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## 2010 Human Rights Report: Malawi

BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR

### 2010 Country Reports on Human Rights Practices

April 8, 2011

Malawi is a multiparty democracy with a population of approximately 15 million. In May 2009 Bingu wa Mutharika of the Democratic Progressive Party (DPP) was reelected president in what international observers characterized as a generally free and fair election. Constitutional power is shared between the president and the 193 national assembly members. Security forces reported to civilian authorities.

The following human rights problems were reported: police use of excessive force, which resulted in deaths and injuries; security force impunity, although the government made some efforts to prosecute abusers; occasional mob violence; harsh and life-threatening prison conditions; arbitrary arrest and detention; lengthy pretrial detention; limits on freedom of speech and the press; official corruption; societal violence against women; trafficking in persons; and child labor.

#### RESPECT FOR HUMAN RIGHTS

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

a. Arbitrary or Unlawful Deprivation of Life

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

On July 27, while conducting a search for another individual, a police officer shot and killed Silence Kapalamula at a video store in the Majawira Trading Centre. Police claimed the shooting was in self-defense. By year's end, no action had been taken against the officer.

On September 20, police officer Godfrey Salamba struck and killed a woman and her child with his vehicle in the village of Balaka. Several eyewitnesses stated that the officer was speeding. By year's end, no action had been taken against Salamba.

On December 23, Detective Sergeant Pierson Msiska was convicted of murder and sentenced to 11 years' imprisonment with hard labor for the August 2009 beating death of Stumai Mwalwanda in Karonga.

Mobs sometimes beat, stoned, or burned suspected criminals to death.

On September 27, a mob in the Ndirande suburb of Blantyre beat Ulemu Sesani and Moses Kachala to death when they were caught breaking into a private home. No arrests were made, and the investigation continued at year's end.

No arrests had been made in the February 2009 case in which villagers in the Nkhata Bay District beat to death village headman Pegson M'nkhwakwata Chirwa and then burned his body.

There were no new developments in the February 2009 killing of Laston Seunda by a mob in Tholo.

#### b. Disappearance

There were no reports of politically motivated disappearances.

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

The constitution and law prohibit such practices; however, police used excessive force and other unlawful techniques, including sexual abuse, during the year. While senior officials publicly condemned prisoner mistreatment, their subordinates continued to employ unacceptable techniques. The Malawi Human Rights Commission (MHRC) and local nongovernmental organizations (NGOs) criticized police for human rights violations several times throughout the year.

On March 17, police allegedly beat Harry Mwandama of Limbe, who suffered a broken leg as a result. Mwandama was accused of illegal peddling. A police spokeswoman denied any knowledge of the beating.

On May 4, three police officers reportedly beat Mercy Lozani until she was unconscious after Lozani refused to reveal the whereabouts of a fugitive. The three officers allegedly then sexually molested Lozani's teenage daughter (see section 1.f.). The case was under investigation at year's end.

There were no developments in the July 2009 case in which police fired into an unarmed crowd in Blantyre, injuring two persons.

Chrispin Ulemu Kam'mayani, a lawyer for the MHRC that a police officer beat and arrested in August 2009, declined to press charges. It was unclear why Kam'mayani dropped the case.

During the year the Limbe Magistrate Court found that Nthethiwa Salamba, Charles Sadick, and Alexander Sadick should be charged with assaulting a police officer; the three claimed they were beaten by police after being arrested in September 2009. The police prosecutor's investigation determined no charges needed to be filed against the police officers involved. The case remained pending at year's end.

During the year police officers from the Kabula police station in Blantyre were cleared of the alleged 2008 beating of Aubrey Kasten.

#### Prison and Detention Center Conditions

Prison conditions remained harsh and potentially life threatening. Overcrowding, inadequate nutrition, substandard sanitation, poor health facilities, and inadequate infrastructure remained serious problems. Prisons and detention centers, while generally well ventilated, had no provisions for temperature control other than wood fires. Basic emergency medical

care was generally available during daytime, but unavailable after regular working hours. Referrals were made to district medical clinics for more involved cases. Potable water was available.

The prison system's 30 facilities, built to accommodate approximately 5,500 inmates, routinely held at least double that number. According to Chief Prison Commissioner MacDonald Chaona, there were 11,672 inmates in the prison system at year's end. Prison staffing remained inadequate despite efforts to recruit more staff. Daily prison rations were meager. Family members were allowed to bring other food items and inmates were encouraged to grow vegetables and raise livestock; however, malnutrition in the prison population remained a problem.

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

The 156 female prisoners were segregated within 16 prison compounds and monitored by female guards. Pretrial detainees often were not held separately from convicted prisoners.

At year's end, according to the Malawi Prison Service, there were 490 children in prison, either serving sentence or awaiting trial.

Prisoners were allowed to have visitors, to observe their individual religions, and to submit complaints to prison authorities.

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

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

During the year the government doubled the budget allocation for the Malawi Prison Service from 558.7 million Malawi kwacha (MWK) to 1.2 billion MWK (\$3.7 million to \$7.9 million). However, the bulk of the increase is slated for the construction of a new prison in Lilongwe, rather than improving current conditions.

#### d. Arbitrary Arrest or Detention

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

#### Role of the Police and Security Apparatus

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

The police force was inefficient, poorly trained, and corrupt (see section 4). Impunity was a problem. Inadequate resources and a lack of qualified candidates from which to recruit hampered efforts to improve MPS quality. The police service maintained a disciplinary committee chaired by the inspector general of police to investigate abuses; however, resources were limited, and it met only sporadically. Officers were disciplined, but punishments often consisted of reassignment to another post or dismissal rather than more stringent sanctions.

Police continued efforts to improve their investigative skills, including training in internal investigations, victims' rights, sexual abuse, domestic violence, and trafficking in persons. Police continued to receive foreign assistance for training officials and procuring equipment.

### Arrest Procedures and Treatment While in Detention

The law provides the accused the right to challenge the legality of detention, to have access to legal counsel, and to be released on bail or informed of charges by a court within 48 hours; however, these rights were often ignored in practice. Most suspects were apprehended without a warrant if police had probable cause. While arrest warrants were normally issued by a duly authorized official based on presented evidence in cases involving corruption or white-collar crime, poorer citizens were often arrested without warrants. The use of temporary remand warrants to circumvent the 48-hour rule was widespread. Police frequently demanded bribes to authorize police bail, which was frequently granted to reduce prison overcrowding rather than on the merits of the case (see section 4). The government provided legal services to indigent detainees; however, access was often delayed, since there were only 15 lawyers and seven paralegals working as public defenders in the country. Relatives were regularly denied access to detainees.

The government arbitrarily arrested persons, sometimes using colonial-era antiseditious and treason laws to stifle criticism.

For example, on August 20, police arrested Levi Nyondo, general secretary of the Livingstonia Synod of the Church of Central Africa, on charges of sedition. The arrest came after Nyondo made statements critical of the government at a funeral. Nyondo was released on bail, and the case was pending at year's end.

During the year the MHRC received six complaints of arbitrary detention related to overstay of remand, denial of bail, and unheard appeals.

The November 2009 convictions of United Democratic Front (UDF) Deputy Secretary General Hophmally Makande for "proposing violence," and Malawi Democratic Party President Kamlepo Kalua for "uttering seditious words," were overturned on appeal on February 19.

There were no further developments in the 2008 treason cases against former president Bakili Muluzi and nine other persons, most of whom had close ties to the UDF.

A total of 1,267 persons, or 11 percent of the total prison population of 11,672, were in pretrial detention. Most pretrial homicide suspects were held in pretrial detention for two to three years, but there is evidence that many detainees remained in prison awaiting trial for much longer periods. Reliable data on the exact number and situation of these long-term pretrial detainees was unavailable.

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, the 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 judicial independence in practice. 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 Malawi Defense Force (MDF) has courts martial but no military or security tribunals. Military personnel accused and tried by courts martial are afforded the same rights as persons accused in civil criminal courts. MDF courts martial can try civilians in cases concerning military operations; however, this has not occurred.

### Trial Procedures

Defendants are presumed innocent and have the right to a public trial but not to a trial by jury. The Ministry of Justice continued its indefinite suspension of jury trials in murder cases, since murder suspects sometimes were incarcerated for years awaiting trial by jury. Juries were used in other types of cases. Defendants have the right to be present at their trial, are entitled to an attorney, and, if indigent, to have an attorney provided at state expense. Defendants have the right to present and challenge evidence and witnesses and have access to government-held evidence relevant to their cases. The law extends the above rights to all persons. All persons have the right of appeal; however, in practice appeals were often delayed for years and sometimes never addressed by the higher court.

The judiciary's budgetary and administrative problems effectively denied expeditious trials for most defendants. The Department of Public Prosecutions had 27 prosecuting attorneys and 10 paralegals, who served as lay prosecutors for minor cases in magistrate courts. Recruitment and retention of government attorneys remained 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 and judicial remedies for alleged wrongs; however, a lack of resources and legal professionals restricted the number of cases pursued and resulted in a large backlog. During the year the MHRC received 83 complaints of limited access to justice and 20 complaints of unfair administrative procedures.

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

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

In 2009 parliament passed a law legalizing warrantless searches. The MHRC reported that police regularly entered homes of poorer citizens using special police search orders, which were issued by a supervisory police officer rather than by a court.

The government detained the family members of persons suspected of criminal activity. For example, police regularly used "bait arrests" of relatives when a suspect could not be found to draw the wanted individual from hiding. Police also sexually molested the teenage daughter of a detainee during the year (see section 1.c.).

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

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

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

The government sometimes threatened the use of colonial-era antiseditious and treason laws to stifle criticism.

The independent media were active and expressed a wide variety of views; however, the government imposed some restrictions, such as the use of onerous licensing and registration provisions. A broad spectrum of political opinion was available in the country's newspapers. There were 10 independent newspapers, including two dailies, one triweekly, and four weeklies.

There were 16 private radio stations that broadcast only in urban areas. State-owned TVM was the sole television broadcaster.

Journalists were harassed, intimidated, and threatened with arrest during the year. On August 26, while making a speech in Blantyre, President Mutharika threatened to arrest journalists and to close newspapers that "print lies." The president was reacting to print reports of food insecurity in the southern region of the country.

There were no developments in the February 2009 "conduct likely to cause a breach of the peace" case against Mzimba Community Radio Station Manager Sam Lwara.

The May 2009 case against Gilbert Tembo for the possession of seditious materials was dropped for lack of evidence.

The July 2009 case against Gabriel Kamlomo remained pending at year's end.

#### 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. Lack of infrastructure and the high cost of Internet connections continued to limit Internet access. According to International Telecommunications Union statistics for 2008, approximately 2 percent of the country's inhabitants used the Internet.

#### Academic Freedom and Cultural Events

There were no government restrictions on academic freedom or cultural events; however, the government sporadically censored films that were deemed to contain culturally sensitive or sexually explicit material.

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

##### Freedom of Assembly

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

##### 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. Registrations for new political parties were routinely delayed.

#### c. Freedom of Religion

For a description of religious freedom, please see the Department of State's *2010 International Religious Freedom Report* at [www.state.gov/g/drl/rls/irf/rpt](http://www.state.gov/g/drl/rls/irf/rpt).

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

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

The government cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern.

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

#### Protection of Refugees

The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to refugees.

The government generally provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular group, or political opinion. However, in 2009 the government deported a recognized refugee from the Democratic Republic of the Congo and an Ethiopian national with a pending asylum application. UNHCR was unable to verify if the two individuals were under threat in their respective countries of origin. No such deportations occurred during the year.

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

The government also provided temporary protection to individuals who may not qualify as refugees under the 1951 Convention relating to the Status of Refugees or the 1967 Protocol; however, no reliable statistics were available.

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. UNHCR, NGOs, and the government collaborated to provide basic assistance, including education to children, in refugee camps.

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

There were no developments or arrests in the July 2009 case of a mob that reportedly killed an Ethiopian refugee accused of stealing maize.

#### 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 periodically through largely free and fair elections based on universal suffrage.

#### Elections and Political Participation

In May 2009 Bingu wa Mutharika of the Democratic Progressive Party (DPP) was reelected president in what international observers characterized as a generally free and fair election, although there were shortcomings. Observers criticized the inequitable access to the state-owned media granted to opposition parties and candidates. Opposition parties accused the government of using public funds for campaign purposes.

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

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

The government delayed the registration of new political parties, which limited their ability to operate legally. Political parties were forced to resort to the courts for judicial relief. For example, the Peoples Development Movement applied for registration in May, but its application was rejected. The party was finally registered November 2, but only after a High Court ruling compelled the government to accept the application. The government appealed the decision, and the case remained in the court at year's end. While parties were generally allowed to operate without restriction or outside interference, there were instances of intimidation by the ruling DPP members.

There were 43 women in the 193-seat national assembly and 10 women in the 42-member cabinet, including the country's first female vice president. Women constituted approximately 25 percent of the civil service. There were three female justices among the 27 Supreme and High Court justices.

There were six members of minorities in the national assembly.

#### Section 4 Official Corruption and Government Transparency

The law provides criminal penalties for official corruption, and the government had some success prosecuting cases; however, officials frequently engaged in corrupt practices with impunity. The World Bank's 2009 Worldwide Governance Indicators reflected that corruption was a serious problem. President Mutharika spoke publicly against corruption and cautioned government officials to refrain from questionable activities. Efforts to combat corruption and promote transparency continued.

Police corruption continued to be a problem. On February 10, police subinspector Charles Ngoleka, officer-in-charge of the Mkanda Police Unit in Mchinji, was arrested for allegedly soliciting and receiving a bribe to release an individual on police bail. The case was pending at year's end.

Casper Chalera, the head of the Malawi Police Service Fiscal and Fraud Section, who was charged for failing to account for 589,436 MWK (\$4,040) in September 2009, was acquitted by the Blantyre Magistrate Court on March 31.

The Malawi Anti-Corruption Bureau (ACB) investigated, indicted, and prosecuted low-level corruption cases during the year; however, critics charged that the bureau generally avoided indictments of high-level government officials. The ACB was considered generally competent in its handling of low-level cases. Indictments of former high-level government officials proceeded slowly, often due to legal challenges filed in court by the accused. Surveys indicated that while a majority of citizens had been exposed to government anticorruption messages, only 15 percent knew how to report corruption to the ACB. The ACB reported that it completed 634 investigations during the year, which resulted in 152 referrals to prosecutors. A total of 25 corruption cases were prosecuted during the year, resulting in 10 convictions, 12 acquittals, and three withdrawals.

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

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

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

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

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

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

The MHRC, an independent government agency, is charged with monitoring, auditing, promoting, and investigating violations of human rights. Continued resource shortfalls resulted in a backlog of cases, delayed production of reports, and hindered human rights monitoring. The MHRC reported that it received 460 complaints of human rights violations during the year.

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

**The Office of the Ombudsman is mandated to investigate and take legal action against government officials responsible for human rights violations and other abuses. Between August 2009 and October 2010, when the ombudsman position was unoccupied, the office continued investigations of existing cases, but no new investigations were authorized. The office continued to lack adequate resources and had difficulty retaining staff. As a result, the office had only six staff members to handle the investigations process for the country. Some recommendations from the ombudsman were referred to parliament after they were ignored or challenged by government departments and agencies.**

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

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

### Women

The law criminalizes rape with a maximum penalty of life imprisonment. Spousal rape is not explicitly mentioned but could be prosecuted under the same rape laws. The government generally enforced the law effectively, and convicted rapists routinely received prison sentences. Data on the prevalence of rape or spousal rape and conviction figures were unavailable; however, press reports of rape arrests and convictions were an almost daily occurrence. The judiciary continued to impose penalties on persons convicted of rape. Although the maximum penalty for rape is death, the courts generally imposed the maximum assault penalty of 14 years in prison for child rape and assault.

The 2009 case against law professor Kandako Mhone for allegedly raping a minor repeatedly since 2006 was pending at year's end.

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 support units provided shelter to some abuse survivors and dealt with human rights and gender-based violence, but officers' capacity to assist and document cases was limited.

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

The government recognized the right of couples and individuals to decide freely and responsibly the number, spacing, and timing of their children. Health clinics and local NGOs were permitted to operate freely in disseminating information on family planning under the guidance of the Ministry of Health. There were no restrictions on the right to use contraceptives, but relatively few citizens had access to them. The government provided free childbirth services, but these services were unevenly distributed due to limited access to hospitals and other medical facilities in rural areas. Contraceptive use among married women between the ages 15 and 49 years old was approximately 38 percent, according to the UN Population Fund (UNFPA). Due to a shortage of doctors, nurses and midwives were a critical component of prenatal and postnatal care. According to the Population Reference Bureau, approximately 56 percent of births were attended by skilled personnel. The UNFPA estimated the maternal mortality ratio to be 510 deaths per 100,000 live births in 2008. Men and women were entitled to equal access to diagnosis and treatment of sexually transmitted infections, including HIV.

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

Women often had less access to legal and financial assistance, and widows often were victims of discriminatory and illegal inheritance practices in which most of an estate was taken by the deceased husband's family. Women usually were at a disadvantage in marriage, family, and property rights; however, awareness of women's legal rights continued to increase, and women began to protest abuse and discrimination. Households headed by women were represented disproportionately in the lowest quarter of income distribution. A total of 52 percent of full-time farmers were women; however, they had limited access to agricultural extension services, training, and credit. Gender training for agricultural extension workers and the gradual introduction of rural credit programs for women increased; however, few women participated in the limited formal labor market, where they constituted less than 5 percent of managerial and administrative staff.

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

The government addressed women's concerns through the Ministry of Gender, Child Development, and Community Development. The Organization for Economic Cooperation and Development's Gender, Institutions, and Development data reflected the elevated discrimination in social institutions and the high inequality to which women were subjected on a daily basis.

#### Children

Citizenship can be derived at birth within the country or from one's parents. In 2007 the government launched the pilot phase of the national registration and identification system, the first step in the creation of a national identification system

to provide for mandatory registration of births; however, the system had not been fully implemented by year's end. There were no reports of discrimination or denial of services due to lack of birth registration.

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

Child abuse remained a serious problem. The press regularly reported cases of sexual abuse of children, including arrests for rape, incest, sodomy, and defilement. A 2008 study by the safe schools program in Machinga found that 90 percent of girls and 47 percent of boys in primary schools experienced some form of violence, including sexual touching by other students, sexual abuse by teachers, corporal punishment, and verbal and psychological abuse.

During the year parliament passed the Child Care, Protection, and Justice Act, which prohibits subjecting a child to any social or customary practice that is harmful to the health or general development of a child. Targeted practices included child trafficking, forced labor, forced marriage or betrothal, and use of children as security for debts or loans.

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

The new law does not specifically prohibit female genital mutilation (FGM), and it was practiced by a few small ethnic groups. In most cases, FGM was performed on girls between 10 and 15 years of age.

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

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

The trafficking of children for sexual purposes was a problem, and child prostitution for survival without third-party involvement also occurred. The new Child Care, Protection, and Justice Act stipulates punishment up to and including life imprisonment for child traffickers.

The penal code outlaws carnal knowledge of females under the age of 16 years old and stipulates penalties up to and including the penalty of death for offenders.

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.

The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. For information on international child abduction, please see the Department of State's annual report on compliance at [http://www.travel.state.gov/abduction/resources/congressreport/congressreport\\_4308.html](http://www.travel.state.gov/abduction/resources/congressreport/congressreport_4308.html).

Anti-Semitism

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

#### Trafficking in Persons

For information on trafficking in persons, please see the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/g/tip](http://www.state.gov/g/tip).

#### Persons with Disabilities

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

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

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

Homosexual activity is illegal and is punishable by up to 14 years in prison in addition to corporal punishment.

On May 20, Tiwonge Chimbalanga and Steve Monjeza were found guilty of "carnal knowledge against the order of nature" and "gross indecency" and were sentenced to the maximum penalty of 14 years in prison with hard labor. On May 29, President Mutharika unconditionally pardoned them. Mutharika stated that he granted the pardon for humanitarian reasons only and stressed that homosexuality was still a crime in the country.

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

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

#### Other Societal Violence or Discrimination

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

#### Section 7 Worker Rights

##### a. The Right of Association

The law allows workers, except for army personnel and police, to form and join trade unions of their choice without previous authorization or excessive requirements, and workers exercised this right in practice; however, union membership was low due to the small percentage of the workforce in the formal sector, the lack of awareness of worker rights, and resistance on the part of many employees to joining unions due to fear of reprisals. Union leaders estimated that 12 percent of the formal sector workforce belonged to unions. There is no reliable data on employment in the formal or informal sector. It is estimated that there are 1.1 million persons actively working in the formal sector. An estimated 650,000 are employed in the civil service. In 2008 the Malawi Congress of Trade Unions (MCTU) calculated that approximately 18 percent of workers in the formal sector were union members. 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; however, in reality the law does not apply to the vast majority of workers in the informal sectors.

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

The law allows members of a registered union to strike or go through a formal mediation process overseen by the Ministry of Labor, and workers exercised this right. A strike can take place only after all complex and time-consuming settlement procedures established in a collective agreement and conciliation efforts have failed. Ambiguities in the law regarding what services are considered to be "essential" could lead to unions having difficulties striking legally. There were, however, no instances of strikes being declared illegal during the year. Laws do not specifically prohibit retaliation against strikers. There is no prohibition on actions against unions that are not registered. Members of a registered union in "essential services" have a limited right to strike. Essential services are defined as services whose interruption would endanger the life, health, or personal safety of the whole or part of the population, as determined by the Industrial Relations Court (IRC). While there is a definition of "essential services," there is no defined list.

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

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

Workers in the formal sector have the right to organize and bargain collectively, and the government protected this right. Informal sector workers organized in the Malawi Union for the Informal Sector (MUFIS), which is affiliated with the MCTU, were unable to obtain the same standard of protection as formal sector workers. This inequity is the result of an administrative Ministry of Labor decision that the MUFIS does not have sufficient standing to bargain collectively. The law requires that at least 20 percent of employees (excluding senior managerial staff) belong to a union before it can engage in collective bargaining at the enterprise level, and at least 15 percent union membership for collective bargaining at the sector level. The law provides for the establishment of industrial councils in the absence of collective agreements for sector-level bargaining. Industrial council functions included wage negotiation, dispute resolution, and industry-specific labor policy development. The law was not effectively implemented due to lack of human and financial resources.

The International Trade Union Confederation reported that "many workers are afraid to join unions because of prevalent antiunion discrimination by employers." There were informal reports of employers denying union access to their premises and resisting bargaining with unions. There was also anecdotal evidence that union organizers were dismissed or had their rights violated, which deterred unionization.

A total of 10 firms held licenses to operate under export processing zone (EPZ) status, and all 10 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. Parliament passed a Child Care, Protection, and Justice Bill that specifically outlawed forced child labor. However, there were reports that such practices occurred, particularly in tobacco farms. Forced labor is punishable by a maximum fine of 10,000 MWK (\$66) or two years' imprisonment. In practice punishments were almost always limited to fines, and the modest fines imposed were not effective in discouraging labor violations.

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

Also see the Department of State's annual *Trafficking in Persons Report* at [www.state.gov/g/tip](http://www.state.gov/g/tip).

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

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

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

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

An August 2009 report issued by Plan International stated that children working in the tobacco industry were being exposed to high levels of nicotine poisoning, equivalent to smoking 50 cigarettes a day. The government disputed the report, arguing that Plan International's claim that 78,000 children worked in the tobacco industry was greatly inflated. Debate continued over the true extent of the problem.

Regarding the 2008 case against Lilongwe restaurant owner Mohamed Abed Ali and his employee Petro Kandindi for hiring four boys to clean a septic tank, Ali and Kandindi were convicted and ordered to pay fines and restitution to the victims.

Police and Ministry of Labor officials were responsible for enforcing child labor laws and policies; however, labor inspectors do not have law enforcement capabilities and must cooperate with the police to pursue violators. The law specifies a maximum fine of 20,000 MWK (\$132) or five years' imprisonment for violations.

The Labor 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 29 district labor officers and an estimated 160 labor inspectors at year's end. Approximately 1,400 inspections were carried out during the year.

The Labor Ministry's 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.

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#### e. Acceptable Conditions of Work

The Ministry of Labor sets separate urban and rural minimum wage rates based on recommendations of the tripartite wage advisory board (TWAB), composed of representatives of labor, government, and the private sector. However, poor functioning of the TWAB resulted in delayed and inadequate wage rate revisions. The urban minimum was 142 MWK (\$0.94) per day; in all other areas, it was 105 MWK (\$0.70) per day. Minimum wage rates did not provide a decent standard of living for a worker and family. Official minimum wages apply only to the formal sector. Wage earners often supplemented their incomes through farming activities. The Ministry of Labor lacked the resources to enforce the minimum wage effectively. However, the minimum wage was irrelevant for most citizens, who earned their livelihood outside the formal wage sector. There was no exception for foreign or migrant workers.

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

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

Workers, particularly in industrial jobs, often worked without basic safety clothing and equipment. Workers dismissed for filing complaints about workplace conditions have the right to file a complaint at the labor office or sue the employer for wrongful dismissal. Workers have the right to remove themselves from dangerous work situations without jeopardy to continued employment; however, given the low level of education of most workers and the high level of unemployment, workers were unlikely to exercise this right.

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

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