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Malawi

Country Reports on Human Rights Practices - [2005](#)

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Malawi is a multiparty democracy with a population of approximately 11.5 million. In May 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). On February 5, President Mutharika resigned from the UDF and on April 14 formed the Democratic Progressive Party (DPP). On October 18, the National Assembly adopted impeachment procedures, which were under legal review by the court at year's end. On October 20, an impeachment motion was filed against the president for alleged legal violations, including election irregularities, the appointment of the head of the Malawi Police Service without National Assembly approval, and the use of state funds to establish the DPP. 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. HIV/AIDS and severe food shortages affecting as many as four million persons exacerbated these problems. The following human rights problems were reported:

- use of excessive force by police
- mob violence
- harsh and life-threatening prison conditions
- arbitrary arrest and detention
- lengthy pretrial detention
- limits on freedom of speech and press
- limits on freedom of assembly
- societal discrimination and violence against women
- child abuse
- trafficking in persons
- forced child labor
- limits on workers' rights

The government took significant steps to punish human rights abusers and investigate corruption. An inspection of a police station in Karonga by the inspector general of the police led to a one-year imprisonment of two policemen who abused detainees. The Mutharika administration continued an ambitious anticorruption campaign, arresting and indicting several high-ranking officials. Leaders increasingly spoke out against exploitative and hazardous child labor practices. Stiff penalties were issued to child traffickers.

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, brutal and unlawful police treatment led to the death of two juveniles.](#)

On June 6, 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 claimed that he had been tortured and assaulted by police. The Malawi Human Rights Commission (MHRC) found a strong correlation between police treatment of the boy and the decline in the boy's health culminating in his sudden death. The Minister of Home Affairs and Internal Security stated the government condemned the alleged torture. The government promised to conduct an inquiry into the case. A police officer was charged with murder; he was denied bail and awaited trial at year's end. On June 7, police shot and killed a 16-year-old boy at a protest in Ngabu (see section 2.b.). The government promised to conduct an investigation of the incident. There was no further development in the case by year's end.

On August 22, police shot and killed a 28-year-old man in Machinga who was cutting trees for firewood. Deputy Police Public Relations Officer Kelvin Maigwa claimed that police officers fired into the air to disperse a crowd of illegal loggers who threw stones at police. An investigation was ongoing at year's end.

There were no developments in the mysterious 2003 death of Kalonga Stambuli, a former private business advisor to the previous president, who died of poisoning and strangulation. Prior to his death, newspaper reports indicated that Stambuli may have had potentially damaging information about the former president's business activities. A police investigation was ongoing at year's end.

There were no developments in the case of Peter Mussa Gama, who died in police custody in 2003. In 2004 the MHRC publicly called for compensation for Gama's family; however, the government had not compensated the family by year's end.

An investigation was conducted in the May 2004 case in which police reportedly killed a 10-year-old girl during a political demonstration (see section 2.b.). A settlement was reached with the family and no charges were filed.

Mobs sometimes resorted to vigilante justice in beating, stoning, or burning suspected criminals. Following the June death of the 12-year-old boy in police custody, protestors chased a group of policemen in Ngabu and severely beat one of the officers. No arrests were made during the year.

On July 4, a mob beat a mentally-ill man to death in Chitipa after he reportedly killed another man with a pounding stick. An investigation was ongoing at year's end.

On November 16, a man was beaten to death in Kasungu by villagers protesting the appointment of a village headman. Eleven people were arrested, but a trial date had not been set by year's end.

There were no developments in the August 2004 case in which a crowd beat a man to death for reportedly burglarizing a home near Blantyre.

A suspect awaited trial at year's end for the August 2004 beating death of a man caught stealing sugar cane near Kasungu.

Police took no action in any of the 2003 cases of mob killings.

b. Disappearance

There were no reports of politically motivated disappearances.

There were no developments in 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 law prohibits such practices; however, there were instances of police beating and abusing detainees, and using excessive force in handling criminal suspects. On June 7, the mother of a 12-year-old boy who died in police custody that month (see section 1.a.) alleged that police officers brutally beat her and two of her children during interrogation. She also claimed that police removed her clothing prior to beating her and refused to allow her to go to the hospital for treatment after the assault.

On June 10, two policemen in Karongawere sentenced to one-year imprisonment with hard labor for assaulting and wounding two detainees. The inspector general of the police ordered the police officers' arrests after discovering an injured inmate during a police station inspection. Police violently dispersed demonstrations during the year, which resulted in numerous injuries and at least one death (see section 2.b.).

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. Police sometimes mistreated suspects due to a mistaken belief that the law required them to present a case (not just charges) to the court within 48 hours of arrest, and police sometimes resorted to beatings to obtain information within the time limit. Lack of financial resources for appropriate equipment, facilities, and training contributed to mistreatment. The MHRC called for the introduction of a compensation fund to assist victims of police abuse and relatives of persons who died in police custody; however, no such fund had been established by year's end.

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 thousand inmates, held 10,389 prisoners, including approximately 350 juveniles. Inmates complained that they did not receive enough food. Prison inmates were encouraged to grow vegetables and raise livestock. Community service programs were available as alternatives to prison terms. In 2004 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 April 2004 the government began a program with international donors to renovate the country's four major prisons. A new prison was under construction, scheduled to open in early 2006 to replace Mzuzu prison and alleviate prison congestion in the north. Some prisons were

upgraded to include improved toilet and shower facilities and plumbing.

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 in practice, 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 could not comply with this law due to lack of space and inadequate facilities.

The Inspectorate of Prisons, domestic nongovernmental organizations (NGOs), and international NGOs were permitted to make visits to monitor prison conditions and to donate basic supplies. 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 law prohibits arbitrary arrest and detention, although there were problems in practice.

Role of Police and Security Apparatus

The National Police, controlled by the Ministry of Home Affairs and Internal Security, has responsibility in law and in practice for law enforcement and maintenance of order within the country. The 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 and domestic violence (see section 5). The government continued to seek community involvement in its comprehensive reform of the police. Civil society groups conducted workshops for the police on crowd control measures and management of demonstrations. 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, have access to legal counsel, and be released on bail or informed of charges by a court of law within 48 hours; however, these rights seldom were 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's situation. The MHRC received 663 complaints of arbitrary detention; most related to overstay of remand, denial of bail, and unheard appeals.

Police were routinely criticized for failing to act impartially with regard to political demonstrations.

Police arrested some journalists and demonstrators during the year (see sections 2.a and 2.b.). On March 15 President Mutharika ordered the arrest and detention of two journalists and an assistant to the vice president in connection with stories the journalists published about the president (see sections 2.a. and 2.b.). On September 16, police arrested former DPP Vice President Gwanda Chakuamba for criticizing the president (see section 2.a.).

A total of 10,389 persons were incarcerated in the country's prisons, including approximately 350 juveniles and 68 women. Twenty-three percent of the prison population was pretrial detainees.

There were no political detainees during the year.

The Centre for Legal Assistance (CELA) offered free legal assistance to expedite the trials of 200 detainees, with priority given to the sick and young and those subjected to trial delays.

e. Denial of Fair Public Trial

The law provides 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. 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, 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

There were no reports of political prisoners.

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

The law prohibits 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 limited this right. There were several cases of intimidation of journalists and government critics through arrests. While none of these cases went to trial, the arrests prompted self-censorship on the part of journalists. Despite tactics used to intimidate journalists, private individuals were generally free to criticize the government without fear of reprisal.

On October 23, the press reported that a man was arrested for making derogatory comments about the president at a gas station in Blantyre. On September 16, police arrested former DPP Vice President Gwanda Chakuamba for statements he made at a political rally after leaving government, in which he allegedly referred to the president as a "brute" and a "drunkard." Chakuamba was charged under the Protected Emblems and Names Act with insulting the president. Capital Radio, which conducted live coverage of the rally, challenged the legality of the act; the case was still pending at year's end.

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.

On March 15, journalists Raphael Tenthani and Mabvuto Banda of the independent newspaper *The Nation* were arrested for allegedly violating the Protected Emblems and Names Act. The journalists had written articles alleging that the president had moved out of his residence for fear that ghosts haunted the building. They were charged with publishing information likely to cause public alarm and were released after 24 hours. The charge was later changed to publishing information likely to insult the president. Although Tenthani and Banda were not prosecuted, the president demanded an apology and a retraction of the story. Neither journalist complied with the demand; there was no court action by year's end.

The government enforced several restriction notices on *The Nation*, preventing it from publishing antigovernment stories. In October 2004 the police went to *The Nation* at midnight and ordered it to stop printing an article that included references to a presidential cabinet meeting. The article was published, and *The Nation* was accused of publishing minutes of a secret cabinet meeting.

There were 15 private radio stations with limited coverage and broadcasting only in urban areas. The state-owned Malawi Broadcasting Corporation (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.

In March 2004 the Public Affairs Committee, a civil society group composed of influential religious leaders, initiated legal action against MBC and TVM, challenging their bias toward the ruling party. These challenges generated renewed public interest in the issue of media freedom. The legal action was not pursued after a change in government two months later.

There were no developments in the 2003 assault of several journalists by police at a roadblock.

On October 20, parliament refused the request of an independent radio station to carry a live broadcast of the National Assembly session, stating that the station was not "adequately professional."

There were no government restrictions on the Internet or academic freedom.

b. Freedom of Peaceful Assembly and Association

Freedom of Assembly

The law provides 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.

On March 27, police arrested five UDF politicians for organizing an antigovernment demonstration. They were charged with unlawful assembly, unlawful procession, and conduct likely to cause the breach of peace. The men were released on bail two days later, and the government subsequently dropped the case.

On June 7, police in Ngabu shot and killed a 16-year-old boy while firing live ammunition at unarmed villagers who were protesting the death in police custody of another boy (see section 1.a.). Another person was shot in the leg. A police officer was arrested, and the Minister of Home Affairs and Internal Security, Uladi Mussa, presented a report to the National Assembly on the incident. Opposition leaders described the report as shallow and biased and called for an independent inquiry into the killing. The police officers who were reportedly involved in the incident were transferred to other stations. A trial date had not been set and no independent investigation was conducted at year's end.

On September 16, police arrested former DPP Vice President Gwanda Chakuamba for criticizing the president during a rally in Blantyre (see section 2.a.).

On December 5, a 13-year-old boy and a 20-year-old man were injured at a government food distribution center in Nsanje when a guard opened fire on a crowd to prevent them from forcibly entering the premises. The Centre for Human Rights and Rehabilitation (CHRR) condemned the incident and called for further investigation; a police investigation was ongoing at year's end.

On December 13, police shot and injured three men in Bvumbwe, Thoyo while attempting to disperse a mob armed with knives that attacked a man on suspicion that he had kidnapped a child. Police arrested four officers; no further action was taken by year's end.

There were no developments in the February 2004 case in which two persons were shot when police used live ammunition and tear gas to break up an opposition rally. According to police, the gathering, which coincided with a ruling party rally nearby, was illegal because it lacked proper permits. Opposition leaders maintained they had a court injunction allowing the event to take place. The MHRC urged the inspector general of police to launch an investigation into the violence, but no action was taken by year's end.

There were no developments in the May 2004 case in which police allegedly shot 2 protestors and arrested at least 96 others for rioting over the results of the presidential election. Police reportedly used live ammunition and tear gas to stop looting and vandalism immediately following the announcement of the election results. One man was reportedly beaten to death by a group of worshippers when he sought refuge from the tear gas in a nearby mosque (see section 1.a.). The suspects arrested by police were released on bail within 48 hours of arrest and were awaiting trial at year's end.

There were no developments in the May 2004 case in which a police officer attempting to break up a political demonstration reportedly shot 10-year-old Epiphania Bonjesi. Bonjesi, a bystander, bled to death after being shot in the leg. Eyewitness accounts indicated the bullet was fired by police. In an October 2004 settlement, the government paid compensation to the family.

No action was taken against police who used excessive force to disperse demonstrations in 2003.

Freedom of Association

The law provides for freedom of association, and the government generally respected this right in practice. The government required organizations, including political parties, to register with the registrar general in the Ministry of Justice, and registration was routinely granted.

c. Freedom of Religion

The law provides for freedom of religion, and the government generally respected this right in practice.

There are no separate requirements for the recognition of religions, but religious groups must register with the government. There were no reports that the government refused to register any religious group during the year.

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.

Societal Abuses and Discrimination

Churches continued to be a significant source of political influence, particularly in rural areas. There were generally amicable relations among the various religious communities. There were no reports of societal violence, harassment, or discrimination against members of religious groups. The Jewish community was very small, and there were no reports of anti-Semitic acts.

For a more detailed discussion, see the 2005 [International Religious Freedom Report](#).

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

The law provides 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. 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 cooperated with the office of the UN High Commissioner for Refugees (UNHCR) in assisting refugees and asylum seekers.

Although largely peaceful, there were some reports of ethnic clashes among asylum seekers. In 2003 the government signed an agreement with the government of Rwanda and UNHCR to voluntarily repatriate approximately 5,500 refugees who fled following the 1994 genocide in Rwanda. At year's end, only a small number of refugees had participated in the voluntary repatriation.

The government provided temporary protection to individuals who may not qualify as refugees under the 1951 convention and the 1967 protocol.

In August 2004 the government cooperated with UNHCR in conducting a verification exercise to assess the population of refugees and asylum seekers in the country. UNHCR reported that the country hosted approximately 9,100 refugees (primarily from the Democratic Republic of the Congo, Rwanda, and Burundi) at a refugee center in Dowa; though UNHCR and the government made efforts to relocate refugees to a second camp in Luwani. While no legal framework existed, the government routinely allowed refugees to seek both employment and educational opportunities. 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 law provides 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 Bingu wa Mutharika, chosen by former President Muluzi as the UDF candidate, was elected to serve a 5-year term. Election discrepancies prevented parliamentary candidates from taking seats in six constituencies. By-elections for these vacancies took place on January 11. 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.

President Mutharika, Vice President Cassim Chilumpha, and a 30-member cabinet exercised executive authority. The executive exerted considerable influence over the National Assembly which followed a hybrid parliamentary system; a number of cabinet ministers also were members of the National Assembly.

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.

There were 27 women in the 193-seat National Assembly, and 5 women in the 30-member cabinet. Women comprised approximately 25 percent of the civil service. There were 2 female justices among the 23 Supreme and High Court justices, and a woman was appointed as inspector general of police, the highest-level position in law enforcement.

There were three members of minorities in the National Assembly. There was one cabinet member who was a person with disabilities; however, he resigned in October.

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 an ambitious anticorruption campaign. These activities contributed to waning support for the president and growing political tension. On October 18, the National Assembly adopted impeachment procedures. On October 20, an impeachment motion was adopted charging the president with alleged violations of the law, including election irregularities, the unlawful appointment of the head of the Malawi Police Service, and the use of state funds to establish the DPP. On October 26, the High Court issued an injunction against the procedures until the High Court could determine their constitutionality or until the injunction itself was overturned. There were no further developments at year's end.

The Anti-Corruption Bureau (ACB) launched several investigations and made several indictments of former high-level government officials, including former President Bakili Muluzi. On October 17, the ACB arrested the secretary of the treasury and on October 18, the chief immigration officer on corruption charges. Their trials were pending at year's end.

On April 20, the mayor of Blantyre, John Chikakwiya, was sentenced to three years in prison for theft by a public servant and abuse of public funds. On December 12, the Supreme Court overturned his theft charge, and Chikakwiya was released early for good behavior.

On May 11, former Education Minister Yusuf Mwawa was charged with theft by a public servant and forgery. He was released on bail the same day, and on May 17, the president dismissed Mwawa from the cabinet. Mwawa's trial was pending at year's end. On November 2, MP Lucius Banda was arrested for forgery. On November 3, MP Maxwell Milanzi was arrested for covering up a previous arrest that would have made him ineligible for parliament. On November 14, former Education Minister Sam Mpasu was arrested on corruption charges. The three men were released on bail November 14; no trial dates were set by year's end.

The law provides for public access to government information, and the government respected this right in practice.

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.

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 are subject to judicial review.

The constitutionally mandated MHRC was charged with monitoring, auditing, and promoting human rights provided for under the law and to carry out investigations regarding violations of human rights. The MHRC handled 1,136 complaints of human rights violations in 2004 compared to 587 complaints in 2003.

Nearly half of the complaints related to the rights of prisoners and detainees and included allegations of overstay on remand, denial of bail, and unheard appeals. Other common complaints cited in the MHRC's 2004 report related to unfair labor practices and inadequate access to justice and legal remedies.

The MHRC complained of severe financial and human resource constraints which led to a backlog of cases, delayed production of reports, and failure to expand human rights monitoring.

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

Women

Domestic violence, especially wife beating, was common, and women seldom discussed the problem openly. The law does not specifically prohibit domestic violence. 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 rapists. Police regularly investigated cases of rape and sexual assault but did not normally intervene in domestic disputes.

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

While prostitution is not illegal per se, living off the wages earned through prostitution, owning a brothel, or forcing another person into prostitution are illegal. In July 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.

Under the law, women have the right to full and equal protection by law and may not be discriminated against on the basis of gender or marital status; however, in practice 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. The literacy rate among women between the ages of 15 and 45 was 46 percent; male literacy in the same age group was approximately 79 percent.

Women often had less access to legal and financial assistance, and wives 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. 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 some areas of the country, a widow's home and possessions were customarily taken by her in-laws. 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 Gender, Child Welfare, and Community Services.

Children

The law provides for equal treatment of children, 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. 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 January 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 past decade, the government increased its education budget annually, but the increases were not proportional to 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. On November 11, the Lilongwe magistrate court sentenced a male teacher to 6 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. On June 21, 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.

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.

The president urged parents and guardians to protect orphans and vulnerable children from abuse. There were societal patterns of child abuse. On April 15, a boy's private parts were cut off in Chinsapo; and on April 21, another boy's ears were cut off in Mchinji. The Ministry of Gender, Child Welfare, and Community Services provided access to medical care and rehabilitation in these cases. Investigations were ongoing at year's end.

The press reported several cases of sexual abuse of children, including arrests for rape and incest. On July 4, a 44-year-old man in Rumphi was sentenced to 14 years' imprisonment for raping his 17-year-old daughter. On October 17, a 46-year-old man in Dedzawas sentenced to 8 years' imprisonment for raping his 11-year-old granddaughter.

Abusive practices, including the secret initiation of girls into their future adult roles, were widespread. There was a re-emergence of the Kupimbira 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 sleep with their daughters. The MHRC expressed concern over reports of parents forcing their daughters into marriages for food.

The Ministry of Gender, Child Welfare, and Community Services 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. On November 3, the ministry announced a plan to introduce a child abuse hot line in early 2006. The ministry was in the process of converting its former regional offices into rehabilitation centers.

The Ministry of Gender, Child Welfare, and Community Services was attempting to change a law which allows 15-year-old girls to marry with

parental consent.

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, including the July establishment of a child justice court and recruitment of juvenile justice officers.

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.). The MHRC conducted awareness-raising activities December 5-10 focused on the rights of children.

Trafficking in Persons

The law does not prohibit trafficking in persons specifically, and trafficking was a problem. 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. The penal code contains several provisions relating to prostitution and indecency that could be used to prosecute traffickers. Since 2001, seven cases involving trafficking in persons have been prosecuted. On September 24, two citizens and a foreigner were sentenced to seven years' imprisonment with hard labor for kidnapping. The three men were arrested in September while attempting to smuggle five young boys across the border into Zambia to work on tobacco estates. Other convicted child traffickers were required to pay fines.

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 with them 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.

Police and the Ministry of Gender, Child Welfare, and Community Services handled cases brought to the attention of authorities, and provided services, including counseling and reintegration assistance for victims.

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 guaranteeing 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. A cabinet member with disabilities led the Ministry for Social Development and Persons with Disabilities until his October 9 resignation. During the 2004 elections, some accommodations were made for voters with disabilities. Voters requiring assistance were permitted to bring an assistant into the voting booth with them.

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. [On June 1, 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 8 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 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. At year's end, 24 unions were registered.

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 two-year case backlog, the IRC could not monitor cases and adequately enforce the laws.

At year's end, 15 firms held licenses to operate under export processing zone (EPZ) status, and 14 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 ICFTU, 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; however, child labor was a problem. The law also prohibits the employment of children under 18 in work that was hazardous, harmful, or interferes with their education. In November 2004 the government published a National Code of Conduct on Child Labor, which defines guiding principles for combatting all forms of child labor.

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

A local NGO reported that in urban areas, it was common to find young girls working outside of their family as domestic servants, receiving little or no wages. School-age children often worked as vendors. The results of a 2002 MOLVT study on child labor released in 2004 indicated that 72 percent of children were in school and 80 percent of children were working either in or outside of their homes. In addition, approximately 38 percent of children 5 to 14 years of age worked over 7 hours per week.

To strengthen the fight against child labor, the MOLVT, in collaboration with workers and employers, completed its work on a "hazardous work schedule" that was awaiting final review at year's end. The schedule details all work that is considered hazardous and not suitable for persons below the age of 18.

The MOLVT conducted three refresher courses for its 150 child labor inspectors and its district and community labor committees. In addition, 77 child labor youth activists received training on child labor using the new child labor code of conduct. With support from UNICEF, the Ministry of Gender, Child Welfare and Community Services also trained 240 child protection workers throughout the country. Budgetary constraints hindered minimum work age and child labor law enforcement by police and MOLVT inspectors. The MOLVT youth committees in rural areas monitored and reported on child labor.

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, the TWAB encountered problems due to inefficient organizational structure and inadequate funding, which hindered timely and accurate revision of the wage rate recommendations. The urban minimum wage amounted to approximately \$0.80 (MK 97) per day; in all other areas, it was approximately \$0.60 (MK 74) per day. Minimum wage rates 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.

Mechanisms for protecting internationally recognized worker rights were weak. There were serious manpower shortages at the MOLVT; as a result, there were almost no labor standards inspections. The law protects foreign workers in correct legal status. Illegal foreign workers were subject to deportation.

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