

# **MALAWI 2020 HUMAN RIGHTS REPORT**

## **EXECUTIVE SUMMARY**

Malawi is a multiparty democracy. Constitutional power is shared between the president and the 193 National Assembly members. In May 2019 elections were conducted for president, parliament, and local councils. In February the Constitutional Court ruled in favor of an opposition challenge, annulling the 2019 presidential election (leaving intact the parliamentary and local results). On June 23, a new presidential election was conducted, and opposition leader Lazarus Chakwera won 58 percent of the vote, returning the opposition to power for the first time in 26 years. The international community and donors congratulated Malawi on the strength of its democratic institutions and peaceful transition of power.

The Malawi Police Service, under the Ministry of Homeland Security, has responsibility for law enforcement and maintenance of order. The Malawi Defense Force has responsibility for external security. The executive branch sometimes instructed the Malawi Defense Force to carry out policing or other domestic activities, such as disaster relief. The Malawi Defense Force commander reports directly to the president as commander in chief. Civilian authorities maintained effective control over the security forces. Members of the Malawi Police Service committed some abuses.

Significant human rights issues included: harsh and life-threatening prison and detention center conditions; arbitrary arrest or detention; significant acts of corruption; lack of investigation and accountability for violence against women; and criminalization of same-sex sexual conduct.

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**

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### **Freedom from**

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

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

In February 2019 Buleya Lule died while in police custody in Lilongwe, just hours after appearing in court as one of six suspects in the abduction of Goodson Makanjira, a 14-year-old boy with albinism (see section 6, Other Societal Violence or Discrimination). In a May 2019 report into 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. Earlier, police arranged an autopsy that attributed his death to intracranial bleeding and hypertension. The MHRC recommended that the police officers involved be prosecuted. On July 10, 13 officers, including now suspended police commissioner Evalista Chisale, were arrested for their alleged involvement in the death of Lule. On July 31, the officers were released on bail.

Perpetrators of past abuses were occasionally punished administratively, but investigations often were delayed, abandoned, or remained inconclusive.

#### **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**

The constitution prohibits the use of torture or cruel, inhuman, and degrading treatment or punishment; however, police sometimes used excessive force and other unlawful practices, including torture, to extract confessions from suspects. The MHRC stated in its annual report that torture was widespread in prisons.

Reputable nongovernmental organizations (NGOs) working with sex workers reported police officers regularly extracted sexual favors from sex workers under

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the threat of arrest.

In October 2019 the MHRC opened an independent inquiry into allegations police officers raped women and teenage girls in Msundwe, M'bwatalika, and Mpingu in Lilongwe. The alleged rapes were reportedly in retaliation for the killing of police officer Usuman Imedi by an irate mob in Msundwe. A December 2019 MHRC report stated police officers raped and sexually assaulted 18 women and girls, at least four younger than age 18. On August 13, High Court Judge Kenyatta Nyirenda ordered the government to compensate the women. The judge also ordered police authorities to release the report of the internal investigations within 30 days. As of November the report had yet to be submitted.

One allegation of sexual misconduct by a Malawian peacekeeper deployed to the UN Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) reported in 2016 remained pending at year's end. Two additional allegations of abuses by Malawian peacekeepers with MONUSCO--in 2016 and 2014--were reported during 2019.

According to the *Conduct in UN Field Missions* online portal, there were three open allegations, submitted in previous years, of sexual exploitation and abuse by Malawian peacekeepers deployed to UN peacekeeping missions, including two submitted in 2018 and one submitted in 2016. As of November the government had not yet provided the accountability measures taken for all three open allegations. The 2016 case remained pending a government investigation. For one of the 2018 cases, the United Nations completed its investigation and was awaiting additional information from the government. The United Nations is still investigating the other 2018 case. All three cases allegedly involved exploitation of an adult.

Impunity was a problem in the security forces.

### **Prison and Detention Center Conditions**

Prison and detention center conditions remained harsh and potentially life threatening due to overcrowding and poor sanitation; inadequate food, potable

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water, heating, ventilation, lighting, and health care; and torture.

**Physical Conditions:** An Inspectorate of Prisons report released in September 2019 indicated the Malawi Prison Service was failing to execute its rehabilitative role, while the courts were failing to exercise their sentence review powers in time. A 2018 Inspectorate of Prisons monitoring tour of prisons and police cells across the country found recurrent problems of poor sanitation, poor diet, overcrowding, prisoner abuse, poor ventilation, detention without charge beyond 48 hours, understaffing, prison staff corruption, and insufficient prisoner rehabilitation such as education and vocational training.

Overcrowding and malnutrition remained problems. In December the Malawi Prison Service reported a total prison population of 14,500 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, which 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, detention facilities for women and children were generally better than men's facilities. The International Organization for Migration (IOM), however, noted significant improvements in the treatment of migrants held at prison facilities, including easier access to care for migrants with medical conditions. The IOM also claimed improved channels of communication with prison staff and easier access to detention facilities. As of October, five male migrants, four Nigerians, and one South African were in detention for immigration offenses. They were convicted, fined, and ordered deported.

As of December, according to the prison service, 15 inmates died in prison, all of natural causes.

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

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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.

**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 primarily verbal 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 follow-up on individual cases.

The MHRC and NGOs working in prisons expressed concern regarding the human rights of detained persons. During the year the MHRC released a report that cited overcrowding, poor sanitation, and inadequate food and health care as major problems in prisons and detention centers. It stated torture was widespread and that most prisoners and detainees lived in degrading and inhuman conditions. From January to August, the MHRC received one complaint regarding the rights of prisoners. NGOs attributed the low number of submitted complaints was due 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; however, 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 in court 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

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meant detainees did not challenge the legality of their detention.

### **Arrest Procedures and Treatment of Detainees**

Police apprehended most suspects without a warrant if they had reasonable grounds to believe a crime was being or had been committed. Only in cases involving corruption or white-collar crime were arrest warrants normally 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; however, authorities often ignored these rights. The 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 on the basis 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. As of December 2019, the bureau had 23 lawyers and 29 paralegals in its three offices, located in the largest cities: Lilongwe, Blantyre, and Mzuzu.

The Center for Human Rights Education, Advice, and Assistance assisted 803 persons detained at police stations and in prisons through its Malawi Bail Project, camp courts, police cell visits, and paralegal aid clinic to expedite their release. During the year the Paralegal Advisory Service Institute (PASI) reached out to 22,499 detainees, for 17,880 of whom it succeeded in obtaining release. PASI and the Center for Legal Assistance, both NGOs that assist prisoners with legal matters, provided limited free legal assistance to expedite trials of detainees. Priority was given to the sick, the young, mothers with infants, persons with disabilities, and those in extended pretrial detention.

**Arbitrary Arrest:** The constitution and law prohibit arbitrary arrest, unlawful detention, or false arrest. Although sections of the penal code pertaining to rogues

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and vagabonds used in the past to make arbitrary arrests were struck down as unconstitutional, police made arrests based on other provisions, such as conduct likely to cause breach of peace and obstruction of police officers. Although prostitution is legal, living off the proceeds of prostitution is illegal; police regularly harassed sex workers.

**Pretrial Detention:** Of the total prison population of approximately 14,000 inmates, an estimated 2,500, or 18 percent, were in pretrial detention. Despite a statutory 90-day limit on pretrial detention, authorities held most homicide suspects in detention for two to three years before trial. There was evidence some homicide detainees remained in prison awaiting trial for much longer periods, but reliable information on the number and situation of these detainees was unavailable.

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 gathered cases of pretrial detainees awaiting trial for excessive periods, who were held unlawfully, or who had been granted bail but were unable to meet the 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. The slow-moving judicial system, including extensive delays due to motion practice (a three-step court order request), a low bar for granting injunctions, judge shopping, prosecutorial delay tactics, recusals, and lawyers and witnesses not being present on trial dates, undermined the government's ability to dispense justice.

The Malawi Defense Force conducts courts-martial but not military or security

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tribunals. Used more frequently than courts-martial is a nonjudicial procedure under which 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 are presumed innocent. The constitution and law require a court to inform an accused of charges within 48 hours of arrest, with free assistance of an interpreter if necessary. 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 homicide cases. Defendants have the right to challenge prosecution or plaintiff evidence and witnesses and present their own witnesses and evidence. By law they may not be compelled to testify or confess guilt. The law does not specify a length of time for the accused to prepare a defense. The slow pace of trials affords defendants adequate time to prepare, but not to adequate facilities due to insufficient prison system funding. All persons have the right of appeal; however, appeals often were delayed for years and sometimes never addressed by a higher court.

The judiciary's budgetary and 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. The directorate had 19 prosecuting attorneys supported by 17 paralegals, who also prosecuted certain lower court cases. COVID-19

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pandemic restrictions caused trial delays.

### **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 violations. Individuals and organizations may appeal adverse domestic decisions to regional courts. The law provides for administrative and judicial remedies for alleged wrongs; however, a lack of legal professionals restricted the number of human rights cases pursued and resulted in a large backlog. As of November there were only 588 licensed legal practitioners in a country of more than 18 million inhabitants.

### **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 something needed for an investigation without undue delay. Before conducting a search without a warrant, the officer must write a reasonable-grounds justification and give a copy to the owner or occupant of the place to be searched.

## **Section 2. Respect for Civil Liberties, Including**

### **a. Freedom of Expression, Including for the Press**

The constitution and law provide for freedom of expression, including for the press, and the government generally respected this right.

**Freedom of Press and Media, Including Online Media:** In the aftermath of the

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May 2019 tripartite elections, during several weeks in which thousands of citizens protested the results on the streets, the government, through the Malawi Communications Regulatory Authority (MACRA), took at least two separate steps to suppress and curtail freedom of speech.

In June 2019 MACRA banned call-in radio shows, justifying this by claiming the shows were a platform for callers to incite the public against the government. In August 2019 the government banned all radio stations in the country from live broadcasting of demonstrations when most radio stations suspended regular programming to cover the protests. MACRA stated the broadcasters should install a delay machine to allow sufficient time for it to disapprove prohibited content.

In September 2019 the Media Institute of Southern Africa (MISA) Malawi, a private rights advocacy group, applied to the High Court for an injunction against MACRA regarding its blanket ban of call-in programs on radio stations. MISA Malawi was joined in the application by the Times Media Group, Zodiak Broadcasting Station, and Capital Radio. In September 2019 the High Court granted MISA Malawi's injunction to lift the ban temporarily while the court investigated whether some broadcasters violated the terms of their licenses as alleged by MACRA.

In May the High Court found MACRA at fault for banning radio stations from live broadcasts, and it reversed the regulator's decision. The court agreed with MISA Malawi that the ban was an infringement of freedom of expression.

**Violence and Harassment:** On January 8, three journalists were arrested and detained by police at Kamuzu International Airport. Golden Matonga of the newspaper *Nation*, and Steve Zimba and Francis Chamasowa of Zodiak Radio Station had gone to the airport to cover the arrival of an EU election observation delegation's report on the disputed 2019 elections. The three journalists were detained for two hours. Police first charged the three with "conduct likely to cause breach of the peace." After the journalists were taken to the Criminal Investigation Department, the charge was changed to "disorderly conduct under the Aviation Act." On January 18, the journalists appeared before court only to learn that the

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charge was dropped.

On February 11, the then deputy minister of transport and public works, Charles Mchacha apologized to journalist Bobby Kabango for verbally attacking and intimidating him. In December 2019 Mchacha made intimating and angry remarks against Kabango when he telephoned a *Nation* journalist to inquire why he was investigating the deputy minister's alleged purchase of land belonging to a government department in Blantyre City.

On March 10, police officers at Lilongwe Police Station assaulted four journalists: Hebert Katanda from Luntha Television, Malumbo Ngwira of MIJ FM, Julius Caleone of YONECO FM and Emma Zawanda of Timveni Radio. The journalists were at the police station to cover the arrest of Timothy Mtambo, the then chairperson of the Human Rights Defenders Coalition (HRDC). Police officers fired tear gas to disperse the protesters and then attacked the journalists, threw stones at them and hit one of the journalists with a gun.

### **Internet Freedom**

The 2017 Electronic Transactions and Cyber Security Act criminalizes the act of “knowingly receiving and sharing unauthorized data” and stipulates that a person convicted of sharing or receiving such information is subject to a substantial monetary fine and up to five years’ imprisonment. The law also makes it a crime for any person, willfully and repeatedly, to use electronic communication to attempt to disturb the peace or right of privacy of any person. Civil society organizations decried passage of the law, arguing it was meant to silence persons on social media ahead of the May 2019 national elections. As of November no one had been charged with a crime under the law. Lack of infrastructure and the high cost of internet connections limited internet access.

### **Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom during the year; however, the government sporadically censored films it deemed contained

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culturally sensitive or sexually explicit material.

### **b. Freedoms of Peaceful Assembly and Association**

The government limited freedoms of peaceful assembly and association.

#### **Freedom of Peaceful Assembly**

The constitution and law provide for freedom of assembly, but the government did not always respect this right.

On March 9, the government executed an arrest warrant for then HRDC chairperson Mtambo, vice chairperson Gift Trapence, and prominent member reverend MacDonald Sembereka for allegedly violating Section 103 of the Police Act prohibiting demonstrations within a 310 feet of state residences and Section 124 of the Penal Code inciting others to break the law when the three called for massive nationwide antigovernment demonstrations. On March 10, HRDC obtained a court injunction, and on March 12, all three made bail. The charges were later dropped.

#### **Freedom of Association**

The constitution and law provide for the freedom of association, and the government respected this right. The government required registration of all NGOs and political parties. NGOs must register with three different government entities and pay significant yearly registration fees.

### **c. Freedom of Religion**

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

### **d. Freedom of Movement**

The constitution and law provide for freedom of internal movement, foreign travel,

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emigration, and repatriation, and the government generally respected these rights.

### **e. Status and Treatment of Internally Displaced Persons**

Not applicable.

### **f. Protection of Refugees**

The government cooperated with UNHCR and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern. As of October 31, there were 47,469 asylum seekers and refugees at the Dzaleka Camp. COVID-19 border closures lowered the average monthly arrival total of 470 individuals at the beginning of the year, to an average of 150 March to October, with only 18 new arrivals in June.

**Abuse of Migrants, Refugees, and Stateless Persons:** Security forces sometimes intimidated refugees and asylum seekers. Police routinely detained and returned to the Dzaleka Camp refugees found outside of the camp, including those with proper identity documents. During the year the UN High Commissioner for Refugees (UNHCR) received no cases of refugees facing forced return to their countries of origin.

There were multiple reports of refugees engaging in survival sex to obtain income to supplement food rations and other necessities in the Dzaleka Camp. UNHCR also reported gender-based violence at Dzaleka.

The MHRC received one complaint of mistreatment at the Dzaleka Camp.

The government continued to ban registration of perceived lesbian, gay, bisexual, transgender, and intersex (LGBTI) asylum seekers on the basis that it was against the law. UNHCR continued to advocate for the Ministry of Homeland Security to reverse its decision and consider registration and processing of all arrivals, including LGBTI cases. UNHCR continued to register persons of concern in the database and conducted the mandatory Refugee Status Determination (RSD).

**Access to Asylum:** The law provides for the granting of asylum or refugee status, and as of October the government provided protection to more than 47,000 individuals. Asylum seekers primarily came from the Democratic Republic of

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Congo. Most of them remained designated as asylum seekers.

In April 2019 the government published a gazette notice recognizing asylum seekers from the eastern Democratic Republic of the Congo, in North and South Kivu Provinces, and Katanga Region as refugees. Implementation of automatic refugee status for Congolese citizens was expected to reduce the backlog of asylum seekers awaiting a refugee status determination but at year's end had yet to be implemented. As of October the RSD backlog in the country stood at 32,499 of the total population of 47,469 asylum seekers and refugees.

**Freedom of Movement:** Refugees were subject to an encampment policy that restricted them to the Dzaleka Camp, the only official designated refugee camp. Authorities periodically rounded up and returned to the Dzaleka Camp those who left it.

**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 food assistance. A small number of refugees with professional degrees, especially those with medical training, received permits to pursue employment and other opportunities outside the camp.

**Access to Basic Services:** 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. The Dzaleka Camp, initially built for 10,000 individuals, housed more than 47,000 persons of concern, creating congestion and a burden on resources and facilities. Overcrowding also increased the risk of the spread of COVID-19. These overtaxed facilities served both refugees and local communities. The inability of most refugees to grow food or earn money due to the encampment policy resulted in 96 percent of the refugees living below the poverty line. Donor-funded assistance did not keep pace with the increasing refugee population.

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 because it had only 13 police officers.

In 2019 refugees and asylum seekers were included in the *Malawi Development*

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*and Growth Strategy III* and the *2019-2023 United Nations Development Assistance Framework*. On several occasions the country expressed its commitment to implement the *Comprehensive Refugee Response Framework* that aims to integrate refugees into national systems.

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

### **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 May 2019 citizens voted in simultaneous presidential, parliamentary, and local elections. International observers characterized conduct of those elections as generally competent, professional, and successful. With 39 percent of the vote, incumbent President Arthur Peter Mutharika of the Democratic Progressive Party was re-elected to a second five-year term. Presidential and vice presidential debates took place and were broadcast on radio and television, which provided voters a tool for evaluating and contrasting candidates and their policies. Lazarus Chakwera of the main opposition Malawi Congress Party received 35 percent of the vote, while Mutharika's former vice president Saulos Chilima of the United Transformation Movement received 20 percent of the vote. In May 2019 Chakwera and Chilima challenged the election results in court and sought an annulment of the election. In February the High Court nullified the election, and in May the Supreme Court of Appeal reaffirmed the nullification. Another presidential election was conducted on June 23 that opposition leader Chakwera won as the torchbearer of the nine-party Tonse Alliance with 58 percent of the

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votes. Former president Peter Mutharika garnered 39 percent of the votes. On June 28, Chakwera was sworn in, together with his running mate Saulos Chilima as vice president.

**Participation of Women and Members of Minority Groups:** No laws limit participation of women or members of minority groups in the political process, 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. More women contested parliament and local councilor seats in 2019 than ever before, but a majority ran as independents as the primary system often disadvantaged women from competing as party candidates. Women reported harassment and intimidation when campaigning. There were 45 women elected to the 193-seat National Assembly and 67 women among the 462 elected local councilors. In the 31-member cabinet, there were 12 women of whom four were ministers and eight were deputy ministers. These represented gains of 7 percent in parliament, a 1 percent increase in local councilors, and an 8 percent increase in cabinet positions. Women constituted 25 percent of the civil service. Of the 47 Supreme Court of Appeal and High Court justices, 14 were women.

### **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 sometimes engaged in corrupt practices with impunity. There was little criminal or professional accountability for those involved.

The government, in cooperation with donors, continued implementation of an action plan to pursue cases of corruption, review how the “Cashgate” corruption scandal occurred, and introduce internal controls and improved systems to prevent further occurrences. Progress on investigations and promised reforms was slow.

**Corruption:** The Anti-Corruption Bureau (ACB) is the agency primarily responsible for investigating and prosecuting cases of official corruption. It also works to educate the civil service and public on anticorruption matters. As of

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November the bureau reported it completed 35 investigations and completed prosecution of 19 cases of which: 10 resulted in convictions, three were acquittals, three were dismissed, and one was discharged; two were civil cases where individuals unsuccessfully sued the ACB. The performance of the ACB was greatly affected by the COVID-19 pandemic; thus, investigations could not be conducted effectively. In the 2020/21 national budget, the government increased the ACB budget by 39 percent that will allow an increase in staff and resources to investigate and prosecute cases.

In January 2019 one Cashgate trial involving 11 suspects concluded with 10 of the suspects convicted and one acquitted. The 10 were convicted of money laundering and conspiracy to commit a felony involving 201 million Malawian kwachas (\$264,000) from the former Ministry of Disability and the Department of the Accountant General. In April 2019 the High Court sentenced three of the 10 to five years' imprisonment each, four of the 10 to four years' imprisonment each, and the last three of the 10 to three years' imprisonment each.

The state's corruption case against former president Bakili Muluzi, begun in 2006, remained stalled.

**Financial Disclosure:** The constitution requires the president, vice president, and members of the cabinet to disclose their assets in writing to the speaker of the National Assembly within three months of being elected or appointed. There is no requirement under the constitution for the speaker to make the declarations public or available to other members of parliament. The 2013 Public Officers' (Declaration of Assets, Liabilities and Business Interests) Act requires officials in 49 categories, ranging from the president, members of parliament, and senior officials down to specific categories of civil servants, including traffic police and immigration officers, to make financial disclosures. Noncompliance is grounds for dismissal, and individuals who knowingly provide inaccurate information may be fined, dismissed, or imprisoned.

In 2018 the director of public officers' declarations wrote the president and the speaker of parliament recommending disciplinary action against a cabinet member and members of parliament for failure to comply with asset declaration statutes.

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No disciplinary measures had been carried out by November.

Under the law declarations filed by public officials are available to the public upon request, but the director of the Office of the Director of Public Officers'

Declarations may refuse access to declarations that are not considered to be in the public interest. The refusal, however, may be appealed and reversed through a judicial review by the High Court.

### **Section 5. Governmental Attitude Regarding 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. On February 28, seven MHRC commissioners appointed by the president in March 2019 were sworn in. The delayed swearing in was because the ombudsman had challenged the legality of the appointments of two of the commissioners. The ombudsman and the law commissioner are ex officio members of the MHRC.

The Office of the Ombudsman is mandated to investigate government officials responsible for human rights and other abuses. The Ombudsman's Office does not take legal action against government officials but may order administrative action to redress grievances and may recommend prosecution to the director of public prosecution. The office had 20 investigators, complemented by three full time legal officers who were assisted by 20 government interns. Due to lack of funds, public awareness campaigns were not conducted. In general the office's operations were slowed down due to COVID-19 gathering restrictions imposed on

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by the government. The office maintained a website, Facebook page, and an active Twitter account, and provided regular updates on its activities.

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

#### **Women**

**Rape and Domestic Violence:** The penal code criminalizes rape of women and girls with a maximum penalty of death for conviction. The 2015 Marriage, Divorce, and Family Relations Act explicitly introduces the concept of spousal rape, but the act 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 penal code. 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 arrests and convictions were an almost daily occurrence. Although the maximum penalty for conviction of rape is death or life imprisonment, the courts generally imposed lesser prison sentences. For cases of 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 Ministry of Gender, Community Development, and Social Welfare and donor-funded NGOs conducted public education campaigns to combat domestic sexual harassment, violence, and rape.

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 wife beating, was common, although victims rarely sought legal recourse. Police regularly investigated cases of rape, sexual assault, and gender-based violence but did not normally intervene in domestic disputes. Police support units provided limited shelter for some abuse

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victims.

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

**Other Harmful Traditional Practices:** 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 awareness concerning the inherent dangers of such behavior, including the risk of HIV/AIDS transmission.

*Kupimbira*, a practice that allows a poor family to receive a loan or livestock in exchange for pubescent daughters, existed in some areas.

Despite certain legal prohibitions, many abusive practices, including the secret initiation of girls into the 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 10 undergo *kusasa fumbi*, a “cleansing ritual” in which the girls are raped by men. According to one UN-sponsored study, more than 20 percent of girls in secondary school underwent a form of initiation that involved rape by an older man.

**Sexual Harassment:** Although sexual harassment was believed to be widespread, there were no data on its prevalence or on the effectiveness of government enforcement of the law. The law makes conviction of sexual harassment punishable by up to five years’ imprisonment and places an obligation on government to have policies and procedures aimed at eliminating sexual harassment. Conviction of “insulting the modesty” of a woman is a misdemeanor punishable by one year’s incarceration. Conviction in extreme cases, such as indecent assault on a woman or girl is punishable by sentences of up to 14 years’

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imprisonment.

**Reproductive Rights:** Couples and individuals have the right to decide the number, spacing, and timing of their children and had access to the information and means to do so, free from discrimination, coercion, or violence. The law limits abortion to safeguarding the life and mental and physical health of a girl or woman.

Health-care clinics and local NGOs operated 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 the 2016 *Malawi Demographic and Health Survey* (MDHS), 81 percent of girls and women of reproductive age had their need for family planning satisfied with modern methods. The government provided free childbirth services, but availability depended upon access to hospitals and other medical facilities 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 29. HIV/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.

**Coercion in Population Control:** There were no reports of coerced abortion or involuntary sterilization on the part of government authorities. In November 2019 the Office of the Ombudsman launched a public appeal for information and testimony following media reports of involuntary hysterectomies of caesarian patients at Blantyre's referral hospital.

**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

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taken by the deceased husband's family. Although Malawian men may sponsor their wives for naturalization, the law does not permit Malawian women to sponsor their husbands for naturalization.

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

### Children

**Birth Registration:** Citizenship may be derived from birth within the country or abroad to at least one Malawian 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 for all children. Education up to age 18 is compulsory, although many families could not afford book fees and uniforms, and limited space in secondary schools prevented many students from continuing beyond primary education. Students from poor families had access to a public book fund.

**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 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 Ministry of Gender, Community Development, and Social Welfare 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

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at 18. According to UNICEF, 46 percent of girls are married before 18, and 9 percent of girls are married before 15. Civic education on early marriage was carried out mainly by NGOs. Some traditional leaders annulled early marriages and returned the girls involved to school.

**Sexual Exploitation of Children:** The law forbids engaging in sexual activity with children younger than age 16 and stipulates penalties for conviction of 14 to 21 years' imprisonment. The law further prohibits "indecent practice" in the presence of or with a child, with offenders liable to 14 years' imprisonment.

The law prohibits commercial sexual exploitation of children, including child pornography and using a child for public entertainment of an immoral or harmful nature. The maximum penalty for conviction of engaging in child pornography is 14 years' imprisonment, while those found guilty of procuring a child for public entertainment are liable to a substantial monetary fine and seven years' imprisonment. The law was not effectively enforced.

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 trafficking of children for sexual purposes was a problem, and child prostitution for survival at the behest of parents or without third-party involvement occurred. In urban areas bar and rest house owners recruited girls as young as 12 from rural areas to do household work such as cleaning and cooking. They then coerced them to engage in sex work with customers in exchange for room and board.

**Displaced Children:** According to the *2015 Demographic and Health Survey*, 20 percent of children younger than age 18 were not living with either biological parent, and 12 percent were orphaned or vulnerable due to extended parental illness or death. 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. See the Department of State's *Annual Report on International Parental Child Abduction* at

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<https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/for-providers/legal-reports-and-data/reported-cases.html>.

### **Anti-Semitism**

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

### **Trafficking in Persons**

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

### **Persons with Disabilities**

The Disability Act 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 provides for the establishment of a disability trust fund to support persons with disabilities, including regarding access to public facilities, both governmental and private.

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 obtain and maintain employment.

Accommodations for persons with disabilities were not among the government's priorities. Although the Disability Act took effect in 2013, the government had yet to adopt standards and plans for its enforcement and implementation. 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.

There were public and privately supported schools and training centers that assisted persons with disabilities. As of August the MHRC reported t two

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complaints were received related to abuse of disability rights.

### **Acts of Violence, Criminalization, and Other Abuses Based on Sexual Orientation and Gender Identity**

The law criminalizes consensual same-sex sexual activity, 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 penal code also criminalizes “indecent practices” between men as well as between women and provides for punishment of five years’ imprisonment if convicted. The government did not actively enforce these laws.

Same-sex sexual activity may also be prosecuted as “conduct likely to cause a breach of the peace.”

The Center for the Development of People documented 15 instances of abuse based on sexual orientation and gender identity. The nature of the abuses fell into three broad categories: stigma, harassment, and violence.

While the law does not prohibit discrimination against LGBTI persons, the revised Malawi National Strategic Plan for HIV and AIDS (2020-25) has also included the transgender and the men who have sex with men community as part of the key populations to be targeted reach towards its goals.

### **HIV and AIDS Social Stigma**

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. Campaigns by the government and NGOs to combat the stigma had some success. The National AIDS Commission maintained that discrimination was a problem in both the public and private sectors.

The *2012 People Living with HIV Stigma Index for Malawi* indicated that of 2,272 persons with HIV interviewed, significant percentages reported having been verbally insulted, harassed, and threatened (35 percent) and excluded from social

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gatherings (33 percent).

### **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 for witchcraft rituals. Religious, traditional, civil society, and political leaders, including the president, publicly denounced the attacks. On July 24, Dorothy Jeffrey, a woman with albinism, survived an attempted abduction at night at her home in Moliha Village in Machinga District. She and her grandmother were injured; one of her suspected abductors was arrested.

In January 2019 Eunice Nkhonjera, an 18-month-old girl with albinism, was abducted from her home in the northern town of Karonga. In February 2019 police arrested three persons suspected of involvement in her kidnapping. Goodson Makanjira, a 14-year-old boy with albinism, was abducted from his home in the central region district of Dedza. Police arrested six suspects, one of whom, Buleya Lule, died in police custody. Both cases remained under police investigation 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.

## **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 Labor, Skills, and Innovation; registration requirements are not onerous, but failure to meet annual reporting requirements may result in cancellation of a union's registration. 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

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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 that 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 Labor. 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 Labor Relations Act. 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. Members of a registered union in essential services have 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. As was true of all cases entering the justice system, lack of capacity resulted in delays of some labor cases. Small fines for most violations were not commensurate with those for other laws involving denials of civil rights. Provisions exist for punishment of up to two years' imprisonment, but no convictions were reported.

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

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Court did not monitor cases or adequately enforce the laws.

Informal-sector workers organized in the Malawi Union for the Informal Sector (MUFIS), which is affiliated with the Malawi Congress of Trade Unions. MUFIS worked with district councils to address issues affecting informal workers due in part to a Ministry of Labor decision that MUFIS did not have sufficient standing to bargain collectively with employers.

### **b. Prohibition of Forced or Compulsory Labor**

The law prohibits all forms of forced or compulsory labor, but penalties for conviction were not commensurate with those for other analogous serious crimes.

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 recruit farmers from distant districts to grow tobacco for them on their estates. The tenants are often promised such services as accommodation and food rations as well as a share of the earnings from sales. Tenant farmers include men and women, usually accompanied by their children and dependents. Most tenants are from the southern region of the country and work in the central or northern region. Employers loan the tenant farmers money to buy agricultural inputs during the growing season. If they are unable to repay the loans, they fall into situations of debt bondage.

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**

The law prohibits all of the worst forms of child labor. The law sets the minimum age for employment at 14, and children between ages 14 and 18 may not work in hazardous jobs or jobs that interfere with their education. The prohibition of child labor does not apply to work done in homes, noncommercial farms, vocational technical schools, or other training institutions. The Employment Act provides a list of hazardous work for children and specifies a fine or imprisonment for

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conviction of violations. Penalties were not commensurate with those for other analogous serious crimes.

Police and Ministry of Labor officials were responsible for enforcing child labor laws and policies. The government did not effectively enforce the law, and child labor occurred.

Child labor, including the worst forms of child labor, remained a serious and widespread problem. The 2015 National Child Labor Survey found 38 percent of children ages five to 17 were involved in child labor. Child labor was most prevalent in agriculture, especially tea, tobacco and livestock herding, brickmaking and construction, and domestic service. Forced child labor also occurred, particularly in agriculture, construction, forced begging and street work, use in illicit activities, and commercial sexual exploitation (see section 6, Children). Children often worked 12-hour days, frequently for little or no pay. Many boys worked as vendors, and young girls in urban areas often worked outside their families as domestic servants, receiving low or no wages. Children who worked in the tobacco industry risked working with hazardous chemicals and sometimes suffered from nicotine poisoning. The closure of schools due to the COVID-19 pandemic led more children into situations of child labor, especially in rural areas.

In February 2019 the Tobacco Industry Act came into force, requiring tobacco growers to report on efforts to eliminate child labor in tobacco farming. As a result of the law, most major tobacco companies put in place systems to address child and forced labor in their supply chain and the Tobacco Commission engaged in awareness-raising activities.

Also 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

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commensurate with those for laws related to civil rights.

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 especially poor. Households headed by women were overrepresented in the lowest quarter of income distribution. On October 9, protesters criticized the government's failure to comply with the Gender Equality Act's requirement to include no less than 40 percent of either men or women in public appointments.

LGBTI 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**

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. In 2018 the World Bank estimated 69 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 law establishes occupational safety and health (OSH) standards that are appropriate for the main industries in the country. The Ministry of Labor houses a Directorate of Occupational Safety and Health responsible for minimum standards,

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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 54 milligrams of dissolved nicotine daily through their skin, the equivalent of 50 cigarettes.

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 labor 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.

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. The Ministry of Labor's enforcement of health and safety standards was also poor. The law specifies fines and imprisonment for violations, but these penalties were not commensurate with those for similar crimes, and no reports of jail terms were ever reported. Because the law is limited to the formal sector, it did not apply to the more than 88 percent of the working population that worked in the informal sector.

In April prison guards in Blantyre went on strike to demand personal protective equipment and hazard pay amid the COVID-19 pandemic. Police attempts to break the strike resulted in violence and injuries, according to media reporting.