

MALAWI 2012 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Malawi is a multiparty democracy. On April 7, Vice President Joyce Banda became president, as stipulated by the constitution, following a brief period of uncertainty after the death of President Bingu wa Mutharika. Banda was Mutharika's running mate in the 2009 elections, which international observers characterized as generally free and fair. Constitutional power is shared between the president and the 193 National Assembly members. Security forces reported to civilian authorities.

The major human rights issues in the country included the use of excessive force by security forces, which resulted in deaths and injuries; harsh and life-threatening prison conditions; and limits on freedom of speech, press, and political expression.

Other human rights problems included arbitrary arrest and detention; lengthy pretrial detention; official corruption; occasional mob violence; societal violence against women; trafficking in persons; discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons; and child labor.

In some cases the government took steps to prosecute officials who committed abuses, but impunity remained a problem.

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

a. Arbitrary or Unlawful Deprivation of Life

There were reports the government or its agents committed arbitrary or unlawful killings.

Police arbitrarily shot and killed suspects. For example, on February 15, police assistant Chikwatu shot and killed car robbery suspect Fabiano. A police official confirmed the killing and stated that Fabiano had attempted to escape. Authorities took no action against Chikwatu.

Police were implicated in the death of several prisoners in custody. For example, on January 29, Edson Msiska died in police custody at Mzuzu Police Station. Msiska was alleged to have stolen a computer and other household items. Six officers were arrested in connection with Msiska's death in April. In October

charges were dropped for three of the officers; the other three were charged with manslaughter. The case was awaiting trial.

In November 2011 a commission of inquiry held several public hearings into the July 2011 deaths of 20 persons during country-wide demonstrations to protest the government's inaction on "poor economic and democratic governance." The commission heard testimony that the youths who attacked shoppers in Blantyre were affiliated with the former ruling Democratic Progressive Party (DPP); that the injunction halting the protests was flawed; and that the Malawi Police Service (MPS) used excessive force, including live bullets. The final report submitted to President Banda on July 18 blamed the country's inadequate police, media, and civil society capacity while largely ignoring political problems that led to the protests. However, a separate report by the Malawi Human Rights Commission (MHRC) differed sharply, blaming the government for being unwilling to hear, much less address, domestic complaints, while conceding that capacity shortages were also factors. On July 5, the president asked the attorney general to recommend whether there was misconduct warranting criminal or administrative action against any individual. There were no further developments by year's end.

On October 9, a commission of inquiry investigating the September 2011 death of student activist and opposition blogger Robert Chasowa transmitted its report to President Banda. The commission concluded that Chasowa was murdered and questioned the conduct of the university administration, police, and politicians. The report also identified potential suspects. Although President Banda stated that those responsible for Chasowa's death would be prosecuted, no further action was taken by year's end.

Perpetrators of past abuses were occasionally punished, but investigations often were abandoned or remained inconclusive. For instance, there were no further developments in the following 2011 killings: the March death of Emmanuel Kafere in police custody, for which a police officer was charged; and the December death of Kingsley Khope, who also died in police custody.

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 practices, including sexual abuse. For example, in December a police officer in Mangochi was arrested following allegations that he raped a detained female suspected of illegal entry into the country.

While senior officials publicly condemned prisoner mistreatment, their subordinates continued to abuse prisoners. The MHRC and local nongovernmental organizations (NGOs) criticized police for human rights violations several times throughout the year.

There were no further developments in the July 2011 beating of Ulemu Martin Nkhata, allegedly by 13 policemen, and the December 2011 beating of Joseph Nyirenda, also allegedly by police officers.

Prison and Detention Center Conditions

Prison conditions remained harsh and potentially life threatening.

Physical Conditions: The prison system's 30 facilities, built to accommodate approximately 5,500 inmates, routinely held at least double that number. According to the Prison Service, there were 12, 236 inmates in the prison at year's end.

Police also held detainees, many for longer than the legal limit of 48 hours, in police stations not designed to accommodate long-term detentions humanely. For example, a 2011 report on pretrial detention by Open Society Initiative for Southern Africa (OSISA) indicated that Lilongwe Police Station had 87 detainees, including four women and seven children. One of the detainees in Lilongwe had been held for seven months.

The country's 102 female prisoners were segregated within 16 prison compounds located in 30 facilities and monitored and controlled by female guards and a female officer-in-charge. Pretrial detainees often were not held separately from convicted prisoners. The 2011 OSISA report found that supervision of female detainees varied in police detention. In Lilongwe and Mzimba, both male and female officers supervised female detainees, while in Blantyre, Thyolo, and Zomba, only female guards monitored female prisoners.

According to the Prison Service, at year's end there were 833 young offenders (between the ages of 18 and 21) in prison, including 778 serving sentences and 55

awaiting trial. There were 17 children (under age 18) in prison living with mothers who were serving sentences. Children can be detained in juvenile detention centers (reformatory centers) for a maximum of six months, but only as a last resort or if the child is likely to be a repeat offender. There were two juvenile detention centers. The Mpemba Reformatory Centre, which held both boys and girls, can accommodate 370 children, and Chilwa, which held boys only, can accommodate 120 children; both facilities were underutilized. Children were not always held separately, at least in police detention.

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 generally was available in the daytime, but unavailable after regular working hours. For more serious cases of illness and injury, referrals were made to district medical clinics. Potable water was available.

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

Given the lower numbers of female prisoners, prison conditions were slightly better for women in terms of space and access to prison amenities.

Between January and September, 78 inmates died in prison, 33 due to tuberculosis, 13 due to pneumonia, and the rest from HIV/AIDS, diarrhea, and inadequate diet.

The government remained noncompliant with the High Court's 2009 requirement to improve prison conditions. For example, on March 19, MHRC Commissioner Veronica Sembereka reported Blantyre's Chichiri Prison cells, meant for 80 inmates, held 193 inmates.

Administration: Prison recordkeeping was considered generally reliable.

While victim support units in Lilongwe and Zomba attended to the needs of vulnerable detainees, such as women and children, other locations, such as Mzimba, had no protective measures in place due to a lack of facilities.

Prison staffing remained inadequate despite efforts to recruit more staff.

Prisoners could have visitors, observe their religious practices, and submit complaints to prison authorities. The law establishes the Inspectorate of Prisons, which is charged with “monitoring of conditions, administration, and general functioning in penal institutions taking due account of applicable international standards.” The inspectorate consists of a justice of appeal or a judge, the chief commissioner of prisons, a member of the Prison Service Commission, a magistrate, and the ombudsman. The inspectorate did not visit any of the prisons during the year.

Community service programs were available as alternatives to prison terms for first-time offenders with permanent addresses who were convicted of less serious crimes. The government also worked with UNICEF and NGOs to implement diversion programs for juveniles and nonviolent offenders, as an alternative to custody sentences.

The government decreased the budget allocation for the Prison Service from the previous year’s 2.4 billion Malawian kwacha (MWK) to 1.1 billion MWK (\$7.6 million to \$3.5 million).

Monitoring: 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 seek permission to visit any prisons during the year. However, the NGO Irish Rule of Law International, the Office of the UN High Commissioner for Refugees (UNHCR), and foreign diplomats visited prisons during the year.

d. Arbitrary Arrest or Detention

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

For example, on February 13, Ralph Kasambara, an opposition activist, was arrested with five others after he called police to arrest alleged arsonists who had been caught at his work place. Kasambara was granted bail on February 14 by a court, but police refused to release him, transferring him to another jail instead. On February 15, Kasambara was released only to be re-arrested two hours later. Police claimed that proper procedure had not been followed in his release. On February 21, he was granted bail while being hospitalized due to a heart condition.

Kasambara and five fellow detainees challenged their detention in court and were awarded 20 million MWK (\$63,490) by the government for false imprisonment.

Role of the Police and Security Apparatus

The MPS, under the Ministry of Home Affairs, has responsibility for law enforcement and maintenance of order. Police occasionally called on the military for support in operating roadblocks and assistance in manhunts.

The police were inefficient, poorly trained, and corrupt (see section 4). Impunity was a problem. Inadequate resources and a lack of qualified candidates hampered efforts to improve the quality of MPS officers. After being sworn into office in April, one of President Banda's first appointments was a new inspector general of police, who led a movement to reform and professionalize the MPS and chaired the National Police Disciplinary Committee to investigate abuses. Members of the committee were appointed by the inspector general of police with the approval of the Police Service Commission. The committee was scheduled to meet quarterly, but only met twice during the year.

Officers were disciplined, but punishments often consisted of reassignment to another post or dismissal rather than more stringent sanctions. For example, there were cases of police officers in Karonga accepting bribes to facilitate illegal immigration. A May newspaper reported that 12 police officers had been disciplined internally by the MPS for involvement in an illegal immigration syndicate, with an anonymous police officer specifying that the discipline consisted of a seven-day salary deduction (less than \$18). In a similar case, a police officer complicit in smuggling was transferred to another district, according to a government official in Karonga.

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 an accused person 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 within 48 hours; however, these rights were often ignored. 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 evidence presented 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 often granted to reduce prison overcrowding rather than on the merits of the case (see section 4).

While the government is obligated to provide legal services to indigent detainees, in a vast majority of cases, such aid was only provided to homicide suspects. Due to limited resources, the Department of Legal Aid prioritized its assistance, focusing on vulnerable groups such as women, children, the elderly, and those facing capital offense charges. Legal aid access often was delayed, since there were only 17 lawyers and eight paralegals working as public defenders in the country. Relatives were sometimes denied access to detainees.

The Center for Legal Assistance and Paralegal Advisory Service Institute, NGOs that assist 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.

Arbitrary Arrest: The government arbitrarily arrested persons, sometimes using colonial-era antisedition and treason laws to stifle criticism.

On August 12, police arrested over 100 persons in an apparent effort to round up criminals. Further information about those arrested was unavailable.

On October 17, police in Mponela arrested 22 persons on charges of robbery, theft, prostitution, and violation of the colonial-era rogue and vagabond laws. The 22 detainees were tried in Mponela Magistrate Court and fined 1,000 MWK (three dollars) each.

Through December the MHRC received four complaints of arbitrary detention related to excessively long pretrial detention, denial of bail, and unheard appeals.

Pretrial Detention: Of the total prison population of 12,236 persons, 1,951, or 15 percent, were in pretrial detention. Most pretrial homicide suspects were held in pretrial detention for two to three years, but there was 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.

According to an NGO, in June there were 489 pretrial detainees in Maula Prison, approximately 200 of whom were being held in unlawful detention as their warrants had expired, and they were being held beyond the lawful pretrial detention limit. Sixty-three of the prisoners had been in prison since before 2010. In contrast to previous years, Maula Prison held no detainees arrested before 2008. With assistance from an NGO, many of Maula Prison's longest-serving detainees, including a detainee whose homicide case dated to 1992, received legal closure on their cases during the year. Some were released, while others were released on bail.

To reduce case backlog and excessive pretrial detention, minor cases were directed to traditional courts (run by chiefs) and "camp courts" (led by civil society). Camp courts expedite cases by bringing magistrates to the prison. Paralegals gather cases of pretrial detainees who have overstayed, are held unlawfully, or have been granted bail but cannot afford the terms set by the court. Magistrates, along with the court clerk and police prosecutor, work through the list granting bail to some, reducing bail, dismissing cases, or setting a date when the accused must appear for trial.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence. However, the judicial system was inefficient and handicapped by serious weaknesses, including poor recordkeeping, 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. The 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. Child Justice

Courts in Blantyre, Mzuzu, and Zomba handled cases of child offenders. The law provides for an accused to be informed of charges by a court within 48 hours. 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. Such assistance generally was limited to homicide cases. Defendants have the right to present and challenge evidence and witnesses and have access to government-held evidence relevant to their cases. By law, they are not compelled to testify or confess guilt. The law extends the above rights to all persons. All persons have the right of appeal; however, appeals often were 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 30 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 legal professionals restricted the number of cases pursued and resulted in a large backlog. Through August the MHRC received 51 complaints of limited access to justice and six complaints of unfair administrative justice 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.

The law permits police officers of the rank of sub-inspector or higher to conduct searches even when it is not feasible to obtain a court warrant if they have reasonable grounds for believing something needed for an investigation cannot be otherwise obtained without undue delay. Before conducting a search without a

warrant, the officer must record his probable cause in writing and give a copy of this record to the owner or occupant of the place to be searched. In May the National Assembly concluded that the Police Act, including the subsection on warrantless searches, had sufficient safeguards to prevent abuse. Nevertheless, 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.

Unlike in past years, there were no reports of the government detaining the family members of persons suspected of criminal activity. The MHRC did not receive any complaints of police using “bait arrests” of relatives when a suspect could not be found to induce the wanted individual to surrender.

Section 2. Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The law provides for freedom of speech and press; however, at times the government attempted to limit these rights.

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

In October 2011 four human rights activists were arrested and charged with sedition and conducting a demonstration without permission. In June the government, through the director of public prosecution, dropped the case due to lack of evidence.

Freedom of Press: 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. Independent newspapers included two dailies, seven weeklies, and one free bimonthly.

There were 16 private radio stations that broadcast primarily in urban areas and six community radio stations. State-owned Malawi Broadcast Corporation (MBC) TV was the sole national television broadcaster. In July the Malawi Communications Regulatory Authority awarded 15 new radio and television broadcasting licenses.

In May the National Assembly repealed a law empowering the government to “prohibit the publication or importation” of publications deemed to be “contrary to the public interest.” The Malawi Censorship Board Secretariat is responsible for reviewing and classifying plays, films and foreign music as well as regulating public theaters. The law stipulates that the Censorship Board is required to have membership of between six and 10 individuals, including a member from the ministry responsible for culture. The minister responsible for culture is empowered to designate the chair of the board. However, the board did not exist at year’s end.

Violence and Harassment: Journalists were harassed, intimidated, and threatened with arrest during the year.

A few journalists reported receiving threats. For example, in March Chairperson of the Malawi Chapter of the Media Institute of Southern Africa Anthony Kasunda reported receiving threats from unknown DPP sympathizers in response to the government’s repeated attacks on the media. As a matter of practice, the media mainly reported threats to alert the public and fellow journalists. No action was taken to investigate the threats.

Police also questioned and arrested journalists. For example, on October 15, journalist Justice Mponda of the online publication *Malawi Voice* was arrested by police and charged with publishing false news likely to cause fear and alarm among the public. Mponda was alleged to have reported the expulsion of the Tanzania high commissioner from the country and the resignation of President Banda; both reports were false. However, instead of referring the case to the Media Council of Malawi, which may penalize journalists found guilty of misconduct, Mponda’s case was referred directly to police. Mponda was free on bail and awaiting trial.

On May 26, journalist Clement Chinoko of the *Sunday Times* was arrested for writing a story about two girls from Blantyre who had become engaged (female homosexuality is illegal). Chinoko was detained beyond the legally permitted 48 hours after which the law requires a detainee be brought before a court of law. The report of the engagement was later found to be false, and Chinoko was charged with misconduct. The case was pending.

Censorship or Content Restrictions: Journalists sometimes practiced self-censorship, especially at government-owned media outlets such as MBC Radios One and Two and MBC TV.

Internet Freedom

There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Lack of infrastructure and the high cost of Internet connections continued to limit Internet access. According to the International Telecommunication Union, approximately 3.3 percent of the population used the Internet in 2011.

Academic Freedom and Cultural Events

Unlike the previous year, there were no government restrictions on academic freedom during the year; 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, but the government restricted this right. For example, the 2010 Police Act holds organizers accountable for any damages and injuries during a protest. City councils and police routinely ignored or delayed responding to protest notifications, which prevented groups from receiving legal authorization to exercise their right to assemble. The government routinely used injunctions and court orders to block protests; however, these abuses declined after President Banda was sworn in April 7.

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 and NGOs were routinely delayed and prevented domestic and international NGOs from registering. The Office of the President and Cabinet was involved in the approval process for new registrations, which added an element of politicization. On several occasions, ministers threatened to deregister NGOs involved in protests or with views contrary to those of the government, although no organizations had been deregistered. These abuses declined after President Banda was sworn in.

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at www.state.gov/j/drl/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. However, delays in obtaining passports delayed travel for some citizens.

The government cooperated with the UNHCR and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to approximately 16,000 refugees, primarily from Central Africa.

Refugee Abuse: Security forces sometimes intimidated refugees and asylum seekers. Police routinely detained refugees found illegally outside of camps and returned them to camps. Local citizens often accused refugees of theft and demanded their deportation. In May a series of attacks in Dowa district targeted mostly Burundian refugees operating businesses outside of the camp. Local business leaders in Dowa petitioned the district council to revoke business and resident permits for refugees alleging that the foreigners harmed local business interests.

Employment: 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 in previous years given work permits to pursue employment outside the camps. There remained some individuals, notably nurses and teachers, who were issued such permits in the past and remained employed based on them.

The government cooperated with the UNHCR in assisting refugees and asylum seekers but restricted refugees' ability to move freely and work outside of refugee camps.

Access to Basic Services: The UNHCR, NGOs, and the government collaborated to provide basic assistance, including education to children, in refugee camps.

Refugees had access to health services through a clinic in the camp, which served both refugee and local community populations. Local laws and the justice system are applicable and accessible to refugees, although access was limited by lack of knowledge on the part of refugees as to services available.

Temporary Protection: The government also provided temporary protection to individuals who may not qualify as refugees; however, no reliable statistics were available.

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

Recent Elections: In May 2009 citizens reelected Bingu wa Mutharika of the DPP as 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 faced by opposition parties and candidates. Opposition parties accused the government of using public funds for campaign purposes. On April 7, Vice President Joyce Banda became president, as authorized by the constitution, following 60 hours of uncertainty after the death of President Bingu wa Mutharika. Banda was chosen by the former president as a running mate before the 2009 election but was expelled from the former ruling DPP party in 2010; she formed the People's Party (PP) shortly thereafter.

Nationwide local elections were last held in 2000 but subsequently have been repeatedly postponed. On November 21, the National Assembly passed a constitutional amendment permitting tripartite elections allowing for concurrent

presidential, legislative, and local elections. The first tripartite elections were scheduled for May 2014. In August President Banda appointed 10 new electoral commissioners. In October the commission successfully oversaw elections for two vacant seats in the National Assembly. Immediately following the by-elections, the president appointed a new chairperson of the Malawi Electoral Commission (MEC) to replace the outgoing commissioner. Although the commission was appointed in accordance with the law, nine financial staff remained on suspension at year's end, which hindered MEC operations.

Political Parties: While parties generally were allowed to operate without restriction or outside interference, there were instances of intimidation by members of the former ruling DPP. However, after Banda's succession to the presidency, there were no reports of intimidation by the new ruling party, the PP.

Although the government did not prohibit 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 executive branch exerted considerable influence over the unicameral National Assembly, which followed a hybrid parliamentary system loosely based on both British and presidential-parliamentary models. All cabinet ministers but one, the minister of justice, were also members of the National Assembly, although they were not required to be.

In contrast to previous years, the government did not delay registration of new political parties. There were 43 registered political parties. Three new parties--Nthanda Congress Party, New Vision Democracy Party, and Chipani cha Pfuko--were registered during the year.

Participation of Women and Minorities: There were 39 women in the 193-seat National Assembly and 12 women in the 36-member cabinet, including Joyce Banda, the country's first female president. Women constituted approximately 25 percent of the civil service. There were six female justices among the 28 Supreme and High Court justices.

There were six members of minority groups, defined as "white," "colored" ("mixed race"), and South Asian, in the National Assembly.

Section 4. Corruption and Lack of Transparency in Government

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.

A May 2012 report by an international NGO concluded that corruption posed a serious challenge and noted that high-level political corruption, petty bribery, patronage, and nepotism were widespread. Corruption was regarded as particularly severe in police, registry and permit services, customs, and the judiciary. There were also reports of widespread corruption and extortion by public officials in procurement. President Banda spoke publicly against corruption and cautioned government officials to refrain from questionable activities. Efforts to combat corruption and promote transparency continued.

The Malawi Anti-Corruption Bureau (ACB) investigated, indicted, and prosecuted persons charged with low-level corruption 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 176 investigations during the year, which resulted in 36 referrals to prosecutors and 44 referrals to other government institutions. There were 19 corruption cases prosecuted during the year, resulting in two convictions.

On June 28, ACB Director Alexious Nampota was arrested by police on charges of abuse of office; he allegedly pocketed allowances for a trip that was postponed. Nampota was released on bail, but not allowed to report for duty. His attorney confirmed that his client agreed to settle the matter out of court. Nampota was compensated for being removed from office before the expiry of his contract, but details of the settlement were not made public.

On November 5, the National Assembly Public Appointments Committee announced its approval of High Court Justice Rezine Mzikamanda as the new director of the ACB. The temporary absence of a director, combined with an ongoing, extended vacancy in the deputy director position, hindered ACB operations, as investigations could only be authorized by the two officers.

On October 8, the ACB arrested former chief statistician for the Population and Housing Census Willie Kachaka for misuse of public office due to allegations of corruption in the hiring of vehicles for the 2008 census. According to a statement from the ACB, Kachaka was released on bail by Lilongwe Magistrates' Court. Kachaka was later convicted and was scheduled for sentencing in February 2013.

A final verdict in the 2007 corruption case against former president Muluzi remained pending.

The constitution provides for public access to government information, in so far as such information is required for the exercise of an individual's rights. 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.

UN and Other International Bodies: 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 operated in the country.

Government Human Rights Bodies: 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 204 complaints of human rights violations during the year.

The Office of the Ombudsman is mandated to investigate government officials responsible for human rights violations and other abuses. The ombudsman does not take legal action against government officials, but may order administrative action to redress the grievance. During the year the office embarked on a public awareness campaign and held public sessions in three major cities to educate the

public about the cases that can be brought to the office. The office had 15 lead investigators aided by 13 assistants.

On October 12, the ombudsman and her executive secretary were arrested by police on charges of theft and abuse of office. Both were released on bail and resumed their duties.

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

The law specifically provides for equal rights for women, forbids discrimination based on race, color, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, property, birth or other status and provides for equality and recognition before the law for every citizen. The law does not specifically mention sexual orientation. However, the capacity of government institutions to ensure equal rights for all citizens was limited.

Women

Rape and Domestic Violence: The law criminalizes rape with a maximum penalty of death. 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 or life imprisonment, the courts generally imposed prison sentences. For cases of indecent assault of women and girls, the maximum penalty is 14 years in prison.

The law provides a maximum penalty of life imprisonment for domestic violence and recognizes that both men and women can be perpetrators as well as victims. According to the 2010 Malawi Demographic and Health Survey (DHS), 41 percent of women reported being victims of physical or sexual violence. 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. 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.

Harmful Traditional Practices: 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.

Sexual Harassment: 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, although it was thought to be widespread, or effectiveness of government enforcement.

Reproductive Rights: 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 access was limited in rural areas. According to UN data from 2011, approximately 42 percent of married women between the ages of 15 and 49 used a modern contraceptive. The government provided free childbirth services, but these were unevenly distributed due to limited access to hospitals and other medical facilities in rural areas. According to the UN Population Fund, the maternal mortality ratio was 510 deaths per 100,000 live births, and a woman's lifetime risk of maternal death was one in 36. Nurses and midwives were a critical component of prenatal and postnatal care, due to a shortage of doctors. Skilled health providers assisted in 71 percent of births with another 14 percent assisted by a traditional birth attendant and 9 percent by untrained relatives or friends. The DHS also reported that one in four girls will experience pregnancy while still a teenager.

Discrimination: 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, and formal and nontraditional

employment opportunities, as well as lower rates of 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. More than half, 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, and those that did 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.

The government addressed women's concerns through the Ministry of Gender, Children, and Social Welfare. 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

Birth Registration: Citizenship can be derived from birth within the country or from one's parents. According to the 2008 population census, 16.6 percent of children under the age of 18 had a birth certificate. In 2007 the government launched the pilot phase of the national registration and identification system, the first step in the creation of a national identification system to provide for mandatory registration of births. The compulsory universal birth registration process started early in the year, but it 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.

Education: The government provided tuition-free primary education for all children, although education was not compulsory. Families were responsible for paying book fees and purchasing uniforms. However, students from poor families had access to a public book fund. Many girls, especially in rural areas, were unable to complete even primary education due to poverty, lack of schools, and cultural factors; they were at a serious disadvantage in finding employment. The 2010 DHS found that 11 percent of men and 19 percent of women had no formal education and that only 14 percent of persons age 15-19 had not completed primary school.

Child Abuse: Child abuse remained a serious problem. The press regularly reported cases of sexual abuse of children, including arrests for rape, incest, sodomy, and defilement. The 2010 DHS estimated that 2.4 million children lived in violent homes, witnessing domestic violence and experiencing its negative effects. 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. Overall, UNICEF estimated that 65 percent of girls and 35 percent of boys experienced some form of child abuse.

In 2010 the National Assembly 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.

The Ministry of Gender, Children, and Social Welfare undertook activities to enhance protection and support of child victims. The ministry trained and paid small stipends to approximately 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.

Child Marriage: The minimum age for marriage is 15, with marriage under age 18 requiring parental consent. According to UNICEF, 9 percent of women 20 to 24 years old were first married or in union before they were 15 years old, and 50 percent were married or in union before reaching age 18.

Harmful Traditional Practices: The law does not specifically prohibit female genital mutilation/cutting (FGM/C). A few small ethnic groups practiced FGM/C. In most cases FGM/C was performed on girls between 10 and 15 years old.

Despite the Child Care, Protection, and Justice Act, many abusive practices, including the secret initiation of girls into their future adult roles, continued. In a few traditional communities, girls averaging 12 years old 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.

Sexual Exploitation of Children: The penal code outlaws engaging in sexual activity with children under the age of 16 and stipulates penalties of 14 to 21 years in prison. The law further prohibits “indecent practice” in the presence of or with a child, with offenders liable to imprisonment for 14 years.

The law prohibits child pornography and using a child for public entertainment of an immoral or harmful nature. The maximum penalty for engaging in child pornography is 14 years in prison, while those found guilty of procuring a child for public entertainment are liable to a fine of 100,000 MWK (\$315) and imprisonment of seven years.

The widespread belief that children were unlikely to be HIV positive and that sexual intercourse with virgins could cleanse an individual of sexually transmitted diseases, including HIV/AIDS, contributed to the widespread sexual exploitation of minors. The 2010 DHS reported that 17.8 percent of women age 15 to 19 experienced sexual violence, 26.8 percent of whom were 14 years old or younger when they first were victimized. Also, 15 percent of women reported that their first sexual intercourse was forced, with 17.7 percent reporting that it occurred when they were younger than 15 years old. A 2009 study of 217 sexually abused children found that 81 percent of those abused were under 11 years old.

The trafficking of children for sexual purposes was a problem, and child prostitution for survival without third-party involvement also occurred. At local bars and rest houses, owners coerced girls who worked at the establishments to have sex with customers in exchange for room and board. The Child Care, Protection, and Justice Act stipulates punishment up to and including life imprisonment for child traffickers.

Displaced Children: A few charitable organizations attempted to reduce the number of child beggars in urban areas; however, the problem of street children remained serious. The 2010 DHS found that 19 percent of children under 18 were not living with either biological parent and that 17 percent were orphaned or vulnerable due to extended parental illness, including an estimated 650,000 orphans attributed to AIDS. Extended family members normally cared for such children and other orphans.

International Child Abductions: The country is not a party to the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

Anti-Semitism

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

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at www.state.gov/j/tip.

Persons with Disabilities

In August President Banda signed the Disability Bill providing equal opportunities for persons with disabilities by promoting and protecting their rights. Under the law, "disability" is defined as a long-term physical, mental, intellectual, or sensory impairment. The law prohibits discrimination in education, health care, social services, the workplace, housing, political life, and cultural and sporting activities for persons with disabilities. The law also calls for the government to take appropriate measures to ensure access for such persons to transportation, information, and communication and provides for the establishment of a Disability Trust Fund to support programs focused on disability issues. The Employment Act prohibits discrimination in employment. Although the law provides for the social protection and support of persons with disabilities through greater access to public places, fair opportunities, and full participation in all spheres of society, limited resources prevented the government from protecting these rights.

The Ministry of Disability and Elderly Affairs is responsible for protecting the rights of persons with disabilities. There were 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.

During International Deaf Week in September, the Malawi National Association of the Deaf, with support from the minister of information, organized training in sign language basics for police officers, health care staff, and secondary school teachers at Masongola.

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

Consensual same-sex sexual activity is illegal and is punishable by up to 14 years in prison in addition to corporal punishment, including hard labor. The penal code outlaws “unnatural offenses” and “indecent practices between males.” Same-sex activity can also be prosecuted as “conduct likely to cause a breach of the peace.” A 2011 amendment to the penal code codifies the illegality of consensual same-sex sexual activity between women, setting a maximum prison term of five years for convicted offenders.

On May 18, in her first state of the union address, President Banda committed to work to repeal the “indecent and unnatural acts laws.” On November 5, Minister of Justice Ralph Kasambara stated publicly that the government would suspend enforcement of laws criminalizing consensual same-sex sexual conduct pending a decision on whether to repeal them. However, subsequently Banda slowed efforts to repeal the laws. On September 26, on the margins of the UN General Assembly, she stated that the country was not ready to repeal laws criminalizing homosexuality.

Public discussion of sexual minority rights increased during the year. For example, on September 15, *The Weekend Nation* newspaper started publishing a weekly column entitled “Sexual Minority Forum.” The column was coauthored by human rights activists Undule Mwakasungura and Gift Trapence. On October 7 and 8, the Centre for Human Rights and Rehabilitation and the Centre for Development of People held a workshop for traditional chiefs that addressed human rights, HIV/AIDS, and homosexuality.

Other Societal Violence or Discrimination

Societal discrimination against persons living with HIV/AIDS remained a problem. 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 (NAC) maintained that discrimination was a problem in both the public and private sectors. To counter such discrimination, the NAC provided funding to the MHRC to examine discrimination issues; the commission also provided support to the Malawi Law Commission for a sensitization program on the legal issues affecting persons living with HIV. The NAC also provided a grant to the Ministry of Gender, Children and Social Welfare to examine gender issues, including the rights of orphans and inheritance rights.

Mobs sometimes used arson as a tool of vigilante justice.

For example, on August 13, a mob stoned to death Kondwani Mangani in Lilongwe when he was found in possession of a stolen digital video player. Police spokesperson Ramsey Mushani condemned the act but said that police arrived after the mob killing. No action was taken against mob members.

On December 2, a mob in Mzimba district beat an elderly woman and burned her home in response to accusations that the woman was practicing witchcraft. Local media reported that police had arrested two suspects in connection with the case.

There were no further developments in the October 2011 burning of a police unit by villagers in Mitundu and the November 2011 burning of the compound of Mariam Nazeem, who was suspected of witchcraft in Kalilima.

Section 7. Worker Rights

a. Freedom of Association and the Right to Collective Bargaining

The law allows workers, except for military personnel and police, to form and join trade unions of their choice without previous authorization or excessive requirements. The law provides for unions to conduct their activities without government interference.

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

The law allows members of a registered union to strike or go through a formal mediation process overseen by the Ministry of Labor. However, the law also moderates the right to strike. A strike can take place only after all complex and time-consuming settlement procedures established in a collective agreement and conciliation efforts have failed. The law also requires the parties concerned to apply to the Industrial Relations Court for a determination as to whether a particular strike involves an essential service. 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); however, there was no defined list of specific occupations. Laws do not specifically prohibit retaliation against strikers. There is no prohibition on actions against unions that are not registered. The law prohibits antiunion discrimination and provides for remedial measures in cases of dismissal for union activity.

Workers in the formal sector have the right to organize and bargain collectively. However, the law restricts this right. It requires high representation thresholds, that is, at least 20 percent of employees (excluding senior managerial staff) must belong to a union before it can engage in collective bargaining at the enterprise level, and at least 15 percent of employees must be union members 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. No known particular group of workers was excluded from relevant legal protections. The government did not effectively enforce applicable laws. As for cases of all types entering the justice system, however, lack of resources and capacity resulted in delays of some labor cases.

Freedom of association and the right to collective bargaining were adequately respected for those in the formal sector. Although workers exercised the right to form and join independent unions and conducted strikes, the law did not apply to the vast majority of workers in the informal sectors.

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. For example, 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. In general, the right to collective bargaining was respected.

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

Union membership was low due to the small percentage of the workforce in the formal sector, and because of a lack of awareness of worker rights and fear of reprisals. There are no special laws or exemptions from regular labor laws in export processing zones (EPZ). Many companies in the EPZs resisted union activity, and union organizers stated they had little access to workers in the EPZs.

Informal sector workers organized in the Malawi Union for the Informal Sector (MUFIS), which is affiliated with the Malawi Congress of Trade Unions (MCTU). However, informal sector employees were unable to obtain the same standard of protection as formal sector workers. This inequity was the result of a Ministry of Labor decision that the MUFIS did not have sufficient standing to bargain collectively.

The MCTU reported incidents of alleged antiunion discrimination during the year. Unlike the previous year, there was no anecdotal evidence that union organizers were dismissed, intimidated with death threats, harassed, arrested, or had their rights violated to deter unionization.

The May 2011 case of the dismissal of a freight forwarding company employee for unauthorized absence to attend an International Labor Organization-sponsored course in Germany continued. The employee alleged that his dismissal was for his trade union activism and claimed that the company had previously fired employees for speaking out in favor of forming or joining a trade union. During the year the case moved from the Industrial Relations Court to the High Court.

In November 2011 workers at a rubber plantation announced the formation of a union after two years of covert organization. The union leader was arrested and charged with “organizing workers without the consent of the Management, District Commissioner, and Labor officers.” At year’s end the case was still in court. The rubber plantation workers formally unionized as Vizara Rubber Plantation Workers’ Union with 2,000 members. The former union, which was not recognized by the employer, was being disbanded.

The International Trade Union Confederation reported the summary dismissal of seven union leaders and members of the Sugar Plantation and Allied Workers

Union at the Illovo Sugar Company for their involvement in a strike in June 2011, over salary increase. The dismissed workers appealed the ruling, and the case remained unresolved.

b. Prohibition of Forced or Compulsory Labor

The government prohibits all forms of forced or compulsory labor. Forced labor is punishable by a maximum fine of 10,000 MWK (\$32) or two years' imprisonment.

The government did not effectively enforce these laws. The 2010 Child Care, Protection, and Justice Act specifically outlaws forced child labor; it came into force in January when it was published in the government gazette. The government also developed and published a list of hazardous work to accompany the Child Care, Protection, and Justice Act. In September the government hosted a national conference on child labor in agriculture. The president opened the conference, which was organized by the Ministry of Labor, the Malawi Congress of Trade Unions, and Employers Consultative Association of Malawi in concert with civil society, UN agencies, and business. Participants and stakeholders were working on action plans to implement conference recommendations.

There were reports that forced child labor occurred. Children were subjected to domestic servitude and other forms of forced labor, including in cattle herding; agricultural labor, particularly on tobacco farms; and menial work in small business. Punishments were almost always limited to fines, and the modest fines did not discourage 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 *Trafficking in Persons Report* at www.state.gov/j/tip.

c. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum age for employment at 14, and children between the ages of 14 to 18 may not work in jobs that are considered hazardous or that interfere with their education. The prohibition of child labor does not apply to work done in homes, vocational technical schools, or other training institutions. The Child Care, Protection and Justice Act prohibits child trafficking, including labor exploitation and the forced labor of child for the income of a parent or guardian. Along with the act, the government also published a list of hazardous work for children. The law specifies a maximum fine of 20,000 MWK (\$64) or five years' imprisonment for violations. However, the law was not effectively enforced due to lack of resources, manpower, and insufficient penalties to deter offenders.

Police and Ministry of Labor officials were responsible for enforcing child labor laws and policies; however, labor inspectors did not have law enforcement capabilities and must cooperate with the police to pursue violators.

The Ministry of Labor 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 165 labor inspectors. Approximately 1,750 inspections were carried out from January to October. 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.

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 some form of child labor.

Child labor was common on tobacco and tea 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.

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 the claim that 78,000 children worked in the tobacco industry was greatly inflated. Debate continued over the true extent of the problem.

Also see the Department of Labor's *Findings on the Worst Forms of Child Labor* at www.dol.gov/ilab/programs/ocft/tda.htm.

d. 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), which is composed of representatives of labor, government, and the private sector. The minimum wage, revised in July, is 317 MWK (\$1.02) per day for both rural and urban areas. The poverty line (at 2004 prices) was 16,165 MWK (\$51 under current exchange rate) per person per year for poor households and 10,029 MWK (\$32) per person per year for ultra-poor households. The 2010 Integrated Household Survey estimated that 50.7 percent of citizens lived below the poverty line. 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.

The Ministry of Labor houses a Directorate of Occupational Safety and Health. The law includes extensive occupational health and safety (OSH) standards. The law protects foreign workers in correct legal status. Illegal foreign workers were subject to deportation.

Poor functioning of the TWAB resulted in delayed and inadequate wage rate revisions. 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. Wage earners often supplemented their incomes through farming activities. In practice, official minimum wages applied only to the formal sector as the government lacked enforcement mechanisms for the informal sector. There were no government programs that provided social protections for workers in the informal economy.

The workweek standards were not effectively enforced, and employers frequently violated statutory time restrictions. The Ministry of Labor's enforcement of the OSH standards was also poor. The law specifies a maximum fine of 20,000 MWK (\$64) or five years' imprisonment for violations. These penalties were not sufficient to deter offenders. No jail terms have ever been reported. There were no reports of any cases where fines were levied during the year.

Workers, particularly in industrial jobs, often worked without basic safety clothing and equipment. In tobacco fields the handling of the leaves was done largely without protective clothing; workers absorbed up to 54 milligrams of dissolved nicotine daily through their skin, equal to the equivalent of 50 cigarettes. Approximately 80,000 child tobacco workers reportedly suffered from a disease called green tobacco sickness, or nicotine poisoning. These children often worked 12-hour days, frequently without pay, or received an average of 42 MWK (\$0.14) per day for their work.

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.

Forty-eight workplace fatalities were reported during the year. The Workers Compensation Division at the Ministry of Labor reported the following workplace fatalities during the year: road accidents (28), attacks by robbers (12), industrial (3), gunshot (1), and drowning (1). The media reported that on December 14, two workers at a commercial quarry near Mzuzu were killed in an explosion meant to destroy expired mining detonator blasters.

During the year the media also reported that a truck driver working at the uranium mine outside Karonga crashed into a water tank and drowned.