

MALAWI 2022 HUMAN RIGHTS REPORT

EXECUTIVE SUMMARY

Malawi is a multiparty democracy. Constitutional power is shared between the president and the 193 National Assembly members. In 2019, elections were conducted for president, parliament, and local councils. In February 2020, the Constitutional Court ruled in favor of an opposition challenge, annulling the 2019 presidential election but leaving intact the parliamentary and local results. In June 2020, Lazarus Chakwera won the presidential election with 58 percent of the vote, returning the opposition to power for the first time in 26 years. The international community and donors congratulated the country on the strength of its democratic institutions and peaceful transition of power.

The Malawi Police Service has responsibility for law enforcement and maintenance of order under the supervision of the Ministry of Homeland Security. The executive branch sometimes instructs the Malawi Defence Force to carry out policing or other domestic activities, such as disaster relief. The Malawi Defence Force commander reports directly to the president. Civilian authorities maintained effective control over the security forces. There were reports that members of the security forces committed some abuses.

Significant human rights issues included credible reports of: torture or cruel, inhuman, or degrading treatment or punishment by the government; harsh and life-threatening prison conditions; arbitrary arrest or detention; arbitrary or unlawful interference with privacy; serious restrictions on freedom of expression and media, including unjustified arrests or prosecutions of journalists and enforcement of criminal libel laws to limit expression; serious government corruption; lack of investigation and accountability for gender-based violence; and the existence and enforcement of laws criminalizing consensual same-sex sexual conduct between adults.

In some cases, the government took steps to prosecute officials who committed human rights abuses or engaged in corrupt practices, but impunity remained a problem.

Section 1. Respect for the Integrity of the Person

a. Arbitrary Deprivation of Life and Other Unlawful or Politically Motivated Killings

There were no reports during the year the government or its agents committed arbitrary or unlawful killings.

On September 14, the High Court cleared the way for prosecution to move forward of suspended Police Commissioner Evalista Chisale and nine other police officers accused of involvement in the 2019 killing of Buleya Lule. The case was pending at year's end. Three other officers originally implicated in the killing, Ronnex Kapesa, Robert Chaka, and Derreck Mswati, were acquitted of all charges. Lule died while in police custody in Lilongwe, just hours after appearing in court as one of six suspects in the abduction of Goodson Mkanjira, a boy aged 14 with albinism (see section 6, Other Societal Violence or Discrimination). In 2020, 13 police officers, including Chisale, were arrested for their alleged involvement in the killing. In a May 2019 report regarding Lule's death, the Malawi Human Rights Commission (MHRC) found the deceased was tortured and his immediate cause of death was from torture using electricity. The government accepted liability and agreed to pay Lule's widow 331 million kwacha (\$386,000).

b. Disappearance

There were no reports of disappearances by or on behalf of government authorities.

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

The constitution prohibits the use of torture or cruel, inhuman, and degrading treatment or punishment, but there were credible reports government officials employed these practices. Police sometimes used excessive force and other unlawful practices, including torture, to coerce confessions from suspects. The MHRC's 2021 annual report, the most recent available, stated torture was widespread in prisons.

In January, the High Court sentenced a police officer to 30 years' imprisonment for the 2020 rape of a university student aged 17 while she was detained at the Limbe police station in Blantyre. The officer was convicted in 2021 of raping the girl two times while she was held in custody. Nongovernmental organizations (NGOs) that assisted individuals engaged in commercial sex reported police officers regularly demanded sexual favors from such individuals under the threat of arrest.

Impunity was a widespread problem in the security forces. Perpetrators of abuses were occasionally punished administratively, but investigations often were delayed, abandoned, or remained inconclusive. The Independent Complaints Commission (ICC) addresses allegations of police abuse by the public and investigates deaths or injuries resulting from police action. The ICC had strong support from the chief of police but was hampered by limited resources and a lack of cooperation from ordinary police officers.

Prison and Detention Center Conditions

Prison and detention center conditions remained harsh and potentially life-threatening due to overcrowding and poor sanitation as well as inadequate food, potable water, heating, ventilation, lighting, and health care.

Abusive Physical Conditions: In February 2021, the Inspectorate of Prison's monitoring tour of prisons and police cells across the country found recurring problems of poor sanitation, poor diet, overcrowding, prisoner abuse, poor ventilation, understaffing, prison staff corruption, and insufficient prisoner rehabilitation such as education and vocational training. A 2021 inspectorate report found the prison service failed to perform its rehabilitative role.

Overcrowding and malnutrition remained problems. In October, the prison service reported a total prison population of 16,366 in a space with a designed holding capacity of 7,000. Police held detainees in police stations for long periods beyond the legal limit of 48 hours that contributed to pervasive cell overcrowding. Authorities held women separately from men but often held pretrial detainees and convicted prisoners together. In police detention centers, children were not always held separately from adults. Although inadequate, conditions in detention facilities for women and children were generally better than men's facilities.

As of October, according to the prison service, nine inmates died in prison. There were several reported causes of the deaths including tuberculosis, anemia, pneumonia, sepsis, and hepatitis. Basic emergency medical care generally was available in the daytime but unavailable after regular working hours. Daily prison rations were meager. Officials allowed family members to provide food and encouraged inmates to grow vegetables and raise livestock in rural prisons. Malnutrition in the prison population remained a problem, however, particularly in urban prisons. Inadequate infrastructure remained a serious problem. Prisons and detention centers had no provisions for temperature control other than wood fires.

The MHRC and NGOs working in prisons expressed concern regarding the human rights of detained persons. Citing overcrowding, poor sanitation, and inadequate food and health care as major problems in prisons and detention centers, a 2020 MHRC report concluded most prisoners and detainees lived in degrading and inhuman conditions.

Administration: Each prison had a designated welfare officer, some of whom had received specialized training, to receive prisoner complaints regarding conditions. The complaints process, however, was oral and informal, allowed for censorship, and provided little follow up. Prisoners sometimes had the opportunity to complain to NGOs that recorded cases for inclusion in government advocacy and reports, but this rarely resulted in action on individual cases.

From January to August, the MHRC received six complaints regarding the rights of prisoners. NGOs attributed the low number of submitted complaints to fear of retaliation by authorities.

Independent Monitoring: The government permitted domestic and international NGOs and media to visit and monitor prison conditions and donate basic supplies. Domestic NGOs, the Malawi Red Cross Society, and diplomatic representatives had unrestricted access to prisons.

d. Arbitrary Arrest or Detention

The constitution and law prohibit arbitrary arrest and detention, but the government did not always observe these prohibitions. The law provides for the right of any person to challenge the lawfulness of his or her arrest or detention but

does not provide for compensation if the person is found to have been unlawfully detained. Lack of knowledge of statutes and of access to representation meant detainees rarely challenged the legality of their detention.

Arrest Procedures and Treatment of Detainees

Police may arrest suspects without a warrant if they have reasonable grounds to believe a crime is being or has been committed, and most arrests were made without warrants. Only in cases involving corruption or white-collar crime were arrest warrants issued by a duly authorized official based on evidence presented. The law provides detainees the right to have access to legal counsel and be released from detention or informed of charges by a court within 48 hours of arrest, but authorities often ignored these rights. Police use of temporary remand warrants to circumvent the 48-hour rule was widespread. Police frequently demanded bribes to authorize bail. Bail was often granted to reduce overcrowding in jails, rather than because of legal merit. Relatives were sometimes denied access to detainees. There were no reports detainees were held incommunicado or held under house arrest.

Detainees who could afford counsel were able to meet with counsel in a timely manner. While the law requires the government to provide legal services to indigent detainees, such aid was provided almost exclusively to suspects charged with homicide. The Legal Aid Bureau is mandated to provide legal assistance to indigent persons through six offices across the country.

Arbitrary Arrest: The constitution and law prohibit arbitrary arrest, unlawful detention, or false arrest. Although police use of antivagrancy laws to justify arbitrary arrests was struck down as unconstitutional, police made arrests based on other provisions such as “conduct likely to cause breach of the peace” or “obstruction of a police officer.”

Pretrial Detention: In a 2020 report containing the most recent data available, World Prison Brief estimated pretrial detainees comprised 18 percent of the total prison population. Despite a statutory 90-day limit on pretrial detention, the actual length of pretrial detention frequently equaled or exceeded the maximum sentence for the alleged crime. According to the prison service, a total of 1,279 detainees

charged with murder were awaiting trial, but authorities held most such detainees for two to three years before trial. There was evidence some detainees charged with murder remained in prison awaiting trial for even longer periods, but reliable information on the number and situation of these detainees was unavailable.

Several NGOs assisted persons detained at police stations and in prisons to expedite their release, successfully obtaining the release of 4,025 pretrial detainees through the work of paralegals. To reduce case backlog and excessive pretrial detention, certain cases were directed to local courts and camp courts organized by civil society groups to expedite cases by having magistrates visit prisons to adjudicate cases. Paralegals prepared a list of cases of detainees awaiting trial for excessive periods, who were held unlawfully, or who had been granted bail but were unable to meet the bail terms set by the court. Magistrates, along with the court clerk and police prosecutor, worked through the list, granting bail to some, reducing bail for others, dismissing cases, or setting trial dates.

e. Denial of Fair Public Trial

The constitution and law provide for an independent judiciary, and the government generally respected judicial independence and impartiality. The judicial system, however, was inefficient and handicapped by serious weaknesses including poor recordkeeping; a shortage of judges, attorneys, and other trained personnel; heavy caseloads; and corruption. Hampered by extensive procedural delays, a low bar for granting injunctions, prosecutorial delay tactics, recusals, and lawyers and witnesses not being present on trial dates, the slow-moving judicial process undermined the government's ability to dispense justice.

The military conducts courts-martial but not military or security tribunals. A nonjudicial procedure is used more frequently than courts-martial; in this procedure, cases are dealt with summarily by senior officers without a formal trial process. In both procedures, military personnel are entitled to the same rights as persons accused in civilian courts.

Trial Procedures

The constitution and law provide for the right to a fair public trial, and an independent judiciary generally enforced this right.

Defendants have the right to be present at their trial, to have an attorney, and, if indigent, an attorney provided at state expense, but such assistance was usually limited to murder cases. The law does not specify a length of time for the accused to prepare a defense. The slow pace of trials afforded defendants adequate time to prepare, but facilities to accommodate defendants awaiting final disposition of their cases were inadequate due to insufficient prison system funding. All persons have the right of appeal; however, appeals were often delayed for years and sometimes never addressed by a higher court.

The judiciary's administrative problems led to backlogs that effectively denied expeditious trials for most defendants and kept some defendants in pretrial detention for long periods. Recruitment and retention of government attorneys remained a problem. Police prosecutors with limited legal training prosecuted most criminal cases. The Directorate of Public Prosecutions in the Ministry of Justice customarily tried high-profile cases and those involving the most serious offenses.

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 submit lawsuits seeking damages for, or cessation of, human rights abuses. Individuals and organizations may appeal adverse domestic decisions to regional courts. The law provides for administrative and judicial remedies for alleged wrongs; however, a severe shortage of lawyers (only 630 licensed attorneys in a country of 18 million inhabitants) was a major reason why few human rights cases were pursued.

f. Arbitrary or Unlawful 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 subinspector or higher to conduct searches without a court warrant if they have reasonable grounds to believe they could not otherwise obtain evidence needed for an investigation without undue delay. Before conducting a warrantless search, the officer must write a reasonable-grounds justification and give a copy to the owner or occupant of the place to be searched.

On May 1, Chidawawa Mainje was arrested and charged with the offense of insulting the president based on a fully encrypted private conversation on a social media platform, suggesting that authorities were monitoring even encrypted private electronic communication without appropriate legal authority or formal notice to those being monitored (see section 2.a., Internet Freedom).

g. Conflict-related Abuses

Physical Abuse, Punishment, and Torture: In June and August, two separate allegations of sexual abuse by the country's peacekeepers deployed to the UN Stabilization Mission in the Democratic Republic of the Congo were reported. According to the *Conduct in UN Field Missions* online portal, there were six open cases of alleged sexual exploitation and abuse by the country's peacekeepers deployed to UN peacekeeping missions, including the two mentioned cases, one submitted in 2021, two submitted in 2018, and one submitted in 2016. As of November, the government had not taken appropriate accountability measures in all open cases. For example, the United Nations completed its investigation of two such cases and was awaiting additional information from the government. All six pending cases allegedly involved sexual exploitation of an adult.

Section 2. Respect for Civil Liberties

a. Freedom of Expression, Including for Members of the Press and Other Media

The constitution and law provide for freedom of expression, including for members of the press and other media, and the government respected this right with some exceptions.

Freedom of Expression: According to Freedom House, individuals were prosecuted for online statements. For example, Freedom House reported that in March, police in Lilongwe arrested a man for posting on Facebook alleging a member of parliament stole maize meant for his constituency. The man was charged with cyberstalking before being released at the request of the parliamentarian he had accused (see also Libel/Slander Laws, below).

Violence and Harassment: On April 5, police detained reporter Gregory Gondwe of the Platform for Investigative Journalism for four hours and searched his cell phone. Gondwe claimed police demanded he reveal his sources for a story published in March that cited a leaked document alleging the government secretly paid millions of dollars to corruption suspect Zuneth Sattar. Police claimed Gondwe was never officially placed under arrest, dropped all charges, and returned his cell phone after the interrogation.

Libel/Slander Laws: According to Freedom House, the law provides for criminal penalties of up to two years' imprisonment for conviction of libel, although it noted most cases were prosecuted as civil matters or settled out of court. According to the NGO End Blasphemy Laws, the law makes conviction of insulting the religion of another person a misdemeanor, punishable by imprisonment of up to a year. The NGO found no indication this law was enforced.

In January, police arrested social media influencer Joshua Chisa Mbele for defamation after he posted online claiming Malawi Defence Force commander Vincent Nundwe accepted bribes from corruption suspect Zuneth Sattar. Mbele faced two charges of criminal libel and publication of offensive communication. His case was pending at year's end.

In February, the High Court in Blantyre ordered the Times Group to pay compensation, apologize, and retract a previously published article that claimed former Minister of Agriculture George Chaponda had failed to cooperate with an inquiry into his alleged role in a corrupt procurement scheme.

Internet Freedom

There were credible reports the government monitored private online

communication without appropriate legal authority. For example, on May 1, police arrested Chidawawa Mainje based on his fully encrypted private communication on a social media platform (see section 1.f.).

Restrictions on Academic Freedom and Cultural Events

Controversial South African entertainer Zodwa Wabantu was banned from performing at a June festival in Blantyre. Her license to perform was turned down by the Ministry of Tourism, Culture and Wildlife’s censorship board due to the nature of her entertainment after a review of her online dance videos.

b. Freedoms of Peaceful Assembly and Association

The constitution and law provide for freedoms of peaceful assembly and association, and the government generally respected those rights.

Freedom of Association

The constitution and law provide for the freedom of association. The government requires registration of all NGOs and political parties. A March amendment to the NGO law requires all NGOs to register with the NGO Regulatory Authority and provides the Authority with the power to sanction and deregister NGOs deemed to be out of compliance with the law. Civil society groups expressed concern regarding a provision in the amendment that prohibits NGOs from engaging in “politicking” without defining the term, saying the provision could be used to hinder accountability organizations from monitoring good governance. The law also provides for potential imputed criminal liability for NGOs and their trustees, managers, and chief executives with penalties including fines and prison sentences of up to two years. In September, the Supreme Court of Appeal ruled a lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+) rights-focused organization, Nyasa Rainbow Alliance, could proceed with a 2017 legal challenge questioning on freedom of association grounds the constitutionality of the government’s refusal to permit the organization to register as an NGO. The case remained pending at year’s end (see section 6).

c. Freedom of Religion

See the Department of State's *International Religious Freedom Report* at <https://www.state.gov/religiousfreedomreport/>.

d. Freedom of Movement and the Right to Leave the Country

The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these related rights.

In-country Movement: Refugees in the Dzaleka camp were subject to an encampment policy that restricted their movements (see section 2.e., Protection of Refugees, Freedom of Movement).

e. Protection of Refugees

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, returning refugees, asylum seekers, and other persons of concern.

Access to Asylum: The law provides for the granting of refugee status, and the government provided protection to asylum seekers and recognized refugees. The government failed to review the cases of most asylum seekers.

Citing legal prohibitions on same-sex conduct, the government continued to refuse registration of perceived LGBTQI+ asylum seekers or granting refugee status based on sexual orientation or gender identity. UNHCR continued to advocate for the Ministry of Homeland Security to reverse this policy and consider registration and processing of all asylum seekers, including LGBTQI+ persons (see section 6). UNHCR continued to register persons of concern in its database and conducted refugee status determinations for these applicants.

Abuse of Migrants and Refugees: Security forces sometimes intimidated refugees and asylum seekers. Police routinely detained refugees found outside of the Dzaleka camp, even those with proper identity documents, and returned them

to the camp. UNHCR received two cases of refugees facing forced return to their countries of origin due to legal prohibitions on same-sex conduct. Refugees, particularly young girls, were recruited for exploitation in sex trafficking in surrounding villages and in Lilongwe. UNHCR also reported gender-based violence in the Dzaleka camp.

Freedom of Movement: Refugees were subject to an encampment policy that restricted them to the Dzaleka camp, the only official designated refugee camp. The camp, initially built for 10,000 occupants, held more than 55,000 persons of concern. Severe overcrowding increased a range of risks including the spread of COVID-19 and other communicable diseases, and burdened resources and facilities.

In April 2021, the Ministry of Homeland Security issued a letter ordering all refugees and asylum seekers living and conducting business in communities outside Dzaleka to return to the camp. The Supreme Court issued an injunction preventing the government from enforcing a return to the camp, but on August 12, the High Court of Blantyre ruled that approximately 8,000 refugees and asylum seekers could be compelled to return to the camp. The Ministry of Homeland Security set a deadline of November 30 for the return to the Dzaleka camp of refugees and asylum seekers living in rural areas, and February 2023 for those in urban areas.

UNHCR warned the forced return of large numbers of refugees would likely exacerbate existing shortages of shelter, water, and other basic services. UNHCR cautioned that increasing the population in the already overcrowded camp could also increase the spread of COVID-19 within the camp and the surrounding district. UNHCR raised further concerns regarding the government's plans to reopen the Luwani refugee camp near the Mozambique border, warning that the camp was not yet ready to accommodate refugees and called for only voluntary relocation of individuals living in the Dzaleka camp.

Employment: In general, the government did not allow refugees to seek employment or educational opportunities outside the camp. Most refugees were dependent on donor-funded humanitarian assistance. A small number of refugees with professional degrees received permits to pursue employment and other

opportunities outside the camp. The prohibition on employment forced many refugees to seek employment in the informal economy, placing them at risk of exploitation.

Access to Basic Services: The UNHCR, NGOs, and the government collaborated to provide most basic services. Refugees had access to education and health-care services through camp schools and clinics. Overused facilities served both refugees and local communities. For example, health services in the camp designed to serve 12,000 persons served 80,000 refugees, asylum seekers, and host community residents. Dzaleka's water and sanitation facilities fell short of international standards. The inability of most refugees to grow food or earn money due to the encampment policy resulted in 96 percent of them living below the poverty line. Donor-funded assistance did not keep pace with the increasing refugee population. Multiple NGOs reported some refugees engaged in commercial sex to obtain income to supplement food rations and other necessities. Refugees reported experiencing lengthy delays by immigration authorities in processing Convention Travel Documents to be able to travel internationally. At year's end, five such travel documents remained pending with immigration authorities.

While local laws and the justice system applied to refugees, inefficiencies and inadequate resources limited access to the system. Law enforcement capacity was extremely limited at the Dzaleka Camp with only 13 police officers.

f. Status and Treatment of Internally Displaced Persons

Not applicable.

g. Stateless Persons

The law does not prevent persons born in the country of unknown or stateless parents from becoming stateless.

Section 3. Freedom to Participate in the Political Process

The constitution and law provide citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on universal

and equal suffrage.

Elections and Political Participation

Recent Elections: In 2019, citizens voted in simultaneous presidential, parliamentary, and local elections. International observers characterized conduct of those elections as generally competent and successful. With 39 percent of the vote, incumbent President Arthur Mutharika was re-elected to a second five-year term. Runner-up Lazarus Chakwera of the main opposition party challenged the election results, and in February 2020 the Constitutional Court nullified the presidential election. In May 2020, the Supreme Court of Appeal reaffirmed the nullification and ordered the June 2020 presidential election that was won by Chakwera and his Tonse Alliance with 58 percent of the vote.

Participation of Women and Members of Minority Groups: No laws limit participation of women or members of minority groups in the political process, including persons with disabilities, and they did participate. Cultural and traditional gender bias and lower levels of literacy, education, and economic empowerment prevented women from participating in the political process to the same extent as men. Women were largely rejected as candidates by political parties, and they reported harassment and intimidation when campaigning as independents. The law makes no specific reference to LGBTQI+ participation in the political process but, because same-sex conduct is illegal under the law, there was a de facto exclusion of LGBTQI+ persons who openly revealed their sexual orientation.

Section 4. Corruption and Lack of Transparency in Government

The law provides criminal penalties for conviction of corruption by officials, but the government did not implement the law effectively. Officials engaged in corrupt practices with impunity. There were numerous reports of government corruption during the year.

The government, in cooperation with donors, continued implementation of an action plan to pursue cases of corruption, reviewed how past corruption scandals

were perpetrated, and introduced internal controls and systems to prevent further occurrences. Due to deficits in professionalism within the civil service and lack of oversight and enforcement, progress on the action plan and the effectiveness of internal controls were limited and movement on investigations and promised reforms was slow. Reports of serious corruption implicated all branches of government.

Corruption: On December 6, police arrested Anti-Corruption Bureau (ACB) Director General Martha Chizuma on charges connected to a leaked audio recording of her private January telephone conversation in which she discussed the challenges of investigating and prosecuting corruption cases tied to British businessman Zuneth Sattar. Public condemnation of Chizuma's arrest was immediate. Civil society and anticorruption advocates noted the arrest took place just days after the ACB's arrest of Vice President Saulos Chilima on corruption allegations and at a time when the ACB's Sattar investigation into alleged bribetaking by Chilima and other key members of the existing government, including cabinet-level officials, had reached an advanced stage. In a December 7 joint statement, a group of civil society organizations claimed Chizuma's arrest was directly linked to her tough stance against corruption and was a deliberate attempt by "invisible forces" to sideline her and undermine ACB work. President Chakwera subsequently announced a commission of inquiry had been established to investigate the circumstances behind her arrest, but no findings were available at year's end.

Threats against Chizuma increased at the same time as the ACB's investigation of Sattar progressed. In May, President Chakwera ordered the ACB to prepare a report on its investigation into corruption allegations against multiple government officials whose names were publicly revealed in a United Kingdom court's bail hearing for Sattar. In June, Chakwera fired Inspector General of Police George Kainja and removed all delegated authority entrusted to Vice President Chilima after their names appeared on a list of high-level government officials believed by ACB to have accepted bribes from Sattar. The ACB's report included the names of 53 sitting and former officials who allegedly received money from Sattar and his agents between March and October 2021. The report also stated the police service and the military awarded 16 contracts worth \$150 million to five companies owned

by Sattar between 2017 and 2021. At year's end, no cases against individuals accused of accepting bribes from Sattar had progressed to the prosecution stage.

Section 5. Governmental Posture Towards International and Nongovernmental Investigation of Alleged Abuses 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 were somewhat cooperative and responsive to their views.

Government Human Rights Bodies: The MHRC, an independent government-chartered institution, is mandated by the constitution to promote and protect human rights and investigate human rights abuses. Despite its independent leadership, resource shortfalls resulted in a backlog of cases, delayed production of reports, and limited investigation of human rights abuses. The ombudsperson and the law commissioner are ex officio members of the MHRC.

The Office of the Ombudsman is mandated to investigate cases of maladministration such as abuse of power, manifest injustice, oppressive conduct, and unfair treatment. Despite having a wide mandate under the constitution to investigate both public- and private-sector offenses, problems of limited capacity led the office to investigate only public officials and entities.

Section 6. Discrimination and Societal Abuses

Women

Rape and Domestic Violence: The law criminalizes rape of women and girls but not men, with a maximum penalty of death or life imprisonment for conviction. A 2015 law explicitly introduced the concept of spousal rape, but the law does not prescribe specific penalties for conviction and applies only to legally separated spouses. Spousal rape may be prosecuted under the rape provisions of the law. The government generally enforced the law effectively, and convicted rapists

routinely received prison sentences.

Data on the prevalence of rape or spousal rape, prosecutions, and convictions were unavailable; however, press reporting of rape and defilement (statutory rape) arrests and convictions was an almost daily occurrence. Although rape may be punished by death, courts generally imposed lesser prison sentences. For conviction of “indecent assault” on women and girls, the maximum penalty is 14 years’ imprisonment. A person convicted of “indecent assault” on a boy younger than age 14 may be imprisoned for up to seven years.

The law provides a maximum penalty of life imprisonment for conviction of domestic violence and recognizes that both men and women may be perpetrators as well as victims. Domestic violence, especially violence against women, was common, although survivors rarely sought legal recourse. Police routinely investigated cases of rape and sexual assault, but usually did not intervene in domestic disputes. Police support units provided limited shelter for some abuse survivors. The Ministry of Gender, Community Development, and Social Welfare and donor-funded NGOs conducted public education campaigns to combat sexual harassment and gender-based violence.

Female Genital Mutilation/Cutting (FGM/C): The law does not specifically prohibit FGM/C. There were no national statistics on FGM/C. The practice of labia elongation has been documented, and it was reportedly performed on girls ages 11 to 15 during sexual initiation camps in rural areas of the Southern Region.

Other Forms of Gender-based Violence: The law prohibits harmful social, cultural, or religious practices including “widow cleansing” and “widow inheritance.” Nonetheless, in some areas widows were sometimes forced to have sex with male in-laws or a designee 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. The government and NGOs sought to abolish such practices by raising public awareness of the inherent dangers of such behavior, including the risk of HIV transmission.

Despite legal prohibitions, many abusive traditional practices, including the secret initiation of girls into socially prescribed roles of womanhood, continued. Such

initiations were often aimed at preparing girls for marriage with emphasis on how to engage in sexual acts. In some traditional communities, girls as young as age 10 undergo *kusasa fumbi*, a “cleansing ritual” in which the girls are raped by men. According to a 2018 UN-sponsored study, more than 20 percent of girls in secondary school underwent a form of initiation that involved rape by an older man. *Kupimbira*, a practice that allows poor families to receive a loan or livestock from men in exchange for pubescent daughters, reportedly existed in some areas.

Sexual Harassment: The law makes conviction of sexual harassment punishable by up to five years’ imprisonment. Conviction of “insulting the modesty” of a woman is a misdemeanor punishable by one year’s incarceration and, in cases involving violence, “indecent assault” on a woman or girl is punishable by sentences of up to 14 years’ imprisonment. Although sexual harassment was believed to be widespread, there was no information on its prevalence or on the effectiveness of government enforcement of the law.

On February 8, a police board of inquiry found suspended Director of Human Resource Management and Development Stan Kaliza guilty of abuse of office following an investigation into reports Kaliza sexually abused 40 women police officers. The inquiry into Kaliza’s conduct was initiated after screenshots were shared on social media in November 2021 showing Kaliza had solicited sexual favors from the women in exchange for promotions, deployment to peacekeeping missions, and assistance recruiting others into the police service.

In April, the MHRC launched the country’s first workplace sexual harassment policy that aims to safeguard employees and persons seeking services at the MHRC from unwelcome sexual advance and provide them with reporting guidelines. The policy includes a mechanism for handling complaints, proposed actions to be taken against perpetrators, and strategies for assisting survivors, including accessing legal remedies.

Reproductive Rights: There were no reports of coerced abortion or involuntary sterilization on the part of government authorities. Couples and individuals have the right to decide the number, spacing, and timing of their children.

Health care clinics and local NGOs operated freely in disseminating information

on family planning under the guidance of the Ministry of Health. According to the 2016 *Malawi Demographic and Health Survey* (MDHS), the most recent data available, 58 percent of girls and women of reproductive age used modern methods to meet family planning needs. The government provided free childbirth services, but availability depended upon access to hospitals and other medical facilities in rural areas. The government provided access to sexual and reproductive health services for survivors of sexual violence at no charge in public facilities, and providers were trained in using a screening checklist for patients who sought care due to sexual violence. Emergency contraception as well as other medications were generally available for the clinical management of rape, but the availability of contraceptives was often limited in rural areas.

The MDHS estimated the maternal mortality rate was 439 deaths per 100,000 live births, and a woman's lifetime risk of maternal death was one in 41. HIV and AIDS and adolescent pregnancy were factors in these high rates. Nurses and midwives were a critical component of prenatal and postnatal care due to a shortage of doctors. According to the National Statistical Office, skilled health care providers assisted in 90 percent of births in 2018. There was only limited access to emergency obstetric care, particularly in rural areas.

Cultural beliefs regarding menstruation and lack of access to menstruation hygiene resources negatively impacted the ability of women and girls to participate equally in society and limited girls' access to education. Cultural practices in some regions excluded menstruating women and girls from participation in social activities, such as forbidding them from talking to males or being present where food was being cooked. UNICEF reported increased availability of menstruation hygiene products such as reusable pads decreased absenteeism of women and girls in school and in the workplace, but it noted lack of access to potable water, sanitation, and hygiene facilities was a problem. In accordance with government policy, pregnant students were suspended from school for one year and could apply for readmission after this period only by sending requests to the Ministry of Education as well as the school. Many teachers were unaware of this policy and unsure how to implement it.

Discrimination: By law women have the same legal status and rights as men and may not be discriminated against based on gender or marital status, including in the workplace. Nevertheless, women had significantly lower levels of literacy,

education, and formal and nontraditional employment opportunities, as well as lower rates of access to resources for farming. Widows often were victims of discriminatory and illegal inheritance practices in which most of an estate was taken by the deceased husband's family. Although citizen men may sponsor their wives for naturalization, the law does not permit citizen women to sponsor their husbands for naturalization.

The law provides for a minimum level of child support, widows' rights, and maternity leave; however, few women and girls knew their rights or had access to the legal system and thus did not benefit from these legal protections. The government addressed women's concerns through the Ministry of Gender, Community Development, and Social Welfare.

Systemic Racial or Ethnic Violence and Discrimination

The constitution and law prohibit discrimination based on race or ethnic origin. The government generally enforced the law effectively and investigated, prosecuted, and punished persons involved in abuses. Despite the presence of numerous tribal groups with diverse cultures, languages, and traditions, cases of violence or discrimination due to tribal, ethnic, or racial differences were rare.

Children

Birth Registration: Citizenship is derived from birth within the country or abroad to at least one citizen parent "of African race." There were no reports of discrimination or denial of services due to lack of birth registration.

Education: The government provided tuition-free primary education to all children, although many families could not afford book fees and uniforms, and limited space in secondary schools prevented many students from continuing beyond primary education. In a reversal of previous trends, girls outnumbered boys in primary school enrollment. Although initial secondary school enrollment rates for girls and boys were approximately the same, girls tended to drop out of secondary school at much higher rates and accounted for approximately 63 percent of all secondary school dropouts due to factors such as pregnancy, economic hardship, and marriage (see section 6, Women, Reproductive Rights).

Child Abuse: Child abuse remained a serious problem. The law prohibits subjecting a child to any social or customary practice that is harmful to health or general development. Prohibited practices include child trafficking, forced labor, early and forced marriage or betrothal, and use of children as security for loans or other debts. The government made some efforts to enforce the law.

The Ministry of Gender, Community Development, and Social Welfare conducted activities to enhance protection and support of child victims included reuniting rescued victims of child labor with their parents and operating shelters for vulnerable children.

Child, Early, and Forced Marriage: The law sets the minimum age for marriage at 18. According to UNICEF, 46 percent of girls were married before age 18, and 9 percent of girls were married before 15. Some traditional leaders annulled early marriages and returned the girls involved to school. Public education on early marriage was carried out mainly by NGOs.

Sexual Exploitation of Children: The law forbids engaging in sexual activity with children younger than age 16, the minimum age for sexual consent. The law further prohibits “indecent practice” in the presence of or with a child, and prohibits commercial sexual exploitation of children, including child pornography and using a child for public entertainment of an immoral or harmful nature. The law was not effectively enforced, although media reported arrests for rape, incest, sodomy, and defilement of children.

The widespread belief children were unlikely to be HIV-positive and sexual intercourse with virgins could cleanse an individual of sexually transmitted diseases, including HIV and AIDS, contributed to the widespread sexual exploitation of children. Trafficking of children for sexual exploitation was a problem, and children were exploited in commercial sex at the behest of parents or for survival without third-party involvement. In urban areas, bar and rest house owners recruited girls as young as 12 from rural areas to do domestic work such as cleaning and cooking. The owners then exploited the children in sex trafficking, coercing them to engage in sex with customers in exchange for room and board.

Antisemitism

The Jewish community was very small, and there were no known reports of antisemitic acts.

Trafficking in Persons

See the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report/>.

Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation, Gender Identity or Expression, or Sex Characteristics

Criminalization: The law criminalizes consensual same-sex sexual conduct or “unnatural offenses,” and conviction is punishable by up to 14 years’ imprisonment, including hard labor. Conviction of attempting “unnatural offenses” is punishable by seven years’ imprisonment. The law also criminalizes “indecent practices” between men and between women and provides for punishment of five years’ imprisonment if convicted. Same-sex sexual conduct may also be prosecuted as “conduct likely to cause breach of the peace” with a prescribed punishment of a fine and imprisonment of up to three months. Historically, the government did not actively enforce these laws, but arrests and prosecutions occasionally occurred.

In December 2021, a court in Mangochi District convicted Jana Gonani, a transgender woman who goes by the name Trizza Banda, on two counts of “obtaining by false pretense” based on her presenting herself as a woman, and on one count of “unnatural offense” for alleged same-sex sexual conduct. Gonani was sentenced to eight years’ imprisonment; her appeal was pending at year’s end.

Violence against LGBTQI+ Persons: The Center for the Development of People, an NGO, documented 16 instances of abuse based on real or perceived sexual orientation or gender identity and expression during the year. The nature of the abuses fell into three broad categories: stigma, harassment, and violence. Although victims were willing to report abuses to the Center, they did not want

their orientation revealed to their families or the public, so no investigations or prosecutions resulted. Additionally, LGBTQI+ persons feared unequal treatment by police, noting cases where community members attempted to register complaints for burglary but were instead threatened with arrest. A 2021 Human Rights Watch report noted police often physically assaulted, arbitrarily arrested, and detained LGBTQI+ persons, sometimes without due process or a legal basis, at other times as punishment for simply exercising basic rights such as seeking health care treatment.

Discrimination: The law does not prohibit discrimination based on sexual orientation, gender identity or expression, or sex characteristics. According to a 2021 Human Rights Watch report, LGBTQI+ persons faced routine discrimination in almost all aspects of their daily lives, including when seeking employment and health care, thus creating a barrier to obtaining HIV services and treatment. Nonetheless, the government's *National Strategic Plan for HIV and AIDS (2020-25)* included transgender persons and men who have sex with men as key populations whose engagement was necessary to achieve plan goals.

The Ivy Foundation, a national intersex-focused NGO, reported intersex persons were considered “evil demons” and the birth of an intersex baby was commonly blamed for bringing bad luck to their family and community. As a result, intersex persons were often shunned and faced discrimination.

The government continued to ban the registration of perceived LGBTQI+ asylum seekers and refused to grant refugee status based on sexual orientation or gender identity, citing legal prohibitions on same-sex conduct (see section 2.f.).

Availability of Legal Gender Recognition: The law does not allow persons to change their gender identity on legal and identifying documents.

Involuntary or Coercive Medical or Psychological Practices Specifically Targeting LGBTQI+ Individuals: Limited information was available regarding coercive medical or psychological practices that specifically targeted LGBTQI+ persons; however, the NGO Nyasa Rainbow Alliance reported LGBTQI+ persons were at times categorized by police as “not of sound mind” and then subjected to forced psychological evaluations.

Restrictions of Freedom of Expression, Association, or Peaceful Assembly:

The government permitted peaceful assembly of LGBTQI+ persons, including permitting a Pride march in Lilongwe in June. Freedom of association was somewhat restricted, as NGOs that sought to register as LGBTQI+ rights organizations continued to face government restrictions. In September, the Supreme Court of Appeal ruled NGO Nyasa Rainbow Alliance could proceed with a 2017 challenge to the government's refusal to register it as an NGO. The case remained pending at year's end. The organization was initially refused registration on the grounds that promoting the human rights of LGBTQI+ persons was akin to advocating illegality. The NGO then removed reference to LGBTQI+ rights, but the government refused to reconsider its decision (see section 2.b.).

Persons with Disabilities

Persons with disabilities could not access education, health services, public buildings, and transportation on an equal basis with others. The law requires such access, but the government did not enforce the law effectively. Government information and communication was provided in accessible formats. Societal stigma related to disability and the lack of accessibility to public buildings and transportation negatively affected the ability of persons with disabilities to obtain services and find and maintain employment.

The law prohibits discrimination in education, health care, the judicial system, social services, the workplace, housing, political life, and cultural and sporting activities for persons with disabilities, defined as a long-term physical, mental, intellectual, or sensory impairment. The law prohibits discrimination against persons with disabilities in political and public life and calls for the government to take measures to provide access for them to transportation, information, and communication services. The law establishes a disability trust fund to support persons with disabilities, including improved access to both public and private facilities. Although the relevant law took effect in 2013, the government has not adopted standards and plans for its implementation and enforcement. The Ministry of Gender, Community Development, and Social Welfare is responsible for protecting the rights of persons with disabilities, but it was unable to do so. Some public and privately supported schools and training centers assisted persons with disabilities.

Other Societal Violence or Discrimination

Mobs and local citizens sometimes engaged in vigilante attacks, at times killing persons suspected of crimes such as theft.

There were several attacks on persons with albinism driven by demand for body parts used in witchcraft rituals. Religious, traditional, civil society, and political leaders, including the president, denounced the attacks. On November 30, an assailant broke into the house of a girl age three with albinism while she slept next to her grandmother, killed the girl, cut off her left arm, and absconded. Less than a week later, police arrested three suspects in connection with the girl's killing. The investigation was pending at year's end.

In a sign of increased vigilance against killings of persons with albinism, courts across the country handed down severe sentences to those convicted of killing persons with albinism. On June 27, a judge sentenced five persons to life in prison, five others to 30 years in prison, and one to 60 years in prison for conviction of their roles in the 2018 killing of a man with albinism, MacDonald Masambuka. Those convicted included the victim's brother, a police officer, a Roman Catholic priest, and a medical officer convicted of conspiring to sell the victim's human tissue.

Societal discrimination against persons with HIV and AIDS remained a problem, especially in rural areas. Many individuals preferred to keep silent regarding their health conditions rather than seek help and risk being ostracized. The National AIDS Commission stated discrimination was a problem in both the public and private sectors. Public awareness campaigns by the government and NGOs to combat the stigma had some success.

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. Unions must register with the Registrar of Trade Unions and Employers' Organizations in the Ministry of Labour; registration requirements are not onerous, but failure to meet annual

reporting requirements may result in cancellation of a union's registration. The law prescribes the articles that trade union constitutions must include and limits certain individuals from holding union offices or positions of responsibility. The law places some restrictions on the right to collectively bargain, including requirements of prior authorization by authorities, and bargaining status. The law provides for unions to conduct their activities without government interference. The law also prohibits antiunion discrimination and provides for remedial measures in cases of dismissal for union activity. The law does not specifically prohibit retaliation against strikers or actions against unions that are not registered.

The law requires at least 20 percent of employees (excluding senior managerial staff) belong to a union before it may engage in collective bargaining at the enterprise (factory) level, and at least 15 percent of employees must be union members for collective bargaining at the sector (industry) level. The law provides for the establishment of industrial councils in the absence of collective agreements for sector-level bargaining. Industrial council functions include wage negotiation, dispute resolution, and industry-specific labor policy development.

The law allows members of a registered union to strike after going through a mandatory mediation process overseen by the Ministry of Labour. A strike may take place only after failure of a lengthy settlement procedure, including seven days' notice of a strike and a 21-day conciliation process as set out in the law. An October amendment to the Employment Act and Labour Relations Act allows employers to deduct wages from striking employees if they strike for more than three days per year. The law also requires the labor minister to apply to the Industrial Relations Court to determine whether a strike involves an "essential service," the interruption of which would endanger the life, health, or personal safety of part of the population. The law does not provide a specific list of essential services, but the October amendment authorizes the minister of labor to designate categories of workers deemed essential who are not allowed to strike. Before the amendment, members of a registered union in essential services had only a limited right to strike. There are no special laws or exemptions from regular labor laws in export-processing zones. The law does not apply to most workers who are in the informal sector without work contracts.

The government did not effectively enforce applicable laws. Throughout the

judicial system, lack of capacity resulted in delays of some labor cases. Small fines for most violations were less than those for other laws involving denials of civil rights. Provisions exist for punishment of up to two years' imprisonment, but no convictions were reported. Penalties were never applied against violators.

Freedom of association and the right to collective bargaining were adequately respected for those in the formal sector. Union membership among workers was low due to the small percentage of the workforce in the formal sector.

Arbitration rulings were legally enforceable; however, the Industrial Relations Court did not monitor cases or adequately enforce the laws. The October amendment restructured the Industrial Relations Court to require it to have permanent staff only, thus eliminating the requirement of employer and employee panelists.

In September, the Ministry of Labour launched the *Decent Country Programme II*, modeled on the International Labor Organization (ILO) *Decent Work Agenda*, to improve worker rights and protections through support from the ILO and other development partners.

b. Prohibition of Forced or Compulsory Labor

The law prohibits and criminalizes all forms of forced or compulsory labor, but penalties for conviction were less than those for other analogous serious crimes. A 2021 amendment to the law prohibits unlawful labor, including forced and tenancy labor. Violations of the act may incur a fine and five years' imprisonment for anyone convicted of exacting, imposing, causing, or permitting forced or tenancy labor.

The government did not effectively enforce applicable laws, and forced labor occurred during the year, especially in agriculture (predominantly the tobacco industry), goat and cattle herding, and brickmaking. Child forced labor also occurred (see section 7.c.). Under the tenancy system, estate owners recruited farmers from distant districts to grow tobacco for them on their estates. The tenants were often promised such services as accommodation and food rations as well as a share of the earnings from sales. Tenant farmers included men and women, usually accompanied by their children and dependents. Most tenants were

from the southern area of the country and worked in the central or northern region. Employers loaned tenant farmers money to buy agricultural inputs during the growing season that could turn into situations of debt bondage if they were unable to repay the loans. Although the 2021 amendment to the Employment Act outlawed tenancy labor, the practice continued to be widely used due to a lack of enforcement and oversight.

Also see the Department of State's *Trafficking in Persons Report* at <https://www.state.gov/trafficking-in-persons-report>.

c. Prohibition of Child Labor and Minimum Age for Employment

See the Department of Labor's *Findings on the Worst Forms of Child Labor* at <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/findings>.

d. Discrimination with Respect to Employment and Occupation

The employment law prohibits discrimination against any employee or prospective employee but does not cover sexual orientation or gender identity, and the government in general did not effectively enforce the law. Penalties were commensurate with those for laws related to civil rights. Penalties were rarely applied against violators.

Discrimination in employment and occupation occurred with respect to gender and disability (see section 6). Despite the law against discrimination based on gender or marital status, 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 informal employment opportunities. Few women participated in the limited formal labor market, and underrepresentation in the employment of women in managerial and administrative jobs was particularly apparent. Households headed by women were overrepresented in the lowest quarter of income distribution. In 2020, protesters criticized the government's failure to comply with the law's requirement to include no less than 40 percent of either men or women in public appointments.

LGBTQI+ individuals faced discrimination in hiring and harassment, and persons with disabilities faced discrimination in hiring and access to the workplace.

e. Acceptable Conditions of Work

Wage and Hour Laws: The minister of labor sets the minimum wage rate based on recommendations of the Tripartite Wage Advisory Board composed of representatives of labor, government, and employers. The minimum wage was set below the World Bank's poverty income level. The government reported during the year that 51 percent of citizens lived below the poverty line.

Migrant workers are entitled to the same legal protections, wages, and working conditions as citizens if they comply with immigration laws. Those persons not in compliance, however, lacked these protections and were subject to deportation.

The legal workweek is 48 hours, with a mandatory weekly 24-hour rest period. The law requires premium payment for overtime work and prohibits compulsory overtime. The law provides for a period of annual leave of no less than 15 working days.

The Ministry of Labour is responsible for enforcement of wage and hour laws. By law, labor inspectors have the authority to make unannounced inspections but lack the authority to initiate sanctions. The government did not provide information on the number of labor inspectors nor on government actions during the year to prevent violations, particularly for vulnerable groups.

Occupational Safety and Health: The law establishes occupational safety and health (OSH) standards that are appropriate for the main industries in the country. The Ministry of Labour houses a Directorate of Occupational Safety and Health responsible for minimum standards, but the number of labor inspectors was insufficient to enforce the law effectively. Inspectors had the authority to make unannounced inspections and initiate sanctions. Workers, particularly in industrial jobs, often worked without basic safety clothing and equipment. Workers harvesting tobacco leaves generally did not wear protective clothing and absorbed up to the equivalent of 50 cigarettes worth of dissolved nicotine daily through their skin.

Workers have the right to remove themselves from dangerous work situations without jeopardy to continued employment. Workers dismissed for filing complaints regarding workplace conditions have the right to file a complaint at the

Labour Office or sue the employer for wrongful dismissal; however, these processes were not widely publicized, and workers were unlikely to exercise these rights. Authorities did not effectively protect employees in this situation.

Wage, Hour, and OSH Enforcement: The government did not effectively enforce laws related to OSH, wages, or overtime. Workweek and annual leave standards were not effectively enforced, and employers frequently violated statutory time restrictions. Alleged violations of wage, hour, and overtime laws were believed to be widespread and, according to a 2017 Ministry of Labour report, were common across both the private and public sectors. The Ministry of Labour's enforcement of health and safety standards was also poor. The law specifies fines and imprisonment for violations, but these penalties were less than those for similar crimes, and no reports of jail terms were ever reported.

Informal Sector: More than 88 percent of the workforce was engaged in the informal sector. Informal workers included street and market vendors, artisans, small veranda businesses (*khondes*), cross-border traders, and smallholder tea farmers. A study by the Congress of Trade Unions found that informal workers endured unsafe and unhealthy working conditions, but labor laws do not protect workers outside the formal sector or part time workers.

The law does not provide for the creation of trade unions for self-employed informal sector workers, but approximately 15,000 of an estimated two million informal workers were organized in the Malawi Union for the Informal Sector (MUFIS), which is affiliated with the Congress of Trade Unions. MUFIS worked with district councils to address matters affecting informal workers due in part to a Ministry of Labour decision that MUFIS did not have sufficient standing to bargain collectively with employers. No official entity provided social protections for informal workers, and the law expressly excludes certain categories of informal workers from participating in the social security system known as the mandatory account system.