



2008 Human Rights Report: Malawi

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

[2008 Country Reports on Human Rights Practices](#)

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Malawi is a multiparty democracy with a population of approximately 13 million. In 2004 citizens elected Bingu wa Mutharika of the United Democratic Front (UDF) as president; in 2005 Mutharika resigned from the UDF to form the ruling Democratic Progressive Party (DPP). Constitutional power is shared between the president and the 193 National Assembly members. 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). 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. Unlawful killing by security forces and police use of excessive force including torture occurred, but the government took steps to prosecute and punish some abusers. Occasional mob violence and harsh and life-threatening prison conditions continued. Arbitrary arrest and detention, including politically motivated arrests, lengthy pretrial detention, societal violence against women, and corruption were problems. The government restricted freedom of assembly and, at times, limited freedom of speech and the press. Government efforts to combat trafficking in persons and child labor continued, but problems remained.

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 persons during the year. Perpetrators were occasionally punished, but investigations often were abandoned or inconclusive.

On August 12, police officers from a rapid response unit shot and killed Yusuf Abdullah while he was driving a truck filled with illegal charcoal in the Mchesi area of Lilongwe. Abdullah's vehicle then crashed into a minibus, killing two additional persons and injuring six others. The Malawi Police Service initially stated that the accident occurred because the vehicle developed mechanical problems while going too fast; however, an autopsy found multiple bullets in Abdullah's body and confirmed that the body had been tampered with to conceal evidence. The Nation newspaper published photos of the body. On August 14, the police arrested four officers--Jonathan Mlotha, Nichola Saidi, Joshua Chewuka, and James Mhonjo--and charged them with murder. The officers were denied bail and were awaiting trial at year's end.

On September 18, a land dispute between two families in the Mbayani area of Blantyre resulted in a clash between police and residents. While trying to control the crowd, many of whom were armed with stones and knives, police

reportedly fired tear gas and rubber bullets. In the confrontation an officer shot and killed a 13-year-old boy. Police had not identified the responsible officer by year's end.

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 MacNever, a guard for government-owned company Admarc; and, the December killing of Dinnis Mashalubu by another Admarc guard Chamasowa.

Mobs sometimes resorted to vigilante abuse, and beat, stoned, or burned suspected criminals to death.

On January 22, a mob in Ndirande Township, Blantyre, beat Chimwemwe Kanyoza to death for the suspected theft of water pumps. On February 10, a mob in Thyolo beat Laston Seunda to death for suspected involvement in the disappearance of a five-year-old girl. On June 3, a mob in Chiradzulu used knives to hack Harold Yobe to death after he was caught stealing cattle. Investigations were ongoing, but no arrests had been made in these cases by year's end.

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

b. Disappearance

There were no reports of politically motivated disappearances.

There were no developments in the February 2007 disappearances of Christopher Chimbanga 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, including torture and other unlawful techniques, in handling criminal suspects. While senior officials publicly condemned prisoner mistreatment, their subordinates continued to employ unacceptable techniques. Inspector General of Police Oliver Kumbambe publicly condemned police officers engaged in human rights abuses and promised the police would not shield them. The Malawi Human Rights Commission (MHRC) and local nongovernmental organizations (NGOs) condemned police for human rights violations several times throughout the year.

There were several instances of security forces abuse. On March 10, The Nation photographed an unknown woman who was left outside the Chilinde Police Station in Lilongwe. Witnesses said she was held by the neck and squeezed against bars on the window by a police officer until she was unconscious. The woman was trying to watch police transport two corpses.

Aubrey Kasten claimed three police officers from Kabula Police Station in Blantyre beat him on August 22 until he was unconscious. Kasten said the officers first asked him to pay a bribe and when he refused, they forced him to join a roving night patrol. When Kasten asked to be released, he was beaten. Police told the media they would investigate but no further information was available.

On November 10, Mzuzu First Grade Magistrate's Court sentenced former police officer Leonard Chitimbe to 24 months in prison for assaulting four suspects on the night of July 20. The suspects has been accused of stealing a digital camera and claimed that Chitimbe beat them with his hands, a cane, and a machete in an attempt to gain a

confession.

Security forces engaged in rape and sexual abuse.

For example, on August 23, a police officer in Lilongwe, Enock Chawanda, was arrested for sodomizing a suspect; the suspect reported the sodomy to medical personnel and a medical examination confirmed the act. Chawanda was awaiting trial at year's end.

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

Prison and Detention Center Conditions

Prison conditions remained harsh and life threatening; overcrowding, inadequate nutrition, substandard sanitation, and poor health facilities remained serious problems. In 2007 chief commissioner for Malawi prison services MacDonald Chawona publicly acknowledged that conditions in the prisons were appalling and attributed most of the problems to inadequate funding. In March the MHRC released a report noting violation of HIV-positive prisoners' rights due to shortage of medicine, inadequate space, poor medical facilities, poor nutrition, and a lack of emergency transport.

The prison system, which was meant 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 was inadequate, and more than 60 percent of positions were unfilled. Budget allocations for the prison system were less than 20 percent of the stated need, and the warden to inmate ratio was one to 17 rather than the recommended one to five.

Inmates were encouraged to grow vegetables and raise livestock and often did so; however, they complained that they did not receive enough food. On September 15, a Department of Prisons spokesperson Tobias Nowa commented that prisoners at Maula Prison in Lilongwe and Chichiri Prison in Blantyre only ate one meal a day due to a shortage of maize in the prison system. In an attempt to remedy the food shortage, the prison system began planting vegetables but still expected to only meet about half the nutritional need of the prisoners. Community service programs were available as alternatives to prison terms for first-time offenders convicted of less serious crimes and who had permanent addresses.

Numerous inmates died in prison each month, largely due to HIV/AIDS, diarrhea, pneumonia, tuberculosis, and inadequate diet. During the year there were 101 reported deaths in the prison system, including 52 attributed to HIV/AIDS, 21 to tuberculosis, 20 to pneumonia, two to malaria, and six to diarrhea. In 2007 the Department of Prisons spokesperson admitted that funding for medicine for HIV/AIDS affected prisoners was inadequate.

Unlike in the previous year, there were no reports of prison riots.

Although women were not kept in separate facilities, the more than 200 female prisoners were segregated within the prison compound and monitored by female guards. Juveniles were no longer incarcerated with adults. There are three juvenile detention centers (Bvumbwe, Lilongwe, and Byandzi) and two prisons with juvenile wings (Zomba and North Mzimba).

In March Blantyre Child Justice Court magistrate Esme Tembenu stated there were 447 children in Malawi's prisons contrary to the Children and Young Persons Act which bars the arrest and conviction of children. Tembenu was

leading a program to remove children from prisons and put them into reformatory centers.

On November 10, Thyolo police officers Richard Chitseko and Cosman arrested and questioned six children between the ages of four and 11 on suspicion of stealing 6500 MWK (approximately \$45). The children claimed the officers handcuffed and beat them. One eight-year-old boy was tied to an Acacia tree and left overnight. All were released after payment of bail, but several NGOs and the MHRC pressed for an investigation which was still pending at year's end.

The law requires pretrial detainees to be held separately from convicted prisoners; however, the number of pretrial detainees swelled to over 2,800 and many prisons did not comply due to inadequate facilities.

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 of the prisons during the year.

In April the special rapporteur for prisons and conditions of detention in Africa, Mumba Malila, from the African Commission on Human and People's Rights, visited the country. He described the Zomba Prison as a serious danger to inmates and criticized the congestion there. Malila noted the prison was over 100 years old and in decay yet housed more than twice the designated capacity.

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

The 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, 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. The police continued to receive 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 within 48 hours; however, these rights were seldom respected in practice. Most suspects were apprehended without a warrant if a police officer had probable cause. Arrest warrants were usually issued in cases involving corruption or white-collar crime and were issued by a duly authorized official based on presented evidence. The use of temporary remand warrants to circumvent the 48-hour rule was widespread. The government provided legal services to indigent detainees; however, access was often delayed since there were only 11 lawyers and seven paralegals working as 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. During the year the MHRC received three complaints of arbitrary detention related to overstay of remand, denial of bail, and unheard appeals.

Arbitrary arrests remained a problem. Police arrested relatives of suspects when a suspect could not be found to draw the wanted individual out of hiding.

Security forces arrested a number of opposition politicians, primarily from the UDF, on a range of charges. Arrests of opposition politicians were greater than in the previous year. While government actions generally were legal in the strictest sense, courts dismissed or suspended many of these cases.

Beginning May 14, police arrested nine persons, most with close ties to the UDF, on charges of treason. Among the suspects were UDF Secretary General Kennedy Makwangwala, UDF Southern Region governor John Chikakwiya, Brigadier General Marcel Chirwa, Brigadier General Jack Mtende, Brigadier General Cosgrove Mituka, former commissioner of police Matthews Masoapyola, retired army commander Joseph Chimbayo, and retired police inspector-general Joseph Aironi. On May 20, all of the suspects were released on bail due to a lack of evidence. However, the cases had yet to be dismissed at year's end.

On May 25, police arrested former president Bakili Muluzi for treason and placed him under house arrest in Blantyre. On May 30, he was granted bail due to lack of evidence. In September the High Court removed Muluzi's bail conditions because the government had failed to begin prosecution within three months of his arrest. However, the case was not dismissed.

The 2006 detention of Vice President Chilumpa for allegedly plotting to assassinate President Mutharika continued. Chilumpa was charged with treason and held under relaxed house arrest in Blantyre, allowing him to travel within the country (provided he informed authorities) and abroad (with High Court permission). On May 30, the Supreme Court agreed that a Constitutional Court should decide whether the government has to give Chilumpa's lawyers photographs of the alleged assassins. At year's end no trial date had been set.

Twenty five percent of the prison population was pretrial detainees. Pretrial homicide suspects were typically held in detention for two to three years, although at Maula Prison alone, 15 suspects had been in jail for over seven years awaiting trial. The most extreme case was that of John Chima, who has been in Zomba Prison awaiting trial for murder for 17 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 a court martial but no military or security tribunals.

Trial Procedures

By law defendants have the right to a public trial but not to a trial by jury. In August the Ministry of Justice approved a new system for murder cases that eliminated jury trials to expedite cases and cut costs. Public and press reaction was noncritical since murder suspects sometimes remained incarcerated for years awaiting trial by jury before the change. Defendants have the right to be present, are entitled to an attorney, and if indigent, have an attorney provided at state expense. Defendants have the right to present and challenge evidence and witnesses, the right of appeal, and the presumption of innocence. The law extends the above rights to all persons.

The judiciary's budgetary and administrative problems effectively denied expeditious trials for most defendants but improvements were made due to increased staffing. The Department of Public Prosecutions had 13 prosecuting attorneys, a decrease of 16 from 2007 levels, and 11 paralegals, an increase of two. 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 paucity of resources and legal professionals restricted the number of cases pursued and resulted in a large backlog. During the year the MHRC received 149 complaints of limited access to justice and 27 complaints of unfair administrative justice. There were no reported problems enforcing 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.

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 practiced self-censorship, especially at government-owned media outlets such as the Malawi Broadcast Corporation (MBC) and Television Malawi (TVM).

Private individuals were generally free to criticize the government without fear of reprisal. However, after the May arrest of nine members of the opposition for treason, several prominent NGO leaders and clergy stated that police and other government officials threatened them with arrest unless they stopped commenting on governance issues.

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

There were 19 private radio stations with limited coverage and which 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. 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.

On February 6, police arrested Daily Times editor James Mphande and charged him with publishing a false story likely to cause public fear and alarm, under Section 60 (1) of the penal code. The arrest came four days after police arrested Mike Chipalasa on the same charge. Chipalasa wrote a story claiming Malawi Congress Party leader John Tembo accused the government of preparing to rig May 2009 elections by hiring vote-rigging experts at a political rally; Tembo subsequently claimed he was misquoted and demanded an apology. Mphande and Chipalasa stood by their story and were released on bail.

On March 12, police arrested Wanangwa Tembo, a Daily Times journalist, for taking pictures of an Anticorruption Bureau (ACB) official arresting a police officer suspected of taking a bribe from a suspect. Tembo said he was handcuffed, hit three times by an officer as he was put into a patrol car, and then forced to delete the photos from his camera while at the police station. Tembo was released a few hours later.

In August the government banned live broadcasts of parliament citing the inappropriate language used by members. The Media Institute of Southern Africa called the ban an infringement on freedom of the media and a violation of the public's right to access information.

The Communications Act provides for the president to appoint board directors and chief executives for the Malawi Communications Regulatory Authority (MACRA), MBC, and TVM.

Government funding for public broadcasters continued to be blocked by opposition legislators as a punitive measure for the biased progovernment reporting of TVM and MBC. In August, after the Electoral Commission and Media Council cited TVM and MBC programs as likely to incite violence, the broadcasters briefly stopped airing the programs in question. However, in October the stations began broadcasting toned-down versions of the controversial programs.

In November MACRA removed Joy Radio, owned in part by former president Bakili Muluzi, from the air, citing ownership by a politician as a violation of the Communications Act. A Supreme Court ruling returned Joy Radio to the air on December 16, pending a judicial review of the case. MACRA continued to hold broadcasting equipment for Joy Television, also owned by former president Muluzi, preventing the station from broadcasting.

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. Less than 15 percent of the population had access to the Internet, 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, the government limited this right. Security forces 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.

Police use of excessive force to disperse demonstrators resulted in several injuries.

On May 25, police arrested former president Bakili Muluzi for treason upon his return from the United Kingdom. Muluzi was expected to address supporters in Lilongwe the same day, but police fired guns to disperse the crowd at the rally location, injuring three persons. Police stopped supporters from going to Muluzi's residence in Limbe multiple times during the next week. On May 31, police again stopped a Muluzi rally in the Biwi area of Lilongwe, firing teargas into the crowd to disburse supporters. Police also stopped a June 1 New Republican Party rally in the Ndirande area of Blantyre where Muluzi was expected to speak. In late August police stopped several Muluzi "whistle-stop" tours in Lilongwe and warned that they would arrest anyone who attended the roadside rallies. Police said the rallies led to traffic jams and blocked roads. On September 3, police relented, saying the rallies could be held as long as they were a safe distance away from the road.

On August 4, police stopped civil society marches in Lilongwe, Mzuzu, and Blantyre. Several civil society groups, including the Human Rights Consultative Committee and the Civil and Political Space Network, organized the demonstrations to urge legislators to put public interest ahead of political self interest. Organizers stated they had originally been given permission for the demonstrations, but were later told they could not hold the marches. Police cited the political environment was not conducive to marches or rallies as the reason for their actions.

No action was taken against police responsible for the use of excessive force to disperse demonstrators in 2006 and 2007.

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. A 2007 Supreme Court ruling declared that religious freedom is a right that cannot be restricted. 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 anti-Semitic acts. The Jewish community was very small.

For a more detailed discussion, see the 2008 International Religious Freedom Report at www.state.gov/g/drl/irf/rpt.

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

The constitution and law 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 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 the expulsion or return of refugees to countries where their lives or freedom would be threatened. 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 settlement. 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.

The government provided temporary protection to individuals who may not qualify as refugees under the 1951 convention or the 1967 protocol and provided it to approximately 3,906 persons during the year.

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 intimidated refugee and asylum seekers. On February 29, police entered the Dzaleka refugee camp in Dowa without informing camp authorities and smashed the store of a Somali man suspected of assisting in the smuggling of refugees to South Africa. Police also routinely performed sweeps of refugees found illegally outside of the camp and returned them to 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 and free, although not always fair, elections held on the basis of universal adult suffrage.

Elections and Political Participation

International election observers found the 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 eight constituencies. By-elections for these vacancies took place in 2005. Observers declared them free and fair and better organized than the national elections. The president and vice president can run for parliamentary seats but are constitutionally barred from simultaneously holding more than one 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; all cabinet ministers are currently 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 used bribery, other inducements, and violence to encourage opposition party divisions. During the year the government detained numerous opposition leaders (see section 1.d.). Sporadic minor violence was common between supporters of rival political parties.

On April 28, President Mutharika opened the National Assembly for the first time since dismissing it last September to prevent the speaker of the National Assembly from enforcing Section 65 of the constitution, which requires members of parliament who change political parties after being elected to vacate their seats. At least 40 members of the ruling (but minority) DPP would have been affected by enforcement of the law. Opposition pressure to implement section 65 continued, forcing a second sitting of parliament which finally passed the national budget on August 28.

In May while the opposition parties boycotted, the National Assembly approved the president's appointees to the positions of chief justice of the Supreme Court of Appeal and auditor general. The opposition maintained the appointments occurred without a quorum.

In May 2005 President Mutharika dissolved district and municipal assemblies in anticipation of constitutionally-mandated local government elections that were scheduled for that same month; however, the government failed to hold elections, citing a budgetary shortfall related to the food crisis. Civil society and the donor community criticized the government for delaying the staging of these elections, which were postponed until 2010.

There were 25 women in the 193-seat National Assembly and six women in the 42-member cabinet. Women comprised approximately 25 percent of the civil service. There were three female justices among the 22 supreme and high court justices.

There were three members of minorities in the National Assembly.

Government Corruption and Transparency

The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials sometimes engaged in corrupt practices with impunity. The World Bank's Worldwide Governance Indicators reflected that corruption was a serious problem and noted a slight decline in the control of corruption from the previous year. The public also perceived corruption as a problem, although some informed observers, including leaders in the business and banking community, claimed a significant reduction in corruption under the current government. A financial disclosure law existed but only applied to members of parliament and was voluntary.

In November 2007 Alexius Nampota was named as the new director of the ACB, ending a period of over a year where the ACB lacked a permanent head. A commission of inquiry found that the ACB's former acting director Tumalisye Ndovi drew two salaries while serving in the position. The president reprimanded Ndovi, but reappointed him as a police commissioner where he served until his death in June.

The ACB continued to launch investigations, but indictments of former high-level government officials remained slow. Many of the cases were tied up in the courts due to legal challenges on investigation procedures. 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. Additionally, the ACB said both complaints and investigations had declined since 2004-2005 when President Mutharika began his anticorruption campaign; the ACB completed 52 corruption convictions since 2004.

In April the High Court convicted Sam Mpasu, a former cabinet minister and National Assembly speaker, of abuse of office in the high-profile Fieldyork notebook case. The court sentenced Mpasu to six years' imprisonment, and he remained in prison pending his appeal.

The ACB continued prosecuting the October 2007 case of Kandi Padambo, the former head of the Electricity Supply Commission of Malawi, charged with steering contracts towards a business associate. Padambo, who denied all charges before he was granted bail, was also accused of misusing his public office and failing to disclose his interests while chairing an internal procurement committee. On December 22, a magistrate's court acquitted Padambo, but the ACB stated it would appeal the ruling.

There was no progress in the case of Minister of Information Patricia Kaliati, who was accused of accepting vehicles from a foreign company in return for a concession at a national park; her ministry previously included the Department of Tourism.

There was little progress during the year in the corruption case against former president Muluzi due to legal injunctions and delays in scheduling appeals. On September 15, the Supreme Court of Appeal dismissed an application by the ACB to vacate a stay order Muluzi obtained. The order restrains the ACB from questioning Muluzi about the 1.4 billion MWK (approximately \$10 million) donor funds that it contends ended up in Muluzi's accounts. A final verdict in the matter by the Supreme Court 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 4 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 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 hindered human rights monitoring. The MHRC reported that it had received 585 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.

UN agencies and international NGOs are resident in the country and have access to investigate human rights abuses. The ICRC delegation for southern Africa based in Harare, Zimbabwe also covers the country.

The ombudsman was mandated by law to investigate and take legal action against government officials responsible for human rights violations and other abuses. However, his 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, but he enjoyed government cooperation and operated without government or party interference. The ombudsman lacked adequate resources, having only eight investigators for the entire country, and some recommendations were referred to parliament after being ignored or challenged by government departments and agencies, since the ombudsman does not have the authority to enforce its determinations.

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, 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.

On February 1, HIV counselor Charles Namphambo was convicted of raping a 19-year-old woman under the pretext of conducting an HIV test. Namphambo was sentenced to four years in prison. In April Lickson Paison was sentenced to 12 years in prison for raping a 90-year-old woman. On March 12, Jawadu Magowero was sentenced to nine years in prison for defiling a three-year-old girl.

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

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 provide shelter to abuse victims and deal 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 is the main charge under which prostitutes were arrested, resulting usually in small fines.

Sexual harassment is not specifically prohibited by law, but 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.

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. Fifty-two 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 have 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 the right to 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 were 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 Women and Child Development.

Children

The constitution prohibits treatment of children that is harmful to their physical or mental development or that may interfere with their education. Government spending levels have not kept up with increasing needs.

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, but the system had not been fully implemented by year's end. 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. Other documents such as health pass books could alternatively be used to identify children.

The government provided free primary education for all children, although education was not compulsory. 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. A 2006 survey showed that boys were 28 percent more likely to attend secondary school than girls.

Child abuse was a problem. The press reported many cases of sexual abuse of children, including arrests for rape, incest, sodomy, and defilement. For example, on April 10, South Lunzu magistrate sentenced Steven Nkhata to 14 years in prison for raping an 11-year-old girl.

A July 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's paralegal department also reported an increase in child abuse and defilement cases for the past year. However, Rumphi police stated in January that the victim support units were raising awareness and gender-based violence cases had dropped from five to 10 per week to one to two in their area.

The government took steps to respond to a 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. For example, on July 15, courts sentenced teacher David Chombwe to three years in prison for defiling a pupil for the previous four years. Chombwe began raping the girl when she was only nine.

During the year the Teacher's Association of Malawi publicly stated it would not shield members who committed sexual assault against pupils. A study by the Safe Schools Program in Machinga said 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-old were forced to have sex 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 Forum for African Educationists in Malawi noted a rise in forced marriages in 40 percent of the districts it worked in. 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 perpetrated on girls between 10 and 15 years of age, less often on 16-to 20-year-olds. A government/UNICEF 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.

On February 28, the High Court sentenced Peter Chakwamba to 20 years in prison for mutilating the genitals of a 14-year-old boy in 2007.

The Ministry of Women and Child Development undertook various activities to enhance protection and support of victims. The ministry trained and paid small stipends to over 800 community child protection workers who worked nationally to identify victims of child abuse, under-age labor, and trafficking, and referred cases to district social welfare offices or the police. In 2005 the ministry announced the introduction of a child abuse hotline; however, budget and other limitations prevented its establishment by year's end. The ministry continued to support the Lilongwe social welfare and rehabilitation center but did not have centers in the southern or northern regions. Religious and NGO-supported centers such as Chisomo Children's Club in Blantyre, and a Salvation Army center in Mchinji augmented government support.

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 trafficking in persons specifically, and women, children, and men were trafficked to, from, and within the country. While the extent of human trafficking was undocumented, the government made efforts to combat it 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 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 phony 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. 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 2008 study 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 exploitation and cattle herding. International trafficking was done on valid travel documents obtained through unlawful means. It 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, some who claimed ignorance of the law were merely warned and released.

Police and the Ministry of Women and Child Development handled cases brought to their attention and provided 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.

The government continued to implement a multiyear strategy to protect vulnerable children from exploitation, but there was no reportable progress on the development of a nationwide, interministerial plan to identify the extent of trafficking and possible solutions.

The State Department's annual Trafficking in Persons Report can be found at www.state.gov/g/tip.

Persons with Disabilities

The Employment Act prohibits discrimination for 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.

A study by the Federation of Disability Organizations in Malawi found that 35 percent of children with disabilities had never attended school. The organization cited poor physical access to schools, lack of special needs teachers, and negative attitudes of parents and fellow pupils as causes. The 2007-08 budget for special needs education was cut by about 60 percent from 2006 levels.

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.

Other Societal Abuses and Discrimination

Societal violence and discrimination based on sexual orientation occurred. A 2008 study by the Center for the Development of People found that approximately 34 percent of homosexual men in the country had been blackmailed or denied services such as housing or healthcare due to their sexual orientation. Additionally, 8 percent surveyed said they had been beaten by police or other security forces due to their sexual orientation.

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, 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 sector.

Section 6 Worker Rights

a. The Right of Association

The law allows workers, except for army personnel and the 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 routinely granted.

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 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.

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 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. The law was not effectively implemented due to lack of human and financial resources.

There were no reports of antiunion discrimination.

Twenty four 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 (approximately \$70) or two years' imprisonment. However, 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 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 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 aged 14-18 may not work in jobs that are considered hazardous or that interfere with their education; nevertheless, child labor was a problem.

In June the Ministry of Labor stated that over 1.4 million children were engaged in child labor. A study in Thyolo found 41 percent of children under 15 engaged in at least part-time work. Seventy-eight percent of children between 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 porous borders with Zambia and Mozambique.

In October police arrested Lilongwe restaurant owner Mohamed Abed Ali and his employee Petro Kandindi for hiring four boys to clean a septic tank of the restaurant. The four boys, who ranged from ages 13-18, were not provided any safety gear for the job. Kandindi claimed he thought all of the boys were over 18, but admitted he did not provide protective gear. The Ministry of Tourism sealed the restaurant and revoked its license. The case was still in the court at year's end.

Police and the 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 (approximately \$140) 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 government continued to participate in several social programs to address child labor, including a three-year International Labor Organization project begun in 2005 to withdraw children and keep them from engaging in hazardous work on tobacco and tea farms and in domestic service. To date over 7,000 youths have been removed and rehabilitated under the program. 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 (approximately \$1) per day; in all other areas, it was 105 MWK (approximately \$0.75) per day. Minimum wage rates did not provide a decent standard of living for a worker and family. Official minimum wages only apply to the formal sector. Wage earners often supplemented their incomes through farming activities. The Ministry of Labor lacked the resources to effectively enforce the minimum wage. 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 was 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.