but are constitutionally barred from holding other public office.

The executive branch exerted considerable influence over the unicameral National Assembly, which followed a hybrid parliamentary system loosely based on the British model but which operated in the context of a presidential-parliamentary model; a number of cabinet ministers also were members of the National Assembly. Although the constitution calls for an 80-member senate as part of a bicameral legislature, the government has yet to establish a senate.

Although the government did not prevent the activities of opposition political parties, the parties alleged that the government used bribery, other inducements, and violence to encourage opposition party divisions. Sporadic minor violence was common between supporters of rival political parties.

In May 2005 President Mutharika dissolved district and municipal assemblies in anticipation of constitutionally-mandated local government elections that were due that same month; however, the government failed to actually hold elections, citing a budgetary shortfall related to the food crisis. Civil society and the donor community have criticized the government for delaying the staging of these elections, which had not been held by year's end, and expressed concern that lack of political will was the primary cause for delay.

On February 9, President Mutharika announced his intention to accept Vice President Chilumpha's "constructive resignation," claiming that Chilumpha had essentially tendered his resignation by skipping cabinet meetings and avoiding most government functions. The action was widely viewed as unconstitutional since the vice president, as an elected official, cannot be dismissed from his position except through impeachment. On December 21, the Constitutional Court ruled that the vice president could not constructively resign. Following the ruling, President Mutharika publicly recognized Chilumpha as vice president for the first time since February in a media broadcast. Chilumpha remained on bail for alleged treason at year's end (see section 1.d.).

There were 27 women in the 193 seat National Assembly and five women in the 30 member cabinet. Women comprised approximately 25 percent of the civil service. There were two female justices among the 23 Supreme and High Court justices, and a woman was appointed as inspector general of police, the highest position in law enforcement.

There were three members of minorities in the National Assembly.

Government Corruption and Transparency

There was widespread public perception of corruption in the executive and legislative branches. President Mutharika continued his reform program, which included passage of anti money laundering legislation in August; however, these efforts were overshadowed by an increase in politically motivated arrests and prosecutions (see sections 1.d., 2.a., and 2.b.), controversy over Mutharika's dismissal of senior prosecutors, and the discontinuance of the corruption case against former president Bakili Muluzi.

The Anticorruption Bureau (ACB) continued to launch investigations and indict former high level government officials. For example, on February 14, former education minister Yusuf Mwawa was sentenced to five years in prison with hard labor for theft by a public servant, abuse of public office, and forgery; however, in September he was granted "bail" on health grounds and released. On June 1, a court sentenced Member of Parliament (MP) Maxwell Milanzi to nine months' imprisonment on embezzlement charges, later commuted to a two-year suspended sentence. In August MP Lucius Banda was convicted of forgery and sentenced to 21 months' imprisonment; however, in November, after serving just two months, Banda was released and his status as an MP restored following a High Court acquittal on the basis that the original verdict was harsh and excessive for a first-time offender. The state was challenging the acquittal at year's end. The arrests of Banda and Milanzi occurred shortly after Banda spearheaded the introduction of parliamentary procedures for impeaching the president, and Milanzi moved an impeachment motion against the president.

On August 2, Sam Safuli, the former principal secretary for education, was sentenced to two years' imprisonment for corruption.

ACB efforts were hampered by increasing interference by President Mutharika. In August the president fired the country's two senior prosecutors, ACB Director Gustav Kaliwo and Director of Public Prosecutions Ismael Wadi, over the handling of the corruption case against Muluzi. Legal professionals, civil society, and the international community sharply criticized the president for compromising the independence of prosecutors and for failing to observe constitutional procedures in the dismissals. A September report on the justice sector jointly published by the Africa Governance Monitoring and Advocacy project and the Open Society Initiative for Southern Africa charged that executive interference with the ACB and the director of public prosecutions had undermined both offices. The Public Appointments Committee stated that the president had breached the Corrupt Practices Act by dismissing Kaliwo. With the two top prosecutor positions vacant for several months, the ACB was unable to investigate and prosecute existing cases during the second half of the year and accumulated a backlog of more than 200 new cases. The courts ruled that some cases be discontinued since the state had failed to provide timely trials or made other procedural mistakes. For example, the corruption case against John Chikago, the country's former ambassador to Japan, was dismissed because the ACB had not obtained the consent of the Director of Public Prosecutions to prosecute. Corruption charges against Ziliro Chibambo, the country's former ambassador to Mozambique, were dismissed due to the ACB's failure to provide evidence.

On July 27, former president Muluzi was arrested on corruption and theft charges and released the same day. On July 31, the former director of public prosecutions, Ismael Wadi, filed a motion for dismissal, noting that with both the director and deputy director positions of the ACB vacant, the case could not continue legally since no prosecutor was present. The president subsequently demanded Wadi's resignation. In late December the press reported that acting ACB director Tumalisye Ndovi had resumed the investigation and traveled to London and Washington, D.C. to investigate whether embassy accounts had been abused under Muluzi.

The Public Accounts Committee summoned officers from various ministries and departments to answer questions raised in a 2005 auditor general's report reviewing compliance with fiscal rules and regulations; however, many failed to appear.

In September a court acquitted Chief Immigration Officer David Kambilonje of corruption and abuse-of-office charges brought against him by the ACB in 2005, stating that the state failed to provide sufficient evidence. The ACB appealed the acquittal.

The trial was still pending for Secretary of the Treasury Milton Kutengule, who was arrested by the ACB in October 2005 on corruption charges. Kutengule asked the High Court to dismiss the charges against him, since the case had yet to be heard at year's end. The case remained pending.

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

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

A wide variety of domestic 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 generally were cooperative and responsive to their views.

The MHRC was charged with monitoring, auditing, and promoting human rights and conducting investigations regarding violations of human rights; however, a shortage of resources resulted in a backlog of cases, delayed production of reports, and failure to expand human rights monitoring. While complete statistics had not been published by year's end, the MHRC reported that it had received 867 complaints of human rights violations during the year; most were related to labor issues, inadequate access to the judiciary, violations of children's rights, restrictions on property rights and economic activity, and rights of prisoners. The government cooperated with international governmental organizations and permitted visits by UN representatives and other organizations.

Ombudsman Enock Chibwana was mandated by the law to investigate and take legal action against government officials responsible for human rights violations and other abuses. The ombudsman's freedom of action was circumscribed by legislation that requires a warrant and a three day waiting period to gain access to certain government records. The activities of the ombudsman were subject to judicial review.

Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The law specifically provides for equal rights for women, forbids discrimination based on language or culture, and provides for equality and recognition before the law for every

citizen. However, the capacity of government institutions to assure equal rights for all citizens was limited.

Women

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 lack of awareness of their legal rights and fear of retribution and ostracism. In August parliament passed a domestic violence bill that 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. The press published frequent accounts of rape and abuse, and the judiciary continued to impose heavier penalties on those convicted of rape--including up to 14 year prison sentences for child rape--and assault.

In February a man was sentenced to five years' imprisonment for wounding his pregnant wife's genitals, and in September another man was sentenced to 14 years' imprisonment for cutting off his wife's hands. During the year the government announced plans to establish shelters to support abuse victims, and the police service began a sensitization campaign on the dangers of domestic violence.

The law does not specifically prohibit female genital mutilation (FGM), and there were anecdotal reports that a few small ethnic groups practiced it.

Prostitution is legal; however, the law prohibits living off the wages earned through prostitution, owning a brothel, or forcing another person into prostitution. On February 26, prostitutes found loitering in Kasungu were charged with living on earnings from prostitution and ordered to pay a small fine or face three months' imprisonment. In August eight prostitutes in Lilongwe were ordered to pay a small fine for loitering at night. In July 2005, bar and hotel owners, participating in a 4 day workshop to brainstorm on commercial sex activities and the spread of HIV/AIDS, called on the government to criminalize prostitution. There was no government action during the year.

Sexual harassment is prohibited by law. In December a man who fondled a woman in Mponda village without her consent was found guilty of indecent assault and sentenced to 18 months' imprisonment.

State House Press Officer Chikumbotsu Mtumodzi was accused of indecently assaulting a journalist at her workplace on December 18; the trial was ongoing at year's end.

Women have the right to full and equal protection under the law and may not be discriminated against on the basis of gender or marital status; 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 the majority of the 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; 52 percent of the country's full time farmers were women. Women also 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 have increased; however, few women participated in the limited formal labor market, where they constituted less than 5 percent of managerial and administrative staff. In 2005 the National Association of Businesswomen supported working women by making small loans to 300 women who successfully completed business management training.

The law provides for a minimum level of child support, widows' rights, and the rights to maternity leave; however, only individuals who utilized 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 were no laws specifically prohibiting these practices, the government and civil society made 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 Women and Child Development.

Children

The constitution protects children from any treatment that is harmful to their physical or mental development or may interfere with their education, and the government continued a high level of spending on children's health and welfare.

The government provided free primary education for all children, although education was not compulsory. A 2005 government study found that 80 percent of children attended primary school, although only 12 percent attended secondary school. Families were responsible for book fees and purchasing uniforms. Students from very 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.

In 2004 the University of Malawi released a report on the status of free primary education since its inception in 1994. The report noted that, over the preceding decade, annual budgetary increases for education had not kept pace with increasing student enrollment. Student dropout rates marginally decreased each year since free education was introduced, but the study concluded that rates remained high. The 2002 Malawi Demographic Household and Education Data Survey's report indicated that gender gaps in primary school attendance were small but that boys were much more likely to attend secondary school than girls. There also were large gaps in achievement levels between girls and

boys.

The government took steps to respond to a March 2004 UN Children's Fund (UNICEF) study that showed a number of girls entered into sexual relationships with teachers for money, became pregnant, and subsequently left school. The study also found that many girls left school because of violent behavior by some teachers. In response the government expanded legal protection of students subjected to exploitation and inappropriate relationships at school. In November 2005 the Lilongwe magistrate court sentenced a male teacher to six years' imprisonment for defiling a 10 year old girl in a classroom.

More than half of the country's children lived in poverty, mostly in rural areas. Children in rural households headed by women were among the poorest. Only one third of children had ready access to safe drinking water, infant mortality was high, and child malnutrition was a serious problem. In June 2005 the government launched a National Plan of Action for Orphans and Vulnerable Children to mitigate the impact of poverty and HIV/AIDS on the country's estimated one million orphans.

Child abuse was a problem. The press reported several cases of sexual abuse of children, including arrests for rape, incest, sodomy, and defilement. On February 18, a man was sentenced to nine years' imprisonment with hard labor for indecent assault of his 16-month-old daughter in 2004. In June a man was sentenced to 14 years' imprisonment with hard labor for defiling his 12-year-old niece. In July an HIV-positive man was sentenced to 18 years' imprisonment with hard labor for defiling two girls in Mulanje and infecting them with gonorrhea. During the year the press reported a few alleged rape cases involving female perpetrators who went unpunished since the relevant law only recognizes male rapists.

Abusive practices, including the secret initiation of girls into their future adult roles, were widespread. In a few traditional communities, girls averaging 12 years old were forced to have sex with older men as part of such initiation rites. There was a re emergence of the Kupimbira, a practice that allows a poor family to receive a loan in exchange for daughters of any age. FGM was performed in some cases (see section 5, Women).

A local NGO reported an increase in fathers marrying their own daughters in Mangochi District, and the organization urged women to report husbands who slept with their daughters. The MHRC expressed concern over reports of parents forcing their daughters into marriages for food.

The Ministry of Women and Child Development undertook various activities to enhance protection and support of victims. In March a workshop was held in Mangochi to enable stakeholders to develop strategies to combat child abuse. In November 2005 the ministry announced a plan to introduce a child abuse hotline during the year; however, the hotline had not been installed by year's end. The ministry continued its efforts to convert its former regional offices into rehabilitation centers.

In August the National Police conducted a two-day child protection orientation for district police commanders and a two-week training-of-trainers workshop for 16 child protection officers from police units.

Investigations continued into the April 2005 cases in which a boy's genitals were cut off in Chinsapo and another boy's ears were cut off in Mchinji. The Ministry of Women and Child Development provided access to medical care and rehabilitation in these cases.

In 2004 the government worked with UNICEF, international donors, and various NGOs to create and implement a Child Justice Act to ensure juveniles suitable access to the justice system. During the year some components of the act were implemented, although the bill remained with the cabinet at year's end.

The trafficking of children for sexual purposes was a problem (see section 5, Trafficking), and child prostitution also occurred. The belief that children were unlikely to be HIV positive and the widespread belief that sexual intercourse with virgins can cleanse an individual of sexually transmitted diseases, including HIV/AIDS, contributed to the sexual exploitation of minors.

Child labor, including instances of forced child labor, was a problem (see section 6.d.).

A few charitable organizations attempted to reduce the number of child beggars in urban areas; however, the problem of street children worsened 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 trafficking in persons specifically, and persons were trafficked from and within the country. Although the extent of human trafficking was undocumented, the government made efforts to combat trafficking and used existing laws to prosecute cases of child trafficking for agricultural labor exploitation. Although the age of sexual consent is 14, there was no age specified for the protection of minors from sexual exploitation, child prostitution, or child pornography. The government worked with UNICEF and NGOs to refine child protection laws (see section 5, Children).

The country is a source and transit 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 offers of marriage, study, or employment. According to the International Organization for Migration, sex tourists, primarily from Germany, the Netherlands, and the United Kingdom, lured children into sexual relationships while in the country. Poverty and low educational levels contributed to such exploitation. Traffickers involved in land border trafficking to South Africa were typically long distance truck drivers and local businesswomen.

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 10 child traffickers; most of the cases involved trafficking of children for agricultural labor exploitation and cattle herding; the cases were reported to authorities by community labor committees and labor inspectors. A Mozambican man was sentenced to six years' imprisonment for attempting to sell two youths to businessmen. In July a farmer was arrested in Mchinji for allegedly abducting three boys for child labor, and in early August a man was arrested in Dedza for allegedly abducting six young boys to work on tobacco farms as herders. Some convicted child traffickers were required to pay fines; however, some who claimed ignorance of the law were merely warned and released. The Ministry of Women and Child Development repatriated the victims to their home villages.

Police and the Ministry of Women and Child Development handled cases brought to the attention of authorities and provided services for victims, including counseling and reintegration assistance.

The government continued to implement a multiyear strategy to protect vulnerable children from exploitation and to develop a nationwide, interministerial plan to identify the extent of the problem and possible solutions.

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.

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.

Other Societal Abuses and Discrimination

Homosexuality is illegal, although there were no prosecutions for homosexuality during the year.

Societal discrimination against persons living with HIV/AIDS was widespread and inhibited access to treatment; many individuals preferred to keep silent about their health rather than seek help and risk being ostracized. In June 2005 the industrial relations court in Lilongwe ruled that an employer had discriminated against an HIV-positive worker, whom he fired after learning of her illness. The employer complied with the court decision to award eight months' compensation to the worker. The Ministry of Labor and Vocational Training (MOLVT) conducted a public relations program to reduce the stigma associated with having HIV/AIDS.

Section 6 Worker Rights

a. The Right of Association

The law allows workers 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 benefits, and a resistance on the part of many employees to join unions. Army personnel and police could not belong to trade unions, but other civil servants were allowed to form unions. Union leaders estimated that 12 percent of the formal sector workforce belonged to unions; however, accurate statistics on the numbers of union members 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 the implementation and enforcement of the law.

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

The law prohibits antiunion discrimination by employers and requires that employers reinstate workers dismissed because of union activities. There were no reports of persons who were fired for their membership in unions.

b. The Right to Organize and Bargain Collectively

Unions have the right to organize and bargain collectively, and the government protected this right in practice. The law requires that at least 20 percent of employees (excluding senior managerial staff) belong to a union before such a union 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. In practice the law was not effectively implemented due to lack of human and financial resources.

The law allows members of a registered union to strike or go through a formal mediation process overseen by the MOLVT, and workers exercised this right in practice. A strike can only occur after all settlement procedures established in a collective agreement (an understanding, not necessarily signed, reached by both parties to attempt mediation) and conciliation efforts have failed. Laws do not specifically prohibit retaliation against strikers. There was no prohibition on actions against unions that were not registered legally. Members of a registered union in "essential services" have a limited right to strike. Essential services were specified 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 the lack of funding and heavy case backlog, the IRC could not monitor cases or adequately enforce the laws.

At year's end, 16 firms held licenses to operate under export processing zone (EPZ) status, and 15 were operational. The full range of labor regulations applied to the EPZs; however, union organizers stated they had little access to workers in the EPZs.

c. Prohibition of Forced or Compulsory Labor

The law prohibits forced or compulsory labor, including by children; however, such labor occurred (see sections 5 and 6.d.). According to the International Confederation of Free Trade Unions, bonded labor involving entire families was widespread on tobacco plantations. Tobacco tenants have 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 artificially low price received for the tobacco crop, 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 defines children as persons under 16 years of age, and the law prohibits the employment of persons under 14; nevertheless, child labor was a problem. The law also prohibits the employment of children under 18 in work that is hazardous, harmful, or interferes with their education. In 2004 the government published a National Code of Conduct on Child Labor, which defines guiding principles for combating all forms of child labor.

There was significant child labor on tobacco farms, subsistence farms, and in domestic service, largely as a result of extreme poverty and longstanding cultural traditions. Child traffickers attempting to smuggle children for agricultural labor exploitation were occasionally caught and successfully prosecuted and convicted (see section 5).

A local NGO reported that young girls in urban areas often worked outside of their families as domestic servants, receiving little or no wages. School age children often worked as vendors. According to a 2002 MOLVT study on child labor released in 2004, 80 percent of children were working either in or outside of their homes. In addition, approximately 38 percent of children five to 14 years of age worked more than seven hours per week.

Police and the MOLVT were responsible for enforcing child labor laws and policies. During the year the MOLVT increased inspections, particularly on agricultural estates, and hired and trained 40 additional labor inspectors. In August the MOLVT conducted a workshop for district labor officers on the roles of the judiciary, NGOs, police, and labor officers in child trafficking. During the year an additional 55 youth activists received training on countering child labor using the 2004 child labor code of conduct. The government continued to participate in a three-year International Labor Organization project to withdraw and prevent children from engaging in hazardous work on tobacco farms and domestic service. The MOLVT also established 60 additional community child labor committees in six districts. The MOLVT conducted child labor "open days" in six districts and conducted six sensitization workshops for school teachers and estate owners during the year. With support from UNICEF, the Ministry of Women and Child Development also trained 240 child protection workers throughout the country. The MOLVT youth committees in rural areas monitored and reported on child labor. Despite these efforts, enforcement by police and MOLVT inspectors of child labor laws was hindered by budgetary constraints.

e. Acceptable Conditions of Work

The MOLVT 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 wage amounted to approximately \$0.71 (MK 97) per day; in all other areas, it was approximately \$0.54 (MK 74) per day. Minimum wage rates, which were last revised in January 2005, did not provide a decent standard of living for a worker and family. Wage earners often supplemented their incomes through farming activities. The MOLVT lacked the resources to effectively enforce the minimum wage. However, the minimum wage largely was irrelevant for the great majority of citizens, who earned their livelihood outside the formal wage sector.

The maximum legal workweek was 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 violated statutory time restrictions.

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