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INDEX TO DOCUMENTATION OF COUNTRY CONDITIONS REGARDING PERSECUTION OF HIV-POSITIVE INDIVIDUALS IN MALAWI

<table>
<thead>
<tr>
<th>TAB</th>
<th>SUMMARY</th>
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</thead>
<tbody>
<tr>
<td></td>
<td><strong>GOVERNMENTAL SOURCES</strong></td>
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<td>“Societal discrimination against persons with HIV/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 maintained that discrimination was a problem in both the public and private sectors.” (p. 22)</td>
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<td>“The 2012 People Living with HIV Sigma Index for Malawi indicated that of 2,272 persons with HIV interviewed, significant percentages reporting having been verbally insulted, harassed, and threatened (35 percent) and excluded from social gatherings (33 percent).” (p. 22)</td>
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- “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 (35.1 percent) and excluded from social gatherings (33.7 percent).” (p. 22-23) |
- “Societal discrimination against persons with HIV/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 maintained that discrimination was a problem in both the public and private sectors.” (p. 21)  
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- “Punitive legal environments constitute a significant barrier to guaranteeing access to sexual health treatment and services for gay and bisexual men and other MSM [men who have sex with men]. The combination of stigma and discrimination based on sexual orientation and gender identity in a criminalized context creates an environment in which these groups of people are deterred from or fearful of seeking preventing, testing, and treatment services. Those whose sexually transmitted infections (STIs) go untreated are at increased risk not only of developing complications, but also of contracting HIV; and those who face barriers accessing HIV testing and treatment due to stigma and discrimination are more likely to die of AIDS.” (p. 40) |
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<td><strong>United Kingdom: Home Office, Country Policy and Information Note – Malawi: Sexual Orientation and Gender Identity (Feb. 20, 2017), available at:</strong> <a href="https://www.refworld.org/publisher,UKHO,,MWI,58aefab44,0.html">https://www.refworld.org/publisher,UKHO,,MWI,58aefab44,0.html</a>.</td>
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<td>• “Societal discrimination against persons with HIV/AIDS remained a problem, especially in rural areas. Many individuals preferred to keep silent about their health conditions rather than seek help and risk being ostracized.” (p. 18)</td>
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<td>• “UNCT stated that women’s experience of HIV and AIDS attenuated gender disparities and affected women’s roles at home and work and in society. The psychosocial and socioeconomic dimensions of HIV and AIDS were different for women and men because of women’s unequal status in the community. Gender inequality was a key variable in the high incidence of HIV and AIDS transmission among women. Vulnerability to HIV and AIDS was increased by a lack of respect for women’s sexual and reproductive health rights. Women’s subordinate position in society restricted the possibilities for women to take control of their lives to combat HIV and AIDS, leave a high-risk relationship or have adequate access to quality health care.” (p. 6)</td>
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<td>• “HR Committee was concerned that the draft bill on HIV/AIDS contained provisions which were not in conformity with ICCPR [(International Covenant on Civil and Political Rights)], such as those allowing a health service provider to disclose a person’s HIV status and providing for compulsory testing in certain circumstances. It stated that Malawi should review the draft bill on HIV/AIDS to ensure full compliance with ICCPR and international standards, despite its adoption.” (p. 6)</td>
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| | • “A report by Human Rights Watch in which 45 lesbian, gay, bisexual and transgender (LGBT) people were interviewed found evidence of routine discrimination and stigma in healthcare settings, coupled with high levels of
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<td>abuse and violence in everyday life, meant many LGBT people did not seek HIV services and treatment.” (p. 12)</td>
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<td>• “Sex workers living with HIV [in Malawi] have also reported being denied access to loans, bank accounts, property and social services due to their HIV status.” (p. 5)</td>
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<td>• “In Malawi, the law protects civil society, although government intimidation and policing sometimes impede activism and the work of civil society organisations (CSOs). Fears exist that the independence of CSOs will be further eroded by the restrictive 2017 NGO (Amendment) Bill.” (p. 10)</td>
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|     | • “Mr Mitha is keenly aware of the many challenges that face male sex workers, having faced them himself. ‘In Malawi, sex work is not recognized as work, so there are no laws to protect sex workers. Also, most of our male sex workers are gay men or men who have sex with men, so they live in fear of arrest because homosexuality is illegal in Malawi,’ he said.” (p. 2) |
|     | • “‘Stigma and discrimination is institutional,’ he said. ‘Male sex workers are not recognized as a key population in the HIV response in Malawi, so we are not prioritized in government plans. And negative attitudes from health-care workers push us away from care.’” (p. 2) |


|     | • “Although HIV prevalence is high amongst MSM [men who have sex with men], criminal law prevents health services from meeting their particular needs . . . . MSM are still afraid of the discriminatory laws and this affects their visibility and ability to access the health services.” (p. 28) |


|     | • “Stigma remains the single most important barrier to public action. AIDS related stigma refers to the prejudice and discrimination directed at people living with
HIV and AIDS and the groups and communities that they are associated with. It causes people living with HIV and AIDS to be rejected from their community, shunned, discriminated against or even get physically hurt. Research evidence shows that some HIV and AIDS patients face some kind of stigma and discrimination. Stigma when directed at PLWHA [people living with HIV and AIDS] complicates the fight against HIV and AIDS because when stigmatized the PLWHA have difficulties to cope with the illness at a personal level.” (p. 124)

- “HIV and AIDS infected members of the family can find themselves facing a lot of challenges including stigma and discrimination within the home.” (p. 124)

- “A 32-year-old female participant had this to share:

  ‘Stigma and discrimination is the biggest problem that we face in the villages. When people discover that you are HIV positive, they avoid you and shun from you. Sometimes even when you call them they reply saying that they are not around… they have gone away… when in actual fact, they are available but they just do not want to be associated with you anymore’.” (p. 126)

- “My relatives stigmatize me, especially those from a distant relationship. They do not give me any assistance. When they see members of the CHBC team coming to my house, they take advantage and laugh at me for having HIV and AIDS’. A 19-year-old female participant narrated.” (p. 127)

- “In most cases, HIV-related stigma and discrimination severely hamper efforts to effectively fight the HIV and AIDS epidemic. Stigma remains the single most important barrier to public action. It is a main reason why too many people are afraid to see a doctor to determine whether they have the disease, or to seek treatment if they are HIV positive. It makes AIDS the silent killer, because people fear the social disgrace of speaking about it, or easily taking the available precautions. Stigma is a chief reason why the AIDS epidemic continues to devastate societies around the world.” (p. 129)

**MEDIA SOURCES**


- “The key populations Living with HIV do not easily access health services including HIV/Aids prevention and Covid19 information due to stigma and discrimination, and increased cases of Gender Based Violence (GBV).”
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<td>“‘Unfriendly attitude by some health service providers keep the key populations away from seeking health services. Therefore, instead of preventing new infections including Covid19, a certain section of our society lack information and because is left unattended and thus unknowingly spreading the virus,’ he explained.”</td>
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<td>“Concurring with Chiwayula, one of the beneficiaries from the key population attending advocacy meeting who sought for anonymity, complained that he often did not visit the health facility because most health workers were not approachable and often ask questions that make him reluctant to go for health services.”</td>
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<td>“Responding to these remarks, a Clinical Officer at Bvumbwe Health Centre, Madalitso Banda said one of the challenges restricting the provision of quality health services at the health facility was lack of a special private room designated for such key populations and medicine for Sexually transmitted infections (STI) treatment.”</td>
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|     | “[L]esbian, gay, bisexual and transgender (LGBT) people and men who have sex with men (MSM) experience considerable levels of stigma and discrimination. This has huge knock-on effects on the risk of HIV transmission.” |
|     | “One of the success stories from the Rapid Response Fund in Malawi comes from Matofu and his son Suphi. They faced horrendous levels of abuse at a refugee camp in the country.” |

<p>|     | “Malawian student Kondwani has fought against the stigma of being HIV-positive for most of his life, but COVID-19 has reignited old prejudices and given rise to a new term of abuse — ‘corona carrier.’ A widely held misconception that HIV-positive people are at high risk of catching the coronavirus is fueling discrimination and making it harder for them to access the medical care they need, health activists in the southern African country said.” |
|     | “‘This stigma is bringing unnecessary fear on those living with HIV,’ Kondwani, who asked to give only his first name, told the Thomson Reuters Foundation.” |</p>
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| 14. | **Face of Malawi, Authorities Bemoan Stigma Over People Living With HIV/AIDS**  

- “According to the Malawi Network of People Living with HIV and Aids (MANET+), the country is still lagging behind in ending discrimination – a thing the body says is hindering people living with HIV/AIDS from partaking in development activities.”  

- “In narrating her story, she said that she has faced outright discrimination and stigma ever since members of her community learnt of her status.  

‘When I go to fetch water, people there will out-rightly deny to touch the borehole handle immediately after me. Others would even be seen making derogatory gestures to me. This is very sad for me to live in this community,’ she said.”  

- “In an interview, MANET+ Executive Director Lawrence Khonyongwa, said that it is unfortunate that stigma and discrimination remain two of the challenges that persons living with HIV/AIDS face in accessing health services.” |
| 15. | **Elizabeth Glasler Pediatric AIDS Foundation, A Boy Grows into a Man Through Teen Club**  

- “‘After I received the message that I am HIV-positive, I was not happy,’ says Pemphero. ‘I thought, “Why am I like this? What will happen when I apply for a job and they ask about my status? Can I have a wife? Will my friends judge me?”’”  

- “‘At that time, I wanted to kill myself because I felt that I was not an important person,’ Pemphero remembers. Stigma is still a factor for many children and adolescents living with HIV in Malawi. Pemphero says that he has experienced schoolmates who no longer play with him after learning that he takes ARVs.” |

Dated: [DATE]  
[CITY, STATE]  
Respectfully submitted,  
[FIRM]  
Pro Bono Counsel for Respondent__________
Tab 1
EXECUTIVE SUMMARY

Malawi is a multiparty democracy. Constitutional power is shared between the
president and the 193 National Assembly members. On May 21, elections for
president, parliament, and local councils were conducted. International observers
characterized the elections as competent and professional.

The Malawi Police Service, under the Ministry of Home Affairs and Internal
Security, has responsibility for law enforcement and maintenance of order. The
Malawi Defense Force (MDF) has responsibility for external security. The
executive branch sometimes asked the MDF to carry out policing activity. The
MDF commander reports directly to the president as commander in chief. Civilian
authorities maintained effective control over the security forces.

Significant human rights issues included: extrajudicial killings, torture, and
arbitrary detention committed by official security forces; harsh and life-threatening
prison and detention center conditions; significant acts of corruption; lack of
investigation and enforcement in cases of violence against girls and women,
including rape and domestic violence, partly due to weak enforcement; trafficking
in persons; 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 Freedom from:

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

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

On February 21, Buleya Lule died while in police custody in Lilongwe, just hours
after appearing in court as one of six suspects in the February 13 abduction of
Goodson Makanjira, a 14-year-old boy with albinism (see section 6, Other Societal
Violence or Discrimination). In a May 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 had
arranged an autopsy that blamed his death on intracranial bleeding and hypertension. The MHRC recommendation that the police officers involved be prosecuted was pending action as of October.

On September 24, Justin Phiri died in police custody in Mzuzu. Phiri was among approximately 20 individuals arrested and charged with inciting violence during a September 19 public demonstration at Karonga Town. Phiri was also among several individuals beaten with sticks by soldiers for allegedly wounding two soldiers during the demonstration. Investigations into Phiri’s death were pending as of October.

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 and law prohibit such practices; 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 the threat of arrest.

On October 18, the MHRC opened an independent inquiry into allegations police officers raped women and teenage girls in Nsundwe, M’bwatalika, and Mpingu in Lilongwe. The alleged rapes took place on October 16 and were said to be revenge for the October 8 killing of police officer Usuman Imedi by an irate mob in Nsundwe. An independent inquiry was expected to be conducted concurrently with a police investigation into the alleged rapes.

One allegation of sexual misconduct by a Malawian peacekeeper deployed to the United Nations 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 the year.

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

**Physical Conditions:** According to an Inspectorate of Prisons report released in September, 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 March 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. On December 3, the Malawi Prison Service reported a total prison population of 14,060 in 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 led 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. Several hundred irregular migrants as young as 13 were held with the general prison population even after their immigration-related sentences had been served. The International Office of 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 December, according to the prison service, 49 inmates had died in prison. Leading causes of death were tuberculosis, pneumonia, malaria, and HIV/AIDS-related conditions.
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.

**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 that 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 and one complaint regarding the rights of individuals at a migrant detention facility. NGOs believed the low number of submitted complaints was due to fear of retaliation by authorities.

**Independent Monitoring:** During the year 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 was found to have been unlawfully detained. Lack of knowledge of statutes and of access to representation 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, which was often granted to reduce overcrowding in jails, rather than release a detainee on the merits of a case. 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. 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 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 Center for Legal Assistance (CELA) reached out to 1,789 detainees, 172 of whom it succeeded in obtaining release for through camp courts at the prisons. CELA and the Paralegal Advisory Service Institute, 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. Sections of the penal code pertaining to rogues and vagabonds were used in the past to make arbitrary arrests but were struck down as unconstitutional in 2017 by the High Court. Authorities, however, made arrests based on other provisions, such as conduct likely to cause breach of peace and obstruction of police officers. Although prostitution is legal, police regularly harassed sex workers. In 2017, in Lilongwe, police arrested Masauko Chimphamba, a small-scale businessperson, and kept him in custody for two nights.
without charge or telling him the reason for his arrest. Chimphamba was released after a man involved in a robbery informed police Chimphamba was not part of the robbery. Chimphamba registered an arbitrary arrest complaint with the MHRC. By October, however, the complaint had not been followed up, due to his having gone abroad.

Pretrial Detention: Of the total prison population of approximately 14,000 inmates, at 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 MDF conducts courts-martial but not military or security 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. In 2017 the directorate had 20 prosecuting attorneys supported by 18 paralegals, who also prosecuted certain lower court cases. Minor victims as young as 12 often testified in open court, and in at least one instance the minor was cross-examined by the abuser who was self-representing. Child-friendly court facilities existed but were used only for minors in conflict with the law.

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 520 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 Expression: In the aftermath of the May 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.

On June 7, MACRA banned call-in radio shows, justifying this by claiming the shows were a platform for callers to incite the public against the government. On August 6, 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.
On September 2, 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. On September 25, the High Court granted MISA Malawi’s injunction to temporarily lift the ban while the court investigated whether some broadcasters indeed violated the terms of their licenses as alleged by MACRA.

**Violence and Harassment:** On September 18, in Lilongwe, two journalists, Golden Matonga from the *Nation* newspaper and Gladys Nthenda from *Kulinji.com*, were assaulted by demonstrators protesting the May election outcome. The demonstrators who assaulted them believed they were taking photographs for police, despite the two showing their press identity cards.

**Censorship or Content Restrictions:** Journalists sometimes practiced self-censorship, especially at government-owned media outlets such as the Malawi Broadcasting Corporation (MBC). Government agencies sometimes selectively targeted prominent media houses critical of the government for enforcement actions. On October 18, the Malawi Revenue Authority sealed National Publications Limited offices in Blantyre due to unpaid tax arrears. In contrast, the equally tax-delinquent progovernment MBC owed 4.5 billion Malawian kwacha (MWK) ($5.9 million) in back taxes but operated without any impediment.

**Internet Freedom**

The Electronic Transactions and Cyber Security Act became law in 2017. The law 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 fine of 1.85 million MWK ($2,400) 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 May 21 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 that it deemed contained culturally sensitive or sexually explicit material.

b. Freedoms of Peaceful Assembly and Association

The constitution and law provide for the freedoms of peaceful assembly and association, but the government did not always respect these rights.

Freedom of Peaceful Assembly

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

Government officials used their positions to prevent protests or gatherings by civil society by deliberately misapplying the legal requirement for demonstrators to notify local government officials. On October 30, ruling on the attorney general’s petition to ban demonstrations led by the Human Rights Defenders Coalition (HRDC), Supreme Court Justice Lovemore Chikopa stated persons did not require permission to demonstrate.

Despite government officials’ opposing efforts, the HRDC was able to lead demonstrations in the major urban centers on June 20, July 4, July 5, July 25, August 5, September 18, and from October 1 to October 4. The demonstrators demanded the resignation of Jane Ansah, chair of the Malawi Electoral Commission, whom HRDC alleged to have mismanaged the conduct of the May 21 elections. As of November, Ansah had not resigned her position.

Freedom of Association

The constitution and law provide for the freedom of association, and the government generally 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.

During the year the government tried to increase its control over civil society. Two draft laws include provisions that would give government-controlled bodies the ability to deregister NGOs, impose criminal penalties on the trustees of organizations, and increase annual registration fees five-fold. The proposed laws were stalled in parliament by two court injunctions brought by civil society. While
the court case was pending, the government issued a new NGO policy that implements provisions in the law, despite it not being passed.

c. Freedom of Religion

See the Department of State’s *International Religious Freedom Report* at [https://www.state.gov/religiousfreedomreport/](https://www.state.gov/religiousfreedomreport/).

d. Freedom of Movement

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

e. Internally Displaced Persons

Not applicable.

f. Protection of Refugees

*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. Local citizens often accused refugees of committing various crimes, and this at times resulted in looting of refugee property by community members. During the year UNHCR received no cases of refugees facing forced return to their countries of origin. Sporadic detention of persons of concern who were found outside the camp took place, with others taken to court and fined up to 100,000 MWK ($130), an approach authorities adopted in 2018.

There were multiple reports of so-called survival sex by refugees to obtain income to supplement food rations and other necessities in the Dzaleka Camp. UNHCR also reported gender-based violence and other criminal activities at Dzaleka. Some refugees reported fear of alleged country of origin operatives in Malawi.

In 2018 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) persons 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. In the interim UNHCR registered the persons of concern in the database and conducted the mandatory Refugee Status Determination (RSD).

The government cooperated with the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern. As of September 30, there were 42,686 asylum seekers and refugees at the Dzaleka Camp in the central region, with an average monthly arrival total of 500 individuals, mostly from the Democratic Republic of the Congo.

Access to Asylum: The law provides for the granting of asylum or refugee status, and as of September the government provided protection to more than 42,000 individuals. Asylum seekers primarily came from the Great Lakes Region of Africa. Most of them remained designated as asylum seekers, with fewer than 14,000 recognized as refugees.

On April 12, the government published a gazette notice on group-based determination for asylum seekers from the eastern Democratic Republic of the Congo, in North and South Kivu Provinces, and Katanga Region. As of September the RSD backlog in the country stood at 28,702 of the 42,686 total asylum seeker and refugee population. UNHCR advocated for more efficient refugee status determination procedures to end the backlog. With the implementation of the recognition of refugee status for Congolese citizens, it was expected the backlog would decline to 35 percent by year’s end.

Freedom of Movement: Refugees were subject to an encampment policy that restricted them to the Dzaleka and Luwani refugee camps, the only two officially designated refugee camps. 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, although only 37 percent of school-age refugee children were enrolled in primary and secondary school. The Dzaleka
camp housed almost 43,000 persons of concern, creating congestion and a burden on resources and facilities. These overtaxed facilities served both refugees and local communities. A rapid increase in the refugee population and the inability of most refugees to grow food or earn money due to the encampment policy limited the available food and services to that provided by donors through UNHCR and the World Food Program. Shelter and food ration allocations were below recommended levels due to lack of space and insufficient funding.

While local laws and the justice system applied to refugees, access to the justice system was limited by inefficiencies and inadequate resources. With only 13 police officers assigned to the Dzaleka Camp, law enforcement capacity was extremely limited.

For the first time, refugees and asylum seekers were included in the Malawi Development 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, which aims to integrate refugees into national systems. UNHCR continued to engage the government to accelerate the roll out of the framework, and a joint implementation plan was expected in early 2020.

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

g. Stateless Persons

Not applicable.

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: On May 21, citizens voted in simultaneous presidential, parliamentary, and local elections. International observers characterized those elections as generally competent, professional, and successful. Voters reelected to
a second five-year term incumbent Arthur Peter Mutharika of the Democratic Progressive Party as president with 38.5 percent of the vote. 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 35.4 percent of the vote, while Mutharika’s former vice president Saulos Chilima of the United Transformation Movement received 20.2 percent of the vote. On May 31, Chakwera and Chilima challenged the election results in court and sought an annulment of the election. As of November the court had not ruled on the challenge.

Participation of Women and Minorities: No laws limit participation of women or members of minorities 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. There were 45 women in the 193-seat National Assembly and 67 women among the 462 elected local councilors. There were five women in the 24-member cabinet. Women constituted 25 percent of the civil service. Of the 35 Supreme Court of Appeal and High Court justices, 10 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 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 October the bureau reported it completed 94 investigations in the 2018/19 financial year and referred 21 of those cases to prosecutors.

On January 10, one Cashgate trial involving 11 suspects was 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 MWK ($264,000) from the former Ministry of Disability and the Department of the Accountant General. On April 16, 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 eight billion MWK ($10.5 million) 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 in law for the speaker to make the declarations public or available to other members of parliament. The law requires officials in 48 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, and imprisoned.

In October 2018 the director of Public Officers’ Declarations wrote the president and the speaker of parliament recommending they take disciplinary measures against a cabinet member and members of parliament for failure to comply with asset declaration statutes. No disciplinary measures had been carried out by October.

The declarations are to be accessible to the public upon request, but the director has the authority to deny such requests. Denials may be appealed to the High Court. The Directorate of Assets Declaration made no effort to make the paper-based asset declarations more readily available by, for example, digitizing them.

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. Seven MHRC commissioners appointed by the president on March 25 were never sworn in after the ombudsman challenged the legality of the appointments of two of the commissioners. The ombudsman and the law commissioner are ex officio members of the MHRC. As of November the issue remained unresolved, and the MHRC remained without commissioners.

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 21 investigators who were assisted by 11 government interns. During the year more than 4,000 members of the public were reached through ombudsman mobile clinics. During these exercises the office carried out sensitization campaigns with Village Development Committees and Area Development Committees, road shows, and distribution of flyers, T-shirts, and caps. It 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 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 fixed
prison sentences. For cases of conviction of indecent assault on women and girls, the maximum penalty is 14 years’ imprisonment.

The Ministry of Gender, Children, Disability, 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 victims.

Female Genital Mutilation/Cutting (FGM/C): The law does not specifically prohibit FGM/C. A 2017 UN study found no evidence of FMC/C but that of a practice of labia elongation or pulling. It was performed on girls between ages 10 and 15 during sexual initiation camps in rural areas of the Southern Region. For additional information, see Appendix C.

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 of any age, 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 consisting of forced sexual relations with an older man. According to one UN-sponsored study, more than 20 percent
of girls in secondary school underwent a form of initiation that involved sexual relations with 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 ensure workplaces have policies and procedures aimed at eliminating sexual harassment in the workplace. Extreme cases could be prosecuted under certain sections of the penal code, such as indecent assault on a woman or girl, under which conviction provides up to a 14-year prison sentence, or conviction of insulting the modesty of a woman, a misdemeanor punishable by one year’s incarceration.

**Coercion in Population Control:** There were no reports of coerced abortion, but there were reports of involuntary sterilization. In November 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. For estimates on maternal mortality and contraceptive prevalence, see Appendix C.

**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.

The government addressed women’s concerns through the Ministry of Gender, Children, Disability, 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. For additional information, see Appendix C.

Education: The government provided tuition-free primary education for all children. Education for children 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. For additional information, see Appendix C.

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. For additional information, see Appendix C.

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, Children, Disability, 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.

Early and Forced Marriage: The law sets the minimum age for marriage at 18. Civic education on early marriage was carried out mainly by NGOs. Some traditional leaders annulled early marriages and returned the girls involved to school. For additional information, see Appendix C.

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 in prison. The law further prohibits “indecent practice” in the presence of or with a child, with offenders liable to imprisonment of up to 14 years.

The law prohibits 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 fine of 100,000 MWK ($130) 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. For additional information, see Appendix C.

**Displaced Children:** According to the *2010 Demographic and Health Survey*, 19 percent of children younger than age 18 were not living with either biological parent, and 17 percent were orphaned or vulnerable due to extended parental illness or death, including an estimated 650,000 orphaned because of AIDS. Extended family members normally cared for such children and other orphans.


**Anti-Semitism**

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

**Trafficking in Persons**


**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 had a negative impact on 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, Children, Disability, 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 October the MHRC reported receiving no complaints related to abuse of disability rights.

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

By law and practice, LGBTI persons are denied basic civil, political, social, and economic rights. Consensual same-sex sexual activity is illegal, and conviction is punishable by up to 14 years’ imprisonment, including hard labor. The penal code, a legacy from the British colonial era, outlaws “unnatural offenses” and “indecent practices between men.”

Same-sex sexual activity may also be prosecuted as “conduct likely to cause a breach of the peace.” The penalty for conviction of consensual same-sex sexual activity between women is up to five years’ imprisonment.

In 2016, the latest year for which data were available, the Center for the Development of People documented 21 instances of abuse based on sexual orientation and gender identity. The nature of the abuses fell into three broad categories: stigma, harassment, and violence.

In August, Lawrence Phiri, a transgender man, was attacked by an unknown assailant while at a bar in Lilongwe. The attacker preceded the assault by shouting slurs at Phiri and questioning his gender and sexuality. Phiri suffered severe lacerations on the head as a result of the assault.
HIV and AIDS Social Stigma

Societal discrimination against persons with HIV/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 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 January 22, Eunice Nkhonjera, an 18-month-old girl with albinism, was abducted from her home in the northern town of Karonga. In February police arrested three persons suspected of involvement in her kidnapping. On February 13, 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. On May 3, the court in the southern district of Thyolo sentenced to death a man who had confessed to killing a 19-year-old man with albinism in 2017. The convict admitted he had intended to use the deceased’s body parts to become rich on instructions from a witchdoctor in neighboring Mozambique. On August 13, a High Court judge convicted and sentenced to death Douglas Mwale, Fontino Folosani, and Sophie Jere for murdering Priscott Pepuzani in 2015.

Section 7. Worker Rights
a. Freedom of Association and the Right to Collective Bargaining

The law allows workers, except for military personnel and police, to form and join trade unions of their choice without previous authorization or excessive requirements. 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 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 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 has failed. 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 insufficient to deter violations. Provisions exist for punishment of up to two years in prison, 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 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 insufficient to deter violations. The government did not effectively enforce applicable laws.

Children were sometimes subjected to domestic servitude and other forms of forced labor, including cattle herding, bonded labor on tobacco farms and other plantations, and menial work in small businesses.

Also see the Department of State’s *Trafficking in Persons Report* at [https://www.state.gov/trafficking-in-persons-report](https://www.state.gov/trafficking-in-persons-report).

**c. Prohibition of Child Labor and Minimum Age for Employment**

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, vocational technical schools, or other training institutions. The law prohibits child trafficking, including labor exploitation and the forced labor of children for the income of a parent or guardian. The Employment Act provides a list of hazardous work for children and specifies a fine or imprisonment for conviction of violations. Penalties and enforcement were insufficient to deter offenders.

Police and Ministry of Labor officials were responsible for enforcing child labor laws and policies. Labor inspectors do not have law enforcement authority and must enlist police to pursue violators.
The Ministry of Labor, Skills, and Innovation increased the number of labor inspectors by 20 following promotions from lower grades to minimum grade for an officer to be eligible to conduct labor inspections. The ministry trained all 85 labor inspectors on child trafficking, labor legislation, and labor exploitation. The training on child trafficking was a follow-up to the designation of labor officers as enforcement officers of the trafficking in Persons Act and was carried out with assistance by the United Nations Office on Drugs and Crime. The ministry also carried out inspections focusing on the agricultural sector and domestic workers. The ministry worked with police and the social welfare department in the Ministry of Gender, Children, Disability and Social Welfare to investigate, prosecute, convict, and sentence persons convicted in cases of labor violations. The government acknowledged programs and activities continued largely based on the legal and regulatory framework that existed in 2018 except for the incorporation of labor officers as enforcement officers of the trafficking in persons act. The government, however, in collaboration with social partners and other stakeholders, developed several strategic documents to scale up interventions on ending child labor by 2025, and modern slavery and forced labor by 2020. Government reviewed the National Action Plan on Child, reviewed the Malawi Decent Work Country Program, and proposed abolition of tenancy labor in the employment amendment act. On November 7, the government ratified four ILO instruments, namely ILO C.029 protocol of 2014 to the forced labor convention 1930, ILO C187 promotional framework for occupational safety and health convention 2006, ILO C155 occupational safety and health convention 1981 and ILO C184 safety and health in agriculture convention 2001. These conventions are expected to be in force by November 7, 2020. Most public education activities and programs on child labor were carried out by tobacco companies—tobacco is the country’s largest export—and NGOs.

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 on farms and in domestic service. These 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. On February 22, the Tobacco Industry Act came into force. The act requires tobacco growers to report on efforts to eliminate child labor in tobacco farming.
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.

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 nontraditional employment opportunities. Few women participated in the limited formal labor market, and those that did represented only a very small portion of managerial and administrative staff. Households headed by women were overrepresented in the lowest quarter of income distribution.

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. There is no requirement that persons employed in the informal sector receive a minimum wage.

The Ministry of Labor did not effectively enforce the minimum wage. Because the law is limited to the formal sector, it did not apply to the more than 88 percent of the population that worked in the informal sector. Wage earners often supplemented their incomes through farming activities. No government programs provided social protections for workers in the informal economy.

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, lack these protections and are 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. 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 conviction of violations, but these penalties were not sufficient to deter offenders, and no reports of jail terms were ever reported.

The law includes extensive occupational health and safety 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, but the number of labor inspectors was insufficient to enforce the law effectively. Workers, particularly in industrial jobs, often worked without basic safety clothing and equipment. In tobacco fields workers harvesting leaves generally did not wear protective clothing; workers 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.
Tab 2
Executive Summary

Malawi is a multiparty democracy. Constitutional power is shared between the president and the 193 National Assembly members. International observers characterized the 2014 elections for president, parliament, and local councils as free, transparent, and credible.

Civilian authorities maintained effective control over the security forces.

Human rights issues included extrajudicial killings; torture; arbitrary detention, the preceding abuses all committed by official security forces; harsh and life-threatening prison and detention center conditions; criminal libel; corruption; lack of investigation and enforcement involving cases of violence against women, including rape and domestic violence, partly due to weak enforcement; criminalization of same-sex sexual conduct; and child labor, including worst forms.

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

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

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

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

Media reported that, between January and August, 43 suspects had died at the hands of police. For example, on June 16, after police arrested 11 persons in Blantyre, four individuals, Humpfrey Sakhumwa, Dave Sembele, Dave Gondwe, and Ashbu Daiton, were separated from the group to be transferred to another facility. Later that day officers dropped their bullet-riddled bodies at the local hospital mortuary. A reputable nongovernmental organization (NGO) and the United Nations carried out a preliminary investigation into several of the deaths that included interviews with family members and witnesses and found the allegations generally credible and warranting a more in-depth inquiry. Media
reported during the year that police were also suspected of responsibility for at least 70 other deaths in 2017.

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 and law prohibit such practices; however, police sometimes used excessive force and other unlawful practices, including torture, to extract confessions from suspects. The Malawi Human Rights Commission (MHRC) stated in its annual report that torture was widespread in prisons.

Reputable NGOs working with sex workers reported that police officers regularly extracted sexual favors from sex workers under the threat of arrest.

One allegation of sexual abuse by a Malawian peacekeeper deployed in MONUSCO and 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 the year.

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

Physical Conditions: According to the Inspectorate of Prisons, the government remained largely noncompliant with the High Court’s 2009 requirement to improve prison conditions. A December 2017 MHRC prisons and police cells monitoring tour covering more than half of the prisons and police cells in the Central, Southern and Eastern regions 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. On October 3, the Malawi Prison Service reported a total prison population of 13,929 in 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 led 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. Several hundred irregular migrants as young as 13 were held with the general prison population even after their immigration-related sentences had been served. The International Office of 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. IOM also claimed improved channels of communication with prison staff, and easier access to detention facilities.

As of October, according to the prison service, 33 inmates had died in prison. Leading causes of death were meningitis (seven), hypovolemic shock (four), anemia (three), and HIV/AIDS-related (three).

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.

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 that torture was widespread and most prisoners and detainees lived in degrading and inhuman conditions. From January to August, the MHRC received one complaint regarding the rights of prisoners and one complaint regarding the rights of individuals at a migrant detention facility. NGOs believed the low number of submitted complaints was due to fear of retaliation by authorities.

Independent Monitoring: During the year 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 found to have been unlawfully detained. Lack of knowledge of statutes and of access to representation meant detainees did not challenge the legality of their detention.

Role of the Police and Security Apparatus

The government exercised effective control over the Malawi Defense Force (MDF) and Malawi Police Service (MPS). The MPS, under the Ministry of Home Affairs and Internal Security, has responsibility for law enforcement and maintenance of order. The MDF has responsibility for external security. The executive branch sometimes asked the MDF to carry out policing activity. The MDF commander reports directly to the president as commander in chief.

Police were inefficient, poorly trained, and corrupt (see section 4). Impunity remained a problem. Officers suspected of misconduct generally were transferred rather than investigated and disciplined if found guilty. Authorities, however, prosecuted officers accused of involvement in serious crimes such as robbery, murder, or rape (see section 1.a.).

Like other elements of government, the MDF and MPS were subject to investigation for corruption. In 2015 the Anti-Corruption Bureau (ACB) arrested former army chief General Henry Odillo and his former deputy, Lieutenant
General Clement Kafuwa, on corruption charges in connection with contracts for military equipment that was never delivered. The trial began in October 2016, and in April 2017 the defendants, who were out on bail, pled not guilty to the charges. The trial had yet to conclude by year’s end. In June a leaked ACB investigation report revealed that MPS officials subverted procurement practices to award an overpriced food ration procurement contract to a company that made a sizable donation to the ruling party. At the request of civil society activists, the courts froze accounts linked to the transaction. No arrests have been made in the case, nor has an official case been opened, and the civil servants identified in the report have yet to face any kind of disciplinary action.

The MDF and MPS cooperated with corruption investigations by the ACB but did not carry out their own internal investigations. Government mechanisms to investigate and punish abuse and corruption were only marginally effective due in large part to funding and human resource constraints.

The inspector general of police remained committed to the professionalization of the MPS. The Professional Responsibility Unit (previously known as the Internal Affairs Department) of the MPS investigates police misconduct, including whether killings or other misconduct that occurred in the line of duty were justifiable.

Police trained officers on internal investigations, victims’ rights, sexual abuse, domestic violence, and trafficking in persons. Police received foreign assistance for training and equipment.

**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, which was often granted to reduce overcrowding in jails, rather than release a detainee on the merits of a case. 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. In 2015 the Legal Aid Bureau replaced the Department of Legal Aid as the institution mandated to provide legal assistance to indigent persons. The bureau had 15 lawyers and 18 paralegals in the three offices, located in the largest cities: Lilongwe, Blantyre, and Mzuzu. Inadequate funding remained a major challenge.

The Center for Human Rights Education, Advice, and Assistance (CHREAA) assisted 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 CHREAA reached out to 18,565 detainees, 18,450 of whom succeeded in obtaining bail. The Center for Legal Assistance and the Paralegal Advisory Service Institute, 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. Sections of the penal code pertaining to rogues and vagabonds were used in the past to make arbitrary arrests but were struck down as unconstitutional in January 2017 by the High Court. Authorities, however, made arrests based on other provisions, such as conduct likely to cause breach of peace and obstruction of police officers. Although prostitution is legal, police regularly harassed sex workers. In April 2017, in Lilongwe, police arrested Masauko Chimphamba, a small-scale businessperson, and kept him in custody for two nights without charge or telling him the reason for his arrest. Chimphamba was released after a man involved in a robbery informed police that Chimphamba was not part of the robbery. Chimphamba registered an arbitrary arrest complaint with the MHRC. By October, however, the complaint had not been followed up, due to his having gone abroad.

**Pretrial Detention:** Of the total prison population of 13,929 inmates, approximately 2,500, or 18 percent, were in pretrial detention. Despite a statutory 90-day limit on pretrial detention, authorities held most homicide suspects in pretrial detention for two to three years. 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. Camp courts expedite cases by bringing magistrates to prisons. 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; corruption; and lack of resources. 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.

In October 2017 police arrested and charged Vincent Wandale, a land reclamation advocate, with “publishing false news” after he declared himself the leader of an independent state in the south of the country. In November 2017, although he was not a danger to himself or others, he was involuntarily committed to a mental institution based on a report on his mental health requested by the prosecution. Wandale was forcibly medicated for mental illness until his release on bail in February after a local NGO challenged his detention. He remained on bail with no date set for his trial.

The MDF conducts courts-martial but no military or security 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 given 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. MPS prosecutors with limited legal training prosecuted the majority of criminal cases. The Directorate of Public Prosecutions in the Ministry of Justice customarily tried high-profile cases and those involving the most serious offenses. As of September 2017, the directorate had 20 prosecuting attorneys supported by 18 paralegals, who also prosecuted certain lower court cases. Minor victims as young as 12 often testified in open court and in at least one instance the minor was cross-examined by the abuser who was self-representing. Child-friendly court facilities existed but were used only for minors in conflict with the law.

**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
September 17, there were only 418 licensed legal practitioners in a country of more than 18 million.

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 Expression: The government sometimes used antisedition and breach of peace laws to stifle criticism. On August 21, police arrested Manes Hale, an American citizen of Malawian origin, while she was boarding an airplane departing the country. The government charged her with insulting the president under section 4 of the Protected Flag, Emblems, and Names Act for critical remarks she wrote concerning the president on Facebook. On August 23, she was released on bail; on August 27, the government dropped the charges, and Hale flew to the United States the following day.

Violence and Harassment: Authorities sometimes attempted to intimidate journalists who reported criticism of the ruling party. On May 4, during the president’s State of the Nation Address at the Parliament, ruling party cadres assaulted a cameraman of privately-owned Times Television. Despite the information minister apologizing for the incident, there were no signs police had undertaken an active investigation. On July 2, two ruling party cadres assaulted newspaper columnist Idris Ali Nassah for his criticism of the Mutharika
administration. The government also regularly barred privately owned media from covering government events.

**Censorship or Content Restrictions:** Journalists sometimes practiced self-censorship, especially at government-owned media outlets such as the Malawi Broadcasting Corporation (MBC). Government agencies sometimes selectively targeted prominent media houses critical of the government for enforcement actions. On June 1, the Malawi Revenue Authority sealed Times Group offices due to unpaid VAT arrears of Malawian kwacha (MWK) 550 million ($756,000). Similarly, on August 22, Zodiak Broadcasting was raided by MRA for MWK 1.7 billion ($2,337,000) in unpaid taxes. In contrast the equally tax delinquent progovernment MBC owed MWK 4.5 billion ($6,187,000) in back taxes but operated without any impediment.

**Internet Freedom**

The Electronic Transactions and Cyber Security Act became law in June 2017. The law criminalizes the act of “knowingly receiving and sharing unauthorized data” and stipulates that a person found sharing or receiving such information is committing a crime and liable to a fine of 1.85 million MWK ($2,500) and imprisonment for up to five years. 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 national elections scheduled for 2019. 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. According to the International Telecommunication Union, 13.8 percent of the population used the internet in 2017, the latest year for which data was available.

**Academic Freedom and Cultural Events**

There were no government restrictions on academic freedom during the year; however, the government sporadically censored films that it deemed contained culturally sensitive or sexually explicit material.

The Malawi Censorship Board Secretariat is responsible for reviewing and classifying plays, films, and foreign music for adult content as well as regulating public theaters.
b. Freedoms of Peaceful Assembly and Association

The constitution and law provides for the freedoms of peaceful assembly and association, but the government did not always respect these rights.

**Freedom of Peaceful Assembly**

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

Government officials used their positions to thwart protests or gatherings by opposition figures through the selective use of permits. In September, after a coalition of NGOs critical of the government announced its intent to hold a protest, the ruling party sought and quickly obtained a permit for a competing event, forcing the activists to reschedule.

In September 2017, during a march against gender-based violence, male police officers arrested protester Beatrice Mateyo and charged her with “insulting the modesty of a woman” for carrying a placard deemed offensive. Released on bail, she had yet to be tried by year’s end.

**Freedom of Association**

The constitution and law provide for the freedom of association, and the government generally 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.

During the year the government tried to increase its control over civil society. Two draft laws include provisions that would give government-controlled bodies the ability to deregister NGOs. The government, however, had yet to introduce these drafts into parliament.

c. Freedom of Religion

See the Department of State’s *International Religious Freedom Report* at [www.state.gov/religiousfreedomreport/](http://www.state.gov/religiousfreedomreport/).

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

The government cooperated with the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern. As of September 30, there were 35,938 asylum seekers and refugees at the Dzaleka Camp in the central region, with an average monthly arrival total of 500 individuals, mostly from the Democratic Republic of the Congo. In November, UNHCR turned over the Luwani Camp, located in the southern region, to the government after the remaining Mozambican asylum seekers returned home voluntarily. After multiple cancelled Tripartite Agreement signing ceremonies scheduled for December 2017 and again in March and September, the Malawian government and UNHCR collaborated to provide documentation and financial support to assist the remaining 2,567 Mozambicans to return home.

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, including those with proper identity documents. Local citizens often accused refugees of committing various crimes, and this at times resulted in looting of refugee property by community members. During the year UNHCR received no cases of refugees facing forced return to their countries of origin. Sporadic detention of persons of concern who were found outside the camp took place, with others taken to court and fined up to MWK 100,000 ($138), an approach authorities adopted during the year.

UNHCR received asylum seekers claiming to be lesbian, gay, bisexual, transgender, and intersex (LGBTI) individuals. Asylum seekers traveled irregularly from Kakuma Refugee camp in Kenya and from Uganda. The government has placed a ban on registration of perceived LGBTI persons’ cases on the basis that it is against the law of the country. UNHCR was still negotiating with the Ministry of Home Affairs to reverse its decision and consider registration and processing of all arrivals, including LGBTI cases.

In-country Movement: Refugees were subject to an encampment policy that restricted them to the Dzaleka and Luwani refugee camps, the only two officially designated refugee camps. Authorities periodically rounded up and returned to the Dzaleka Camp those who left it.

Protection of Refugees
Access to Asylum: The law provides for the granting of asylum or refugee status, and as of September the government provided protection to more than 35,500 individuals. Asylum seekers primarily came from the Great Lakes Region of Africa. A majority of them remained designated as asylum seekers, with fewer than 14,000 recognized as refugees.

There were multiple reports of so-called survival sex by refugees to obtain income to supplement food rations and other necessities in the Dzaleka Camp. UNHCR also reported gender-based violence and other criminal activities at Dzaleka. Some refugees reported fear of alleged country of origin operatives in Malawi.

From January to August, the MHRC received one complaint of mistreatment at 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 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 housed almost 36,000 persons of concern, creating congestion and a burden on resources and facilities. These overtaxed facilities served both refugees and local communities. A rapid increase in the refugee population and the inability of most refugees to grow food or earn money due to the encampment policy limited the available food and services to that provided by donors through UNHCR and the World Food Program. Shelter and food ration allocations were below recommended levels due to lack of space and insufficient funding.

While local laws and the justice system applied to refugees, access to the justice system was limited by inefficiencies and inadequate resources. With only 13 police officers assigned to the Dzaleka Camp, law enforcement capacity was extremely limited.

During the year the government committed to include refugees in national systems, as recognized in the Malawi Development and Growth Strategy III (MDGS III). The government has also indicated a willingness to adopt the UN’s Comprehensive
Refugee Response Framework that would lead to the inclusion of refugees in the provision of health and education services.

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

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 2014 citizens voted in simultaneous presidential, parliamentary, and local elections. International observers characterized those elections as generally peaceful, free, credible, and transparent. Voters elected Arthur Peter Mutharika of the Democratic Progressive Party as president with 36.4 percent of the vote. Mutharika defeated incumbent president Joyce Banda, marking the first time an incumbent party lost the presidency since the country’s first multiparty election in 1994. Presidential and vice presidential debates took place and were broadcast on radio and television for the first time, which provided voters a tool for evaluating and contrasting candidates and their policies. The 2014 elections also filled the positions of local councilors following a nine-year gap; the term of councilors elected in 2000 had expired in 2005.

Since 2014 the country has held several by-elections for vacated seats; the next tripartite elections are scheduled for May 2019, with political parties already actively campaigning. Media regularly reported that the ruling Democratic Progressive Party (DPP) diverted state resources for partisan events. The DPP sometimes requisitioned national or local government vehicles to ferry supporters to partisan events. In 2017 representatives from several government-affiliated entities attended a DPP fundraising event held at the presidential palace, with their respective institutions paying the bill.

Participation of Women and Minorities: No laws limit participation of women or members of minorities 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. There were 32 women in the 193-seat National Assembly and 56 women among the 462 elected local councilors. There were four women in the 20-member cabinet. Women constituted approximately 25 percent of the civil service. There were 10 female justices among the 35 Supreme Court of Appeal and High Court justices.

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 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 October the ACB reported it completed 105 investigations of the 141 cases scheduled in the 2017/18 financial year, representing a 74 percent completion rate. There were seven corruption cases prosecuted as of October, resulting in five convictions, and the ACB was appealing one of the unsuccessful prosecutions.

The investigation and prosecution of approximately 70 individuals, primarily midlevel civil servants arrested in 2013 for involvement in the theft of approximately 20 billion MWK ($55 million at the time) through fraudulent transactions--the Cashgate corruption scandal--proceeded slowly. As of September a total of 14 cases resulted in convictions, with prison sentences ranging from three to 11 years. At year’s end no high-level officials had been arrested or charged and prosecuted in direct connection with Cashgate. Former justice and constitutional affairs minister Raphael Kasambara received a 13-year sentence for conspiring to murder former budget director Paul Mphwiyo, who was on trial for his involvement in Cashgate. In March he was freed on bail pending an appeal. The state’s eight billion MWK ($10.6 million) 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 in law for the speaker to make the declarations public or available to other members of parliament. The Public Officers Declaration of Assets Law requires officials in 48 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, and imprisoned.

In October the director of Public Officers’ Declarations wrote the president and the speaker of Parliament recommending they take disciplinary measures against a cabinet member and members of Parliament for failure to comply with asset declaration statutes. No disciplinary measures had been carried out by year’s end.

The declarations are to be accessible to the public upon request, but the director has the authority to deny such requests. Denials may be appealed to the High Court. The Directorate of Assets Declaration made no effort to make the paper-based asset declarations more readily available by, for example, digitizing them.

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 violations of human rights. Despite its independent leadership, resource shortfalls resulted in a backlog of cases, delayed production of reports, and limited investigation of human rights violations.

The Office of the Ombudsman is mandated to investigate government officials responsible for human rights violations 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 17 investigators who were assisted by 11 government interns. During the year its civic education team conducted public rallies and awareness campaigns in five of the country’s 28 districts. It 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 with a maximum penalty of death for conviction. The Marriage, Divorce, and Family Relations Act enacted in 2015 explicitly introduces the concept of spousal rape, but the act does not prescribe specific penalties 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 fixed prison sentences. For cases of conviction of indecent assault on women and girls, the maximum penalty is 14 years in prison.

The Ministry of Gender, Children, Disability, 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 victims.

Female Genital Mutilation/Cutting (FGM/C): The law does not specifically prohibit FGM/C. A 2017 UN study found no evidence of FMC/C but that of a
practice of labia elongation or pulling. It was performed on girls between ages 10 and 15 during sexual initiation camps in rural areas of the Southern Region.

For more information, see Appendix C.

Other Harmful Traditional Practices: The Gender Equality Act of 2013 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 of any age, 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 age 10 undergo “kusasa fumbi,” a cleansing ritual consisting of forced sexual relations with an older man. According to one UN-sponsored study, more than 20 percent of girls in secondary school underwent a form of initiation that involved sexual relations with 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 Gender Equality Act makes conviction of sexual harassment punishable by up to five years’ imprisonment and places an obligation on government to ensure workplaces have policies and procedures aimed at eliminating sexual harassment in the workplace. Extreme cases could be prosecuted under certain sections of the penal code, such as indecent assault on a woman or girl, under which conviction provides up to a 14-year prison sentence, or conviction of insulting the modesty of a woman, a misdemeanor punishable by one year’s incarceration.

Coercion in Population Control: There were no reports of coerced abortion but there were of involuntary sterilization. In November 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. For estimates on maternal mortality and contraceptive prevalence, see Appendix C.

**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.

The government addressed women’s concerns through the Ministry of Gender, Children, Disability, and Social Welfare. The law provides for a minimum level of child support, widows’ rights, and maternity leave; however, few knew their rights, had access to the legal system, and thus benefited from these legal protections. In August the government launched its cross-sectoral National Strategy for Adolescent Girls and Young Women (AGYW) that aims at improving outcomes in education and health and reducing the incidence of gender-based violence among AGYW.

**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. For additional information, see Appendix C.

**Education:** The government provided tuition-free primary education for all children. Education for children 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. For additional information, see Appendix C.

**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. For additional information, see Appendix C.
The law prohibits subjecting a child to any social or customary practice that is harmful to health or general development. Prohibited practices included 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, Children, Disability, 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.

**Early and Forced Marriage**: The Marriage, Divorce, and Family Relations Act sets the minimum age for marriage at 18. In April 2017 the president signed a constitutional amendment removing a provision that allowed marriage at age 15 with parental consent. Civic education on early marriage was carried out mainly by NGOs. Some traditional leaders annulled early marriages and returned the girls involved to school. For additional information, see Appendix C.

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

The law prohibits 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 in prison, while those found guilty of procuring a child for public entertainment are liable to a fine of 100,000 MWK ($133) and imprisonment for seven years. 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 but then coerced them to engage in sex work with customers in exchange for room and board. For additional information, see Appendix C.

**Displaced Children**: According to the 2010 *Demographic and Health Survey*, 19 percent of children under age 18 were not living with either biological parent and 17 percent were orphaned or vulnerable due to extended parental illness or death,
including an estimated 650,000 orphaned because of AIDS. Extended family members normally cared for such children and other orphans.


**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 [www.state.gov/j/tip/rls/tiprpt/](http://www.state.gov/j/tip/rls/tiprpt/).

**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 with regard to access to public facilities, both governmental and private.

Societal stigma related to disability and the lack of accessibility to public buildings and transportation had a negative impact on 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, Children, Disability, 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 September the MHRC reported receiving no complaints related to abuse of disability rights.

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

By law and practice LGBTI persons are denied basic civil, political, social, and economic rights. Consensual same-sex sexual activity is illegal and for which conviction is punishable by up to 14 years in prison, including hard labor. The penal code, a legacy from the British colonial era, outlaws “unnatural offenses” and “indecent practices between men.” In 2014, however, Solicitor General Janet Banda told the UN Human Rights Commission the government would not enforce these laws. In 2015 Minister of Justice Samuel Tembenu reaffirmed the moratorium on the enforcement of laws criminalizing consensual same-sex sexual activity.

Same-sex sexual activity may also be prosecuted as “conduct likely to cause a breach of the peace.” A 2011 amendment to the penal code established penalties for consensual same-sex sexual activity between women, setting a maximum prison term for conviction of five years.

In 2016, the latest year for which data were available, the Center for the Development of People documented 21 instances of abuse based on sexual orientation and gender identity. The nature of the abuses fell into three broad categories: stigma, harassment, and violence.

**HIV and AIDS Social Stigma**

Societal discrimination against persons with HIV/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 (35.1 percent) and excluded from social gatherings (33.7 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 the demand for body parts for witchcraft rituals in neighboring Tanzania. Religious, traditional, civil society, and political leaders, including the president, publicly denounced the attacks. The government launched a public awareness campaign and conducted training of police, prosecutors, and judges in border districts to counter the trend. On March 16, in the southernmost district of Nsanje, police arrested brothers Fatsani Litikhoya and Watson Litikhoya for kidnapping and attempting to kill Masiteni Losi, a person with albinism. As of October the brothers were in custody at Chichiri Prison in Blantyre awaiting trial. Earlier in the year, police in Mulanje District opened an investigation into the exhumation of bones from the grave of Nduzayani Mwathunga, a deceased person with albinism; as of October the investigation continued.

**Section 7. Worker Rights**

**a. Freedom of Association and the Right to Collective Bargaining**

The law allows workers, except for military personnel and police, to form and join trade unions of their choice without previous authorization or excessive requirements. Unions must register with the Registrar of Trade Unions and Employers’ Organizations in the Ministry of Labor. 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 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 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 has failed. The law also requires the labor minister to apply to the Industrial Relations Court to determine whether a particular 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 the vast majority of 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, limited resources and lack of capacity resulted in delays of some labor cases. Small fines for most violations were insufficient to deter violations. Provisions exist for punishment of up to two years in prison, 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 and a lack of awareness of worker rights. Employers, labor unions, and the government lacked sufficient knowledge of their roles in labor relations and disputes.

Arbitration rulings were legally enforceable; however, the Industrial Relations 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. Conviction of forced labor is punishable by fine of MWK 10,000 ($13.60) or two years’ imprisonment, which was insufficient to deter violations. The government did not effectively enforce applicable laws.

Children were sometimes subjected to domestic servitude and other forms of forced labor, including cattle herding; bonded labor on plantations, particularly on tobacco farms; and menial work in small businesses.

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

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, vocational technical schools, or other training institutions. The law prohibits child trafficking, including labor exploitation and the forced labor of children for the income of a parent or guardian. The Employment Act provides a list of hazardous work for children and specifies a fine or imprisonment for conviction of violations. The law, however, was not effectively enforced due to lack of resources and staffing. Penalties and enforcement were insufficient to deter offenders.

Police and Ministry of Labor officials were responsible for enforcing child labor laws and policies. Labor inspectors do not have law enforcement authority and must enlist police to pursue violators.

The Ministry of Labor carried out inspections, focused mainly on agricultural estates, but enforcement by police and ministry inspectors of child labor laws was minimal. The government acknowledged it made little progress in implementing the now-expired 2010-16 National Action Plan on Child Labor. Most public education activities were carried out by tobacco companies--tobacco is the country’s largest export--and NGOs.

Child labor remained a serious and widespread problem. The 2015 National Child Labor Survey found that 38 percent of children ages five to 17 were involved in child labor. Child labor was most prevalent on farms and in domestic service. These children often worked 12-hour days, frequently for little or no pay. Children who worked in the tobacco industry risked working with hazardous chemicals and
sometimes suffered from nicotine poisoning. Many boys worked as vendors, and young girls in urban areas often worked outside of their families as domestic servants, receiving low or no wages.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

The employment law prohibits discrimination against any employee or prospective employee, but the government in general did not effectively enforce the law.

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 nontraditional employment opportunities. Few women participated in the limited formal labor market, and those that did represented only a very small portion of managerial and administrative staff. Households headed by women were overrepresented in the lowest quarter of income distribution.

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 962 MWK ($1.28) per day as of July 2017, lower than the World Bank’s poverty income level of $1.90. During the year the World Bank estimated that 69 percent of citizens lived below the poverty line. There was no exception to the requirement of paying the minimum wage for foreign or migrant workers.

The Ministry of Labor lacked the capacity to enforce the minimum wage effectively. Official minimum wages apply only to the formal sector and thus did not apply to most citizens, who earned their livelihood outside the formal wage sector. Wage earners often supplemented their incomes through farming activities. No government programs provided social protections for workers in the informal
economy. According to the 2013 Malawi Labour Force Survey, of the 7.8 million persons in the working population, 88.7 percent were in the informal sector.

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 are 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. 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 conviction of violations, but these penalties were not sufficient to deter offenders, and there have never been reports of jail terms.

The law includes extensive occupational health and safety standards. The Ministry of Labor 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. Workers, particularly in industrial jobs, often worked without basic safety clothing and equipment. In tobacco fields workers harvesting leaves generally did not wear protective clothing; workers 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, due to ignorance of such rights and high levels of unemployment, workers were unlikely to exercise these rights. Additionally, authorities did not effectively protect employees in this situation.
Tab 3
EXECUTIVE SUMMARY

Malawi is a multiparty democracy. Constitutional power is shared between the president and the 193 National Assembly members. International observers characterized the 2014 elections for president, parliament, and local councils as free, transparent, and credible.

Civilian authorities maintained effective control over the security forces.

The most significant human rights issues included: excessive use of force by security officers, including torture; harsh and life-threatening prison and detention center conditions; lack of investigation and enforcement involving cases of violence against women, including rape; criminalization of same-sex sexual conduct; and sexual exploitation of children.

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

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

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

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

Police arbitrarily shot and sometimes killed unarmed suspected criminals. For example, in January police shot and killed Jonathan Kaiya, a suspected car thief, under suspicious circumstances while he was being transferred. Kaiya, who was on bail, had been rearrested and transferred to a remote police station for no obvious reason.

Perpetrators of past abuses were occasionally punished, 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 and law prohibit such practices; however, police sometimes used excessive force and other unlawful practices, including torture to extract confessions from suspects. In the past police showed little restraint in such situations, but in at least one instance the Malawi Police Service (MPS) professionally handled the beating of a police officer by protesters. The Malawi Human Rights Commission (MHRC) stated in its annual report that torture was widespread in prisons.

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

Physical Conditions: According to the Inspectorate of Prisons, the government remained largely noncompliant with the High Court’s 2009 requirement to improve prison conditions. A 2014 inspection tour that covered 90 percent of prisons 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. On September 18, the Malawi Prison Service reported the total prison population was 14,795 in space with a theoretical holding capacity of 7,000. Police held detainees in police stations for long periods beyond the legal limit of 48 hours, which led to pervasive cell overcrowding.

Authorities held women separately from men but often held pretrial detainees and convicted prisoners together. In police detention children were not always held separately from adults. Although inadequate, detention facilities for women and children were generally better than men’s facilities. Several hundred irregular migrants as young as 13 were held with the general prison population even after their immigration-related sentences had been served.
As of September, according to the prison service, 41 inmates had died in prison. Leading causes of death were tuberculosis (nine), diarrhea (nine), anemia (four), and malaria (four).

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.

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. The MHRC received only two complaints during the year. Prisoners sometimes had the opportunity to complain to nongovernmental organizations (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 that torture was widespread and most prisoners and detainees lived in degrading and inhuman conditions. From January to August, the MHRC received one complaint regarding the rights of prisoners and two complaints regarding the rights of individuals at a migrant detention facility. The low number of submitted complaints was believed to be due to fear of retaliation by authorities.

A national prison wardens’ strike in July and two judiciary staff strikes in February and August, lasting one and three weeks respectively, prevented incarcerated individuals from accessing the courts, delaying further the delivery of justice. During the prison warden strike, families of inmates were not allowed to visit prisoners.

Independent Monitoring: During the year the government permitted domestic and international NGOs and the 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/her arrest or detention in court but does not provide for compensation if found to have been unlawfully detained. Lack of knowledge of statutes and of access to representation meant detainees did not challenge the legality of their detention.

Role of the Police and Security Apparatus

The government exercised effective control over the Malawi Defense Force (MDF) and MPS. The MPS, under the Ministry of Home Affairs, has responsibility for law enforcement and maintenance of order. The MDF has responsibility for external security. The MDF was sometimes asked to carry out policing activity. The MDF commander reports directly to the president as commander in chief.

Police were inefficient, poorly trained, and corrupt (see section 4). Impunity remained a problem. Officers suspected of misconduct generally were transferred rather than investigated and disciplined if found guilty. Authorities, however, prosecuted officers accused of involvement in serious crimes such as robbery, murder, or rape (see section 1.a.).

Like other elements of government, the MDF and MPS were subject to investigation for corruption. In 2015 the Anti-Corruption Bureau (ACB) arrested former army chief General Henry Odillo and his former deputy, Lieutenant General Clement Kafuwa, on corruption charges in connection with contracts for military equipment that was never delivered. The trial began in October 2016, and in April the defendants, who were out on bail, pled not guilty to the charges. The trial had yet to conclude by year’s end.

The MDF and MPS cooperated with corruption investigations by the ACB but did not carry out their own internal investigations. Government mechanisms to investigate and punish abuse and corruption were only marginally effective due in large part to funding and human resource constraints.
The inspector general of police remained committed to the professionalization of the MPS. The Professional Responsibility Unit (previously known as the Internal Affairs Department) of the MPS investigates police misconduct, including whether killings or other misconduct that occurred in the line of duty were justifiable.

Police continued to train officers on internal investigations, victims’ rights, sexual abuse, domestic violence, and trafficking in persons. Police continued to receive foreign assistance for training and equipment.

**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, which was often granted to reduce overcrowding in jails, rather than release a detainee on the merits of a case. 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. In 2015 the Legal Aid Bureau replaced the Department of Legal Aid as the institution mandated to provide legal assistance to indigent persons. The bureau had 15 lawyers and 18 paralegals in the three offices, located in the largest cities: Lilongwe, Blantyre, and Mzuzu. Inadequate funding remained a major challenge.

The Center for Human Rights Education Advice and Assistance (CHREAA) assisted persons detained at police stations and in prisons through its Malawian Bail Project, camp courts, police cell visits, and paralegal aid clinic to expedite their releases. During the year CHREAA reached out to 28,367 detainees, 19,543 of whom succeeded in obtaining bail. The Center for Legal Assistance and the Paralegal Advisory Service Institute, NGOs that assist prisoners with legal matters, provided limited free legal assistance to expedite the 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. Sections of the penal code pertaining to rogues and vagabonds were used in the past to make arbitrary arrests but were struck down as unconstitutional by the court in January. Authorities, however, continued to make arrests based on other provision such as conduct likely to cause breach of peace and obstruction of police officers. Although prostitution is legal, police regularly harassed sex workers. On April 2, in Lilongwe, police arrested Masauko Chimphamba, a small-scale businessman, and kept him in custody for two nights without charge or telling him the reason for his arrest. On April 4, Chimphamba was released after a man involved in a robbery informed police that Chimphamba was not part of the robbery. Chimphamba registered an arbitrary arrest complaint with the MHRC. By October, however, the complaint had not been followed up, due to his having gone abroad.

**Pretrial Detention:** Of the total prison population of 14,795 inmates, 1,598, or 11 percent, were in pretrial detention. Despite a statutory 90-day limit on pretrial detention, authorities held most homicide suspects in pretrial detention for two to three years. 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. Camp courts expedite cases by bringing magistrates to prisons. 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; corruption; and lack of resources. 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, frequent recusals, and lawyers and witnesses not being present on trial dates, undermined the government’s ability to dispense justice.

A week-long prison wardens’ strike in July and two separate judiciary staff strikes in February (one week) and August (three weeks) prevented inmates from accessing courts.

In November land reclamation advocate Vincent Wandale was involuntarily committed to a mental institution based on a report on his mental health requested by the prosecution. Wandale was on trial for spreading false rumors after he declared himself the leader of an independent state in the South of the country.

The MDF conducts courts-martial but no military or security 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 given 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. MPS prosecutors with limited legal training prosecuted the majority of criminal cases. The Directorate of Public Prosecutions in the Ministry of Justice customarily tried high-profile cases and those involving the most serious offenses. As of September the directorate had 20 prosecuting attorneys supported by 18 paralegals, who also prosecuted certain lower court cases. Minor victims as young as 12 often testified in open court and in at least one instance the minor was cross-examined by the abuser who was self-representing. Child-friendly court facilities existed but were used only for minors in conflict with the law.

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 September 8, there were only 407 licensed legal practitioners.

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 Expression: Antisedition and breach of peace laws were sometimes used to stifle criticism. For example, in February 2016 three opposition parliamentarians were arrested and charged with sedition for their statements in a social media conversation in which they discussed taking political advantage of public discontent with the government. While the conditions of their bail were relaxed in March, they remained under indictment. In April, two opposition figures were arrested on suspicion of having authored a resignation letter widely circulated on social media purportedly written by Vice President Saulos Chilima.

Violence and Harassment: Authorities sometimes attempted to intimidate journalists who reported criticism of the ruling party. In January, shortly after leading privately owned media entity Times Media Group exposed a significant government corruption scandal, the Malawi Revenue Authority (MRA) raided and closed the group’s offices. The following week, the Malawi Communications Authority (MACRA) censured the group for not adhering to its declared programming schedule during the time its offices were closed by the MRA. In March, MACRA summoned two Times Media Group journalists for statements and allegations of nepotism concerning the president. The government also regularly barred privately owned media from covering government events.

Censorship or Content Restrictions: Journalists sometimes practiced self-censorship, especially at government-owned media outlets such as the Malawi Broadcasting Corporation. In December 2016 the government publicly reprimanded and eventually fined Zodiak Broadcasting Station (ZBS), a leading independent radio and television station, for broadcasting an interview with an opposition politician who criticized the government, which the government claimed was unfairly “one-sided” and violated an obscure public communications regulation. ZBS was subsequently barred from participating in government-organized press conferences.

Internet Freedom

The Electronic Transactions and Cyber Security Act became law on June 1. The new law criminalizes the act of “knowingly receiving and sharing unauthorized data” and stipulates that a person found sharing or receiving such information is
committing a crime and liable to a fine of 1.85 million Malawian kwacha (MWK) ($2,500) and imprisonment of up to five years. The new 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 new law, arguing it was meant to silence persons on social media ahead of national elections in 2019. As of November no one had been charged with a crime under the new law. Lack of infrastructure and the high cost of internet connections limited internet access. According to the International Telecommunication Union, approximately 9.6 percent of the population used the internet in 2016, the latest year for which data was available.

Academic Freedom and Cultural Events

There were no government restrictions on academic freedom during the year; however, the government sporadically censored films that it deemed contained culturally sensitive or sexually explicit material.

The Malawi Censorship Board Secretariat is responsible for reviewing and classifying plays, films, and foreign music for adult content as well as regulating public theaters.

b. Freedoms of Peaceful Assembly and Association

The constitution and law provides for the freedoms of peaceful assembly and association, but the government did not always respect these rights.

Freedom of Peaceful Assembly

The constitution and law provide for freedom of assembly, but the government did not always respect this right. On September 21, 26 peacefully protesting students from Lilongwe University of Agriculture and Natural Resources were arrested and charged with conduct likely to breach the peace. They were subsequently released on bail, and their case was pending at year’s end.

On September 14, during a march against gender-based violence, male police officers arrested protester Beatrice Mateyo and charged her with “insulting the modesty of a woman” for carrying a placard deemed offensive. Released on bail, she was awaiting trial at year’s end.

Freedom of Association
The constitution and law provide for the freedom of association, and the government generally 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 www.state.gov/religiousfreedomreport/.

d. Freedom of Movement

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

The government cooperated with the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, asylum seekers, and other persons of concern. By the end of September, the 70 percent of the 3,345 Mozambicans at the Luwani Camp who had indicated they wished to return home voluntarily were awaiting completion of an agreement between the governments of Malawi and Mozambique and UNHCR. As of September 30, there were approximately 35,000 asylum seekers and refugees at the Dzaleka Camp in the North, with more refugees continuing to arrive, mostly from the Democratic Republic of the Congo and Burundi.

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, including those with proper identity documents. Local citizens often accused refugees of committing various crimes.

In-country Movement: Refugees were subject to an encampment policy that restricted them to the Dzaleka and Luwani refugee camps, the only two officially designated refugee camps. Authorities periodically rounded up and returned to the Dzaleka Camp those who left it.

Protection of Refugees

Access to Asylum: The law provides for the granting of asylum or refugee status, and as of September the government provided protection to more than 35,000
individuals. Asylum seekers primarily came from the Great Lakes region of Africa and Mozambique.

There were multiple reports of so-called survival sex by refugees to obtain income to supplement food rations and other necessities in the Dzaleka Camp. Gender-based violence and other criminal activities were also reported at Dzaleka.

From January to August, the MHRC received three complaints of mistreatment at 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 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. These overtaxed facilities served both refugees and local communities. A rapid increase in the refugee population and the inability of most refugees to grow food or earn money due to the encampment policy limited the available food and services to that provided by donors through UNHCR and the World Food Program. Ration allocations were below recommended levels due to insufficient funding.

While local laws and the justice system applied to refugees, access to the justice system was limited by inefficiencies and inadequate resources. With only 13 police officers assigned to the Dzaleka Camp, law enforcement capacity was extremely limited.

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

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 2014 citizens voted in simultaneous presidential, parliamentary, and local elections. Voters elected Arthur Peter Mutharika of the Democratic Progressive Party as president with 36.4 percent of the vote. Mutharika defeated incumbent president Joyce Banda, marking the first time an incumbent party lost the presidency since the country’s first multiparty election in 1994. Presidential and vice-presidential debates took place and were broadcast on radio and television for the first time, which provided voters a new tool for evaluating and contrasting candidates and their policies. The 2014 elections also filled the positions of local councilors following a nine-year gap; the term of councilors elected in 2000 had expired in 2005.

International observers characterized the elections as generally peaceful, free, credible, and transparent, although there were shortcomings. For example, the ruling Democratic People’s Party (DPP) regularly diverted state resources for partisan events. National or local government vehicles were sometimes requisitioned to ferry supporters to partisan events. Representatives from several government-affiliated entities attended a DPP fundraiser event held at the presidential palace.

Participation of Women and Minorities: 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. There were 32 women in the 193-seat National Assembly and 56 women among the 462 elected local councilors. There were four women in the 20-member cabinet. Women constituted approximately 25 percent of the civil service. There were 10 female justices among the 34 Supreme Court of Appeal and High Court justices.

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.
The vice president headed a public-sector reform effort to address the factors that allowed corruption to thrive.

Corruption: In February the Anti-Corruption Bureau raided several houses including that of then minister of agriculture George Chaponda in connection with the suspect procurement of 100,000 tons of grain from Zambia known as “Maizegate.” Chaponda and two accomplices were arrested in July and released on bail because the “Maizegate” trial was underway.

The investigation and prosecution of approximately 70 individuals, primarily mid-level civil servants arrested in 2013 for involvement in the theft of approximately 20 billion MWK ($55 million at the time) through fraudulent transactions--the Cashgate corruption scandal--proceeded slowly. As of September a total of 14 cases resulted in convictions, with prison sentences ranging from three to 11 years. At year’s end no high-level officials had been arrested or charged and prosecuted in direct connection with Cashgate. Former justice and constitutional affairs minister Raphael Kasambara received a 13-year sentence for conspiring to murder former budget director Paul Mphwiyo, who was on trial for his involvement in Cashgate. The state’s eight billion MWK ($10.6 million) 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 in law for the speaker to make the declarations public or available to other members of parliament. The Public Officers Declaration of Assets Law requires officials in 48 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 a basis for dismissal, and individuals who knowingly provide inaccurate information may be fined, dismissed, and imprisoned. The declarations are to be accessible to the public upon request, but the director has the authority to deny such requests. Denials may be appealed to the High Court. On October 4, the Directorate of Assets Declaration revealed that 28 members of parliament, including some cabinet members, failed to declare their assets; however, no sanctions were announced.

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 violations of human rights. Despite its independent leadership, resource shortfalls resulted in a backlog of cases, delayed production of reports, and limited investigation of human rights violations.

The Office of the Ombudsman is mandated to investigate government officials responsible for human rights violations 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 18 investigators who were assisted by two support staff. During the year their civic education team conducted public rallies and awareness campaigns in four of the country’s 28 districts. It maintained a website with 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 men or women with a maximum penalty of death. The Marriage, Divorce, and Family Relations Act enacted in 2015 explicitly introduces the concept of spousal rape, but the act does not prescribe specific penalties 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 fixed prison sentences. For cases of conviction of indecent assault on women and girls, the maximum penalty is 14 years in prison.
The Ministry of Gender, Children, Disability, and Social Welfare conducted public education campaigns to combat domestic 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 victims.

Female Genital Mutilation/Cutting (FGM/C): The law does not specifically prohibit FGM/C. According to press reports from 2011, some cases of FGM/C were prosecuted as unlawful wounding. A 2014 UN Human Rights Committee report expressed concern regarding the existence of FGM/C in some regions of the country. A few small ethnic groups practiced FGM/C. In most cases FGM/C was performed on girls between ages 10 and 15.

For more information, see data.unicef.org/resources/female-genital-mutilation-cutting-country-profiles/.

Other Harmful Traditional Practices: The Gender Equality Act of 2013 prohibits certain harmful traditional 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 continued efforts 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 daughters of any age, 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 training girls how to engage in sexual acts. In some traditional communities, girls as young as age 10 undergo “kusasa fumbi,” a cleansing ritual consisting of forced sexual relations with an older man. According to one UN-sponsored study, more
than 20 percent of girls in secondary school underwent a form of initiation that involved sexual relations with an older man.

In July a five-part series by the French newspaper *Le Monde* reported that the practice of men having sex with girls as part of initiation rites continued.

**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 Gender Equality Act makes sexual harassment punishable by up to five years’ imprisonment if convicted. Extreme cases could be prosecuted under certain sections of the penal code, such as indecent assault on a woman or girl, which provides for up to a 14-year prison sentence if convicted, or insulting the modesty of a woman, a misdemeanor punishable by one year’s incarceration if convicted.

**Coercion in Population Control:** There were no reports of coerced abortion, involuntary sterilization, or other coercive population control methods. Estimates on maternal mortality and contraceptive prevalence are available at: [www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/](http://www.who.int/reproductivehealth/publications/monitoring/maternal-mortality-2015/en/).

**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.

The government addressed women’s concerns through the Ministry of Gender, Children, Disability, and Social Welfare. The law provides for a minimum level of child support, widows’ rights, and maternity leave; however, only women employed in the formal sector knew their rights, had access to the legal system, and thus benefited 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. For additional information, see Appendix C.

Education: The government provided tuition-free primary education for all children. Education for children under age 18 is compulsory. Families were responsible for paying book fees and purchasing uniforms. Students from poor families had access to a public book fund. For additional information, see Appendix C.

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. For additional information, see Appendix C.

The law prohibits subjecting a child to any social or customary practice that is harmful to health or general development. Prohibited practices included child trafficking, forced labor, early and forced marriage or betrothal, and use of children as security for loans or other debts.

Ministry of Gender, Children, Disability, 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.

Early and Forced Marriage: The Marriage, Divorce, and Family Relations Act sets the minimum age for marriage at 18. On April 2, the president signed a constitutional amendment removing a provision that allowed marriage at age 15 with parental consent. Civic education on early marriage was carried out mainly by NGOs. Some traditional leaders annulled early marriages and returned the girls involved to school. For additional information, see Appendix C.

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

The law prohibits 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 in prison, while those found guilty of procuring a child for public entertainment are liable to a fine of 100,000 MWK ($133) and imprisonment of seven years. 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 but then coerced them to engage in sex work with customers in exchange for room and board. For additional information, see Appendix C.

Displaced Children: According to the 2010 Demographic and Health Survey, 19 percent of children under age 18 were not living with either biological parent and 17 percent were orphaned or vulnerable due to extended parental illness or death, including an estimated 650,000 orphaned because of AIDS. Extended family members normally cared for such children and other orphans.


Anti-Semitism

The Jewish community was 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 www.state.gov/j/tip/rls/tiprpt/.

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 with regard to access to public facilities, both governmental and private.

Societal stigma related to disability and the lack of accessibility to public buildings and transportation had a negative impact on 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, Children, Disability, 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 September the MHRC reported receiving seven complaints related to disability rights and concluded investigations into three of them. The complaints regarded the insufficient availability of wheelchairs, inadequate access to schooling for children with disabilities, and the unavailability of sunscreen at a health facility for an individual with albinism.

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

By law and practice lesbian, gay, bisexual, transgender, and intersex (LGBTI) persons are denied basic civil, political, social, and economic rights. Consensual same-sex sexual activity is illegal and punishable by up to 14 years in prison, including hard labor. The penal code outlaws “unnatural offenses” and “indecent practices between males.” In 2014, however, Solicitor General Janet Banda told the UN Human Rights Commission the government would not enforce these laws. In 2015 Minister of Justice Samuel Tembenu reaffirmed the moratorium on the enforcement of laws criminalizing consensual same-sex sexual activity and continued the moratorium during the year.

Same-sex sexual activity may also be prosecuted as “conduct likely to cause a breach of the peace.” A 2011 amendment to the penal code established penalties for consensual same-sex sexual activity between women, setting a maximum prison term for conviction of five years.

In 2016, the latest year for which data were available, the Center for the Development of People documented 21 instances of abuse based on sexual
orientation and gender identity. The nature of the abuses fell into three broad categories: stigma, harassment, and violence.

**HIV and AIDS Social Stigma**

Societal discrimination against persons with HIV/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 (35.1 percent) and excluded from social gatherings (33.7 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 the demand for body parts for witchcraft rituals in neighboring Tanzania. Religious, traditional, civil society, and political leaders, including the president, publicly denounced the attacks. The government launched a public-awareness campaign and conducted training of police, prosecutors, and judges in border districts to counter the trend.

In September, after rumors of “blood-suckers” stealing blood from individuals to use in “black magic” rituals emerged in the southern region, vigilante crowds attacked outsiders and purported accomplices of “blood-suckers.” Several were injured and at least six died in the attacks.

**Section 7. Worker Rights**

**a. Freedom of Association and the Right to Collective Bargaining**

The law allows workers, except for military personnel and police, to form and join trade unions of their choice without previous authorization or excessive requirements. Unions must register with the Registrar of Trade Unions and
Employers’ Organizations in the Ministry of Labor. 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.

Workers in the formal sector have the right to organize and bargain collectively. 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 a lengthy settlement procedure set out in the Labor Relations Act has failed. The law also requires the labor minister to apply to the Industrial Relations Court to determine whether a particular 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 the vast majority of 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, choices relating to the allocation of limited resources and lack of capacity resulted in delays of some labor cases. Small fines for most violations were insufficient to deter violations. Provisions exist for punishment of up to two years in prison, but no convictions were reported.

Freedom of association and the right to collective bargaining were adequately respected for those in the formal sector. The law requires that unions must be registered, and registration was granted routinely. Union membership among workers was low due to the small percentage of the workforce in the formal sector and a lack of awareness of worker rights. Employers, labor unions, and the
government lacked sufficient knowledge of their roles in labor relations and disputes.

Arbitration rulings were legally enforceable; however, the Industrial Relations 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. Forced labor is punishable by a modest fine or short imprisonment, which was insufficient to deter violations. The government did not effectively enforce applicable laws.

Children were subjected to domestic servitude and other forms of forced labor, including cattle herding; bonded labor on plantations, particularly on tobacco farms; and menial work in small businesses.

Also see the Department of State’s Trafficking in Persons Report at www.state.gov/j/tip/rls/tiprpt/.

c. Prohibition of Child Labor and Minimum Age for Employment

The law sets the minimum age for employment at 14, and children between the ages 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, vocational technical schools, or other training institutions. The law prohibits child trafficking, including labor exploitation and the forced labor of children for the income of a parent or guardian. The Employment Act provides a list of hazardous work for children and specifies a fine or imprisonment for violations. The law, however, was not effectively enforced due to lack of resources and staffing. Penalties and enforcement were insufficient to deter offenders.

Police and Ministry of Labor officials were responsible for enforcing child labor laws and policies. Labor inspectors do not have law enforcement authority and must enlist police to pursue violators.
The Ministry of Labor carried out inspections, focused mainly on agricultural estates, but enforcement by police and ministry inspectors of child labor laws was minimal. The government acknowledged making little progress in implementing its 2010-16 National Action Plan on Child Labor. Most public education activities were carried out by tobacco companies--tobacco is the country’s largest export--and NGOs.

Child labor remained a serious and widespread problem. The 2015 National Child Labour Survey found that 38 percent of children ages five to 17 were involved in child labor. Child labor was prevalent on tobacco farms, subsistence farms, and in domestic service. Thousands of child tobacco workers suffered from nicotine poisoning. These 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 of their families as domestic servants, receiving low or no wages.

Also see the Department of Labor’s Findings on the Worst Forms of Child Labor at www.dol.gov/ilab/reports/child-labor/findings/.

d. Discrimination with Respect to Employment and Occupation

The employment law prohibits discrimination against any employee or prospective employee, but the government in general did not effectively enforce the law.

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 nontraditional employment opportunities. Few women participated in the limited formal labor market, and those that did represented only a very small portion of managerial and administrative staff. Households headed by women were overrepresented in the lowest quarter of income distribution.

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, which is composed of representatives of labor, government, and employers. The minimum wage was 962 MWK ($1.28) per day as of July, lower than the World Bank’s poverty income level of $1.90. During the year the World Bank estimated that 69 percent of citizens lived below the poverty line. There was no exception to the requirement of paying the minimum wage for foreign or migrant workers.

The Ministry of Labor lacked the capacity to enforce the minimum wage effectively. Official minimum wages apply only to the formal sector and thus did not apply to most citizens, who earned their livelihood outside the formal wage sector. Wage earners often supplemented their incomes through farming activities. No government programs provided social protections for workers in the informal economy. According to the 2013 Malawi Labour Force Survey, of the 7.8 million persons in the working population, 88.7 percent were in the informal sector.

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 are 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. 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 sufficient to deter offenders, and there have never been reports of jail terms.

The law includes extensive occupational health and safety standards. The Ministry of Labor 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. Workers, particularly in industrial jobs, often worked without basic safety clothing and equipment. In tobacco fields workers harvesting leaves generally did not wear protective clothing; workers 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, due to ignorance of such rights and high levels of unemployment, workers were unlikely to exercise these rights. Additionally, authorities did not effectively protect employees in this situation.
"I'm scared of being attacked, even in public spaces," McJessie said. "You go to the bank, they look at your ID...you have to prove that you're this particular sex that was assigned to you at birth."

'McJessie has a three-month-old relationship with a local woman but said, "I cannot take her to the local market to buy vegetables because that's going to start another issue."

13.6 Access to healthcare services

13.6.1 The HRW report, ‘Let Posterity Judge’ – Violence and Discrimination against LGBT people in Malawi, stated:

‘Punitive legal environments constitute a significant barrier to guaranteeing access to sexual health treatment and services for gay and bisexual men and other MSM. The combination of stigma and discrimination based on sexual orientation and gender identity in a criminalized context creates an environment in which these groups of people are deterred from or fearful of seeking prevention, testing, and treatment services. Those whose sexually transmitted infections (STIs) go untreated are at increased risk not only of developing complications, but also of contracting HIV; and those who face barriers accessing HIV testing and treatment due to stigma and discrimination are more likely to die of AIDS…

‘Several interviewees told Human Rights Watch that health care professionals subjected them to homophobic remarks and discriminatory treatment, particularly in government hospitals. Peer educators who tried to help gay men and other MSM in accessing health care also reported hospitals turning away their clients…

‘The African Commission noted that in Malawi, more than 80 percent of MSM have not disclosed their same-sex sexual practices to a health practitioner, with serious implications for providing health-care services.

‘The Malawian authorities have made some efforts to improve the inclusiveness of health services. Malawi’s 2015-2020 National Strategic Plan for HIV and AIDS (NSP) expressly includes MSM, recognizing that criminalization of same-sex conduct and persistent stigma and discrimination against marginalized groups hinder the country’s HIV response. The NSP outlines a series of programs aimed at addressing these challenges and protecting the human rights of key populations, including MSM: “Stigma and discrimination reduction; provision of HIV related legal services; monitoring and reforming laws, regulations and policies relating to HIV; provision of legal literacy (“know your rights”) services; sensitization of law-makers and law enforcement agents; training for health care providers on human rights and medical ethics related to HIV and; reducing discrimination against women in the context of HIV.”

122 France 24, ‘Fear and stigma mark life for gays in conservative Malawi’, 15 June 2019
123 HRW, ‘Let Posterity Judge’ – Violence and Discrimination…’, Chapter 2, 26 October 2018
Tab 5
Country Policy and Information Note
Malawi: Sexual orientation and gender identity

Version 3.0
February 2017
Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as 'clearly unfounded' under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this note has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), dated April 2008, and the European Asylum Support Office’s research guidelines, Country of Origin Information report methodology, dated July 2012.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the Country Policy and Information Team.

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office’s COI material. The IAGCI welcomes feedback on the Home Office’s COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

Independent Chief Inspector of Borders and Immigration,
5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.
Email: chiefinspector@icinspectorgsi.gov.uk

Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at http://icinspectorgsi.gov.uk/country-information-reviews/
1. Introduction

1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by the state and/or non-state actors due to a person's actual or perceived sexual orientation and/or gender identity.

1.2 Points to note

1.2.1 This note provides policy guidance on the situation generally of gay men, lesbians, bisexuals and transgender persons – referred hereafter collectively as 'LGBT persons', though the experiences of each group may differ.

1.2.2 Where a claim by a male applicant falls to be refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as Malawi is listed as a designated state in respect of men only.

1.2.3 Decision makers must also refer to the Asylum Instructions on Sexual Identity Issues in the Asylum Claim and Gender Identity Issues in Asylum Claims.

2. Consideration of Issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the Asylum Instruction on Assessing Credibility and Refugee Status.

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the Asylum Instruction on Language Analysis).

2.2 Particular social group

2.2.1 LGBT persons in Malawi form a particular social group (PSG) within the meaning of the Refugee Convention because they share an innate characteristic, or a common background that cannot be changed, or share a characteristic or belief that is so fundamental to their identity or conscience that they should not be forced to renounce it, and have a distinct identity which is perceived as being different by the surrounding society.

2.2.2 Although LGBT persons in Malawi form a PSG, this is not sufficient to be recognised as a refugee. The question is whether the particular person will face a real risk of persecution on account of their membership of a PSG.

2.2.3 For further guidance on particular social groups, see the Asylum Instruction on Assessing Credibility and Refugee Status.
2.3 Assessment of risk

2.3.1 Decision makers must establish whether or not the person, if returned to Malawi, will live freely and openly as a LGBT person. This involves a wide spectrum of conduct which goes beyond merely attracting partners and maintaining relationships with them. If it is found that the person will conceal aspects of his or her sexual orientation/identity if returned, decision makers must consider why.

2.3.2 If this will simply be in response to social pressures or for cultural or religious reasons of their own choosing and not because of a fear of persecution or serious harm, then they may not have a well-founded fear of persecution or serious harm. Decision makers should also consider if there are individual or country specific factors that could put the person at risk even if they choose to live discreetly because of social or religious pressures.

2.3.3 But if the reason why the person will resort to concealment is that they genuinely fear that otherwise they will be persecuted, it will be necessary to consider whether that fear is well founded.

2.3.4 For further guidance, see the Asylum Instruction on Sexual Identity Issues in the Asylum Claim.

a. State treatment

2.3.5 Consensual same-sex sexual activity in Malawi is illegal and punishable with imprisonment for up to 5 years for women and up to 14 years with hard labour for men. Same-sex activity may also be prosecuted as “conduct likely to cause a breach of the peace”. On the 17 April 2015, the Marriage, Divorce and Family Relation Law came into force. It makes no provision for same-sex marriages. The new law also does not allow people who have undergone gender reassignment surgery to marry a person, who before that sex changing surgery was of the same sex. The law is, otherwise, silent on matters relating to a person’s gender identity (see the law).

2.3.6 In 2012 (then) President Joyce Banda committed to repeal all laws that criminalized same-sex sexual relations, but she subsequently slowed efforts to repeal the laws (before leaving office in 2014). In November 2013 the High Court of Malawi decided to review the constitutionality of anti-LGBT laws, however at the time of writing no judgement has been made (see the law).

2.3.7 Although a moratorium on arrests and prosecution under the law criminalising homosexual acts was in effect from November 2012, in February 2016 it was anulled following successful appeals to the courts by religious leaders. The law itself is still under review in the High Court (see Moratorium and law review).

2.3.8 There have, however, been few reported cases of arrests and prosecutions of LGBT persons since the re-imposition of the law and only very few arrests in previous years. In December 2016, two gay men were arrested, convicted and fined for public indecency, but not under anti-gay laws, after having sexual relations. The conviction in 2010 of a gay couple and the arrest of another couple in 2015 were both subject to international furore and the government responded by pardoning the convicted couple and dropping the charges.
against the arrested couple (see treatment by, and attitude of, state authorities).

2.3.9 The government has also approved a HIV policy that includes programmes focussing on gay, bisexual, and other men who have sex with men (see treatment by, and attitude of, state authorities and moratorium and law review).

2.3.10 The government is seemingly cautious about using anti-gay laws. This is potentially due to it being conscious of international opinion linked to Malawi’s reliance on international donations and aid. Irrespective, the evidence available does not establish that LGBT persons are likely to be subject to persecution or serious harm by the state (see moratorium and law review).

b. Societal treatment

2.3.11 There is limited information from sources on the societal attitudes and treatment of LGBT persons. Sources indicate that there is societal stigma and discrimination, with incidents ranging from physical assault, harassment in the workplace and at home, loss of employment, and in accessing healthcare. LGBT persons were also subjected to homophobic rhetoric from some members of Christian and Muslim groups, while human rights defenders who advocated LGBT rights experienced ridicule and hate speech (see societal attitudes and societal treatment).

2.3.12 However, public discussion of LGBT rights has increased since 2013, and there has been an improvement in the balance of how the media reports on LGBT issues. Some NGOs campaign for, support and document human rights violations against LGBT persons, including supporting a challenge against the laws through the Malawi High Court. Some key religious and traditional leaders publicly supported NGO advocacy programmes on LGBT rights (see societal attitudes and societal treatment).

2.3.13 Some domestic media outlets have warned that because Malawi is heavily dependant on international donor aid, the government’s promotion of homophobia could lead to suspension of that aid (see treatment by, and attitude of, state authorities, the law).

2.3.14 While societal intolerance and discrimination occurs, there is no evidence of widespread harassment or violence against persons known or perceived to be LGBT. A number of NGOs actively (and openly) support LGBT persons and there are signs of growing societal tolerance of their rights (see societal attitudes and societal treatment).

2.3.15 Societal treatment does not, in general, reach the level to constitute persecution or serious harm. However, it may do in individual cases, depending on the person’s particular circumstances. The onus is on the person to show that they are at real risk on return.

2.3.16 For further information on assessing risk, see Asylum Instruction on Assessing Credibility and Refugee Status.
2.4 Protection

2.4.1 Where the person’s fear is of persecution or serious harm at the hands of the state, they will not be able to avail themselves of the protection of the state.

2.4.2 Where the person is at risk from a non-state actor, there is limited information about the state’s willingness, or not, to provide protection. The current president has however said that he would like gay rights “protected”. However it is reported that LGBT persons face a lack of access to justice and the state has in the past failed to prosecute perpetrators of violence against LGBT persons and those who call for it. Protection may be available and the onus is on the person to show that they are unable to seek and obtain it (see Treatment by, and attitude of, state authorities and Societal treatment).

2.4.3 For further guidance on assessing the availability or not of state protection, see Asylum Instruction on Assessing Credibility and Refugee Status.

2.5 Internal relocation

2.5.1 Where the threat is from the state, a person cannot internally relocate to escape that risk.

2.5.2 While societal intolerance is prevalent throughout the country, relocation may be relevant and reasonable where the threat is from a non-state actor. Decision makers must take into account the person’s individual circumstances, with the onus on the person to demonstrate they cannot relocate.

2.5.3 Internal relocation is not viable if it depends on the person concealing their sexual orientation and / or gender identity in the proposed new location for fear of persecution.

2.5.4 For further guidance on internal relocation, see the Asylum Instruction on Assessing Credibility and Refugee Status.

2.6 Certification

2.6.1 Malawi is listed as a designated state under section 94 of the Nationality, Immigration and Asylum Act 2002 in respect of men only. However where a claim made on the basis of the person’s sexual orientation is refused, it is unlikely to be certifiable as ‘clearly unfounded’ because in general the claim when taken at its highest is unlikely to be so clearly without substance that it is bound to fail.

2.6.2 For further guidance on certification, see Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).
3. **Policy summary**

3.1.1 Same-sex sexual relations are criminalised in Malawi, however this legislation is currently under review. Although a moratorium on imposing this law has been annulled there have been no reports of arrests and prosecutions under anti-gay legislation since the annulment. While there have been arrests and prosecutions in the past these have been few in number and since 2010 have been overturned by the government.

3.1.2 There is no evidence that there is widespread harassment of, or violence against, LGBT persons. While societal intolerance and discrimination occurs, such treatment does not generally amount to a real risk of persecution or serious harm. Each case needs to be considered on its individual merits, with the onus on the person to demonstrate that they would be at real risk on return.

3.1.3 Protection may be available and it is up to the person to show that they are unable to seek and obtain it.

3.1.4 Decision makers must give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person.

3.1.5 Where a claim falls to be refused, it is unlikely to be certifiable as ‘clearly unfounded’.

[Back to Contents]
Country Information

Note: some of the quotes in the country information refer to a moratorium on the use of anti-gay legislation. This suspension was in place from November 2012\(^1\) to February 2016\(^2\).

4. The law

4.1 Discrimination under the law

4.1.1 The United States State Department’s country report on human rights practices covering events in 2015 (‘the USSD report for 2015’) noted that the law forbids discrimination based on race; colour; sex; language; religion; political or other opinion; national, ethnic, or social origin; disability; property; birth; or other status. The law does not specifically mention sexual orientation. The capacity of government institutions to enforce the law was limited\(^3\).

4.2 The penal code

4.2.1 Same sex sexual relations for men and women are illegal under Section 137A, 153, 154 and 156 of the Penal Code and are punishable by up to 5 years for women and up to 14 years for men in prison\(^4\).

4.2.2 A report by the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), ‘State Sponsored Homophobia’, updated to October 2016, detailed the legislation:

‘Section 153. Unnatural offences

‘Anyone who – has carnal knowledge of any person against the order of nature; or has carnal knowledge of any animal; or permits a male person to have carnal knowledge of him or her against the order of nature, shall be guilty of a felony and shall be liable to imprisonment for fourteen years, with or without corporal punishment.

‘Section 154. Attempt to commit unnatural offences

Any person who attempts to commit any of the offences specified in the last preceding section shall be guilty of a felony and shall be liable to imprisonment for seven years, with or without corporal punishment.


Section 156 Indecent practices between males

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, shall be guilty of a felony and shall be liable to imprisonment for five years, with or without corporal punishment.

The new Section 137A: captioned “Indecent practices between females” provides that any female person who, whether in public or private, commits “any act of gross indecency with another female” shall be guilty of an offence and liable to a prison term of five years. The term “gross indecency” remains undefined in this legislation.5

4.2.3 The USSD report for 2015 noted:

LGBTI persons are denied by law and practice basic civil, political, social, and economic rights. Consensual same-sex sexual activity is illegal and punishable by up to 14 years in prison, including hard labor. The penal code outlaws “unnatural offenses” and “indecent practices between males…

‘Same-sex sexual activity may also be prosecuted as “conduct likely to cause a breach of the peace.” A 2011 amendment to the penal code established penalties for consensual same-sex sexual activity between women, setting a maximum prison term for conviction of five years.’6

4.3 Marriage, Divorce and Family Relations Act

4.3.1 The USSD report for 2015 also noted that the Marriage, Divorce, and Family Relations Act enacted in April [2015] explicitly defined marriage as a union between a man and a woman. It also for the first time in Malawian law defined sex (gender) as sex at birth7.

4.3.2 Human Rights Watch, in their April 2015 report, ‘Malawi - New Marriage Laws Can Change Lives’, noted:

‘…though Malawi’s constitution does not expressly preclude marriage for same-sex couples, the Marriage Act limits marriage to “persons of the opposite sex,” ignoring the reality of same-sex relationships.

‘The law also reinforces the prohibition of “unnatural offences” under Malawi’s Penal Code – a provision used to criminalize consensual same-sex relations

5 IGLA, ‘State Sponsored Homophobia’ (page 73), Updated to October 2016
Date accessed 20 December 2016


between adults – by listing a conviction for such an offence as acceptable evidence of irretrievable marriage breakdown.\textsuperscript{8}

4.3.3 The International Gay and Lesbian Human Rights Commission published a press release on 17 April 2015 and stated that, ‘The Marriage, Divorce and Family Relations Law creates new forms of legal discrimination against lesbian, gay, bisexual, transgender and intersex individuals. While the law raises the minimum marriage age to 18, it also promotes a policy of exclusion against LGBTI Malawians that would likely translate into discrimination in education, housing, jobs and elsewhere.’\textsuperscript{9}

4.3.4 Pink news added, in reference to the new Marriage Laws, ‘The law also mentions gay sex as being comparable to rape and sexual harassment.’\textsuperscript{10}

4.4 Transgender

4.4.1 There is no information on laws relating to gender identity, although as noted above, sex is defined as “sex of a person at birth”.

4.4.2 Human Rights Watch, in their April 2015 report, ‘Malawi- New Marriage Laws Can Change Lives’, stated, ‘By defining sex as “the sex of a person at birth,” the Marriage Act denies equal rights to form a family to some transgender people. The same provision denies the right to marriage to some intersex people – those born with both male and female sex characteristics – whose sex is often assigned arbitrarily at birth.’\textsuperscript{11}

4.4.3 Pink News reported on 17 April 2015 about the new Marriage Laws:

‘It also defines a person’s sex as “determined at birth”, hence sex, for the purpose of marriage, will continue to be regarded as one’s sex at birth. The law states: “Such a determination of sex at birth avoids any potential problems caused by transsexuals or persons who have undergone sex-changing surgery later in life from marrying a person, who, prior to that sex-changing surgery was of the same sex as them.”’\textsuperscript{12}

4.4.4 The International Gay and Lesbian Human Rights Commission published a press release on 17 April 2015 and stated that: ‘The [new] law denies equal rights to form a family to transgender, intersex and other individuals whose identity does not align with that assigned at birth, and ignores the reality of


any co-living arrangement not in the form of opposite-sex couples—including non-romantic relationships.'

4.5 Moratorium and law review

4.5.1 The Human Rights Campaign stated in July 2014 that:

‘In November 2013, the Malawi High Court decided to review the constitutionality of the nation’s ban on homosexual intercourse. The question of decriminalization of homosexuality in Malawi has been debated since former President Joyce Banda took office in 2012. She called for repealing the Penal Code but later told international reporters that the country might not be prepared for such a change. The suspension of the anti-LGBT law has been opposed by some religious figures arguing that homosexuality is alien to the Malawian culture.’

4.5.2 The USSD report for 2015 stated:

‘In July 2014, however, Solicitor General Janet Banda told the UN Human Rights Commission that the government would not enforce these [same sex] laws. On December 19 [2015], Minister of Justice Samuel Tembenu reaffirmed the moratorium on the enforcement of laws criminalizing consensual same-sex sexual activity.

‘In 2013 the High Court invited friend-of-the-court submissions on the constitutionality of laws against “unnatural offenses” and “indecent practices between males.” It received arguments both for and against the laws’ constitutionality, with most of the arguments being in opposition. The attorney general filed a motion with the Supreme Court objecting to the process on the basis that the chief justice must certify constitutional questions and obtained an order in February 2014 suspending the proceedings. As of October [2015] the motion had yet to be decided.’

4.5.3 At the time of writing, there has been no decision.

4.5.4 IGLA’s ‘State Sponsored Homophobia’ report, updated to October 2016, considered political opinion in Malawi:

‘In the year following the introduction of Section 137A, the government introduced a suspension on arrests under the Unnatural offences Articles. However, as widely reported, two men were arrested (filed under ‘sodomy’) in December 2015, which then led to a reaffirmation of the moratorium.

‘As SOGI issues have got greater visibility in Malawi (for example decriminalisation is called for in the National Strategic Plan for HIV and AIDS

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2015-2020), with strengthening advocacy from within the country, increasing attention from outside it and more calls for Malawi to regularise its legislation in line with its international law commitments, in January 2016 the United Nations cautioned against a rising backlash. Regarding the failure to prosecute a politician for blatant hate speech, the UN said “this case sends a dangerous message that inciting others to kill gay people is legitimate and will be tolerated by the authorities – in effect encouraging violent threats and attacks on the gay and lesbian community in Malawi”.

‘Of the 18 recommendations concerning SOGI that Malawi received in it 2nd UPR in May 2015, the State accepted two: the first agreeing to “take effective measures to protect” LGBTI persons from violence and to prosecute perpetrators (Austria), and the second guaranteeing “effective access” to health services (Honduras).

‘The Human Rights Committee that oversees the ICCPR expressed concern in 2014 that the newly-formed Human Rights Commission did not include SOGI within its mandate. It said Malawi “should review” its discrimination legislation to include SOGI, decriminalise same-sex sexual relations, implement a monitoring mechanism for violence directed at LGBTI people and prosecute perpetrators, ensure public officials do not incite violence and should positively raise public awareness, and finally guarantee “effective access” to health services for LGBTI people.

‘In November 2015, the Committee on the Elimination of Discrimination against Women welcomed the adoption of the Gender Equality Act that prohibits discrimination, but were concerned about the 2011 amendments to the Penal Code that “criminalizes same-sex relationships between women”, and it recommended that Malawi “Envisage decriminalizing sexual relationships between adult women”.’

4.5.5 Pink News reported on 12 February 2016 that ‘A court in Malawi has ordered the country’s anti-gay law back into force.’ The article went on to say:

‘The country’s government, which is heavily reliant on support from NGOs and Western aid money, had previously confirmed that it would no longer arrest people for same-sex sexual acts – an agreement first laid out in 2012 after a prolonged campaign.

‘When two men were arrested on gay sex grounds in December [2015], Malawi’s Justice Minister has stepped in to quash the case and impose a “moratorium” on gay sex convictions. [See para 5.1.4 for more detail].

‘However, Malawi24 reports that this week a senior judge in Mzuzu has instructed Malawi Police and the Director of Public Prosecutions to continue to enforce the law, while the government’s decision is “reviewed”.

‘Judge Dingiswayo Madise claimed that any person who disobeys the order shall be guilty of contempt of court.

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16 IGLA, ‘State Sponsored Homophobia’ (page 73), Updated to October 2016
Accessed: 20 December 2016
'It comes after three pastors had sought to challenge the government decision.

Minister for Justice Samuel Tembenu previously acknowledged the viewpoint that no one should be arrested on the grounds of their sexuality or gender identity, and re-committed to reviewing the country’s anti-gay laws.

However, he added that any review would be carried out “in consultation with the people of Malawi as prescribed by the Constitution”.

Even Malawian commentators had expressed fear that if allowed to continue, the country’s anti-gay laws could impact on aid contributions received from the West – on which the country is heavily reliant.

One Nyasa Times columnist warned not to “prick the backsides” of donors, writing: “Most people in England would be appalled to hear that people in this day and age are still being arrested for their sexual identities.

“And what many people in Malawi need to appreciate is that the people of England, America, Germany do not wish to see their tax money being spent in countries that discriminate on these grounds.

“Malawi can exercise its so called sovereignty if it wishes: continue this discrimination, and tear up the donor’s cheques in the process.”

4.5.6 VOA news also reported in February 2016 on the same judgement:

A high court in Malawi has ordered the annulment of a government moratorium issued in 2012 that suspended a law criminalizing homosexual acts. The government had suspended enforcement of the anti-gay laws pending parliamentary review after rights campaigners said the laws were unconstitutional.

The court’s order to enforce the anti-gay laws comes two months after government authorities ordered police to respect the moratorium by unconditionally pardoning two suspected gays who were arrested in December last year in the capital, Lilongwe.

Three pastors filed suit in the northern city of Mzuzu, saying that by pardoning the gay suspects, the government was applying the penal code selectively. They argued that the government’s suspension of the anti-homosexuality law was illegal.

“Our main arguments have been that the executive branch of government, the minister of justice, the director of public prosecutions and Malawi police service do not have the mandate to change the position of any law in the country,” argued George Kadzipatike, lawyer representing the three pastors.

“He said only the Malawi parliament has the mandate to change or suspend any law in the country…And having regards to the penal code which prohibits acts of homosexuality in the country, that Act of Parliament was not amended or repealed in any way by the Malawi parliament,” he added. “So it is still in force and has to be applied.”

'When announcing the order this week, Judge Dingiswayo Madise said the arrests [of gays] should continue until there is a judicial review of the government’s decision to stop the prosecutions of gay people in Malawi.

‘Timothy Mtambo, a campaigner for minority rights and also the executive director for the NGO Centre for Human Rights and Rehabilitation, said the court's position on the matter is worrying.

“‘These laws are archaic and undemocratic and these laws are not supposed to be implemented in the nation that has the human rights regime,” he said.

‘Mtambo said his organization is ready to support any group that will challenge the high court’s order, which he said will force the country’s more than 40,000 homosexuals to suffer in silence over fear of being arrested.

“‘When there was a moratorium, you saw a number of members of LGBT [lesbian, gay, bisexual, and transgender] community coming in public, demanding their rights to say, ‘I am a gay and I am demanding my rights.’ So this time around is like we are going back to square zero,” said Mtambo.

‘A spokesman for the Presbyterian Church in northern Malawi, Reverend Maurice Munthali, welcomes the high court order. “Rights should not be a hiding leaf for people to commit sin. What we think is that anything that is unlawful should not be turned into a [human] right,” he said.

‘Government authorities said they will announce their position on the court’s order once they go through the court’s documents.'18

5. **Treatment by, and attitude of, state authorities**

5.1.1 A January 2016 post on ‘Erasing 76 Crimes’ stated:

‘The news coming from Malawi may suggest a gradual shift in political opinion about LGBT rights.

‘Recently, Malawian President Peter Mutharika announced through his press secretary Gerald Viola that he “wants gay rights protected,” in an interview on a local radio station.

‘In an interview with BuzzFeed, Viola reiterated Mutharika’s message of increasing tolerance for LGBT people, saying, “These people are human beings” and expressing concern about reports that gay Malawians were being “beaten and locked up.”

‘He said, the question about repealing the colonial era law regarding homosexuality should now be put to the Malawian people. That law punishes same-sex relations with up to 14 years in prison. In 2012, President Joyce Banda called for parliament to remove the sodomy law, but after a few months dropped the issue and oversaw the imposition of a moratorium on enforcing it. So far, no moves have been taken to introduce such a proposal in parliament or putting it to a vote.

‘The constitutionality of the law is currently under review in the Malawi High Court.

‘Because the issue is a question of human rights, it should not be decided by a popular vote but in court, many activists say.’19

5.1.2 During the July 2015 Universal Periodic Review at the UN Human Rights Council, Malawi accepted two recommendations regarding the rights of LGBT persons:

- Take effective measures to protect lesbian, gay, bisexual and intersex persons from violence and prosecute the perpetrators of violent attacks (110.93)
- Guarantee that people of the lesbian, gay, bisexual, transgender and intersex communities have effective access to health services, including treatment for HIV/AIDS (110.126)

The government however did not accept several recommendations to repeal provisions in the Penal Code criminalizing consensual same-sex sexual conduct between adults. 20

5.1.3 The USSD Human Rights Report covering events in 2015 observed that:

‘On December 7 [2015], police arrested and charged two men under the anti-sodomy laws, compelled them to undergo nonconsensual medical examinations, and released them on bail the following day. The Minister of Justice took over the investigation and dropped all charges citing the moratorium on the enforcement of laws criminalizing consensual same-sex sexual activity. Two men charged pursuant to the antisodomy laws in May 2014, after one of them disclosed the relationship to police, remained free on bail at year’s end.’21

5.1.4 The Washington Post, reported in March 2016 on how the government has reacted to international pressure to quash convictions:

‘Six years after the arrest and imprisonment of a gay man and a transgender woman – Steven Monjeza and Tiwonge Chimbalanga – the subject of LGBT rights has resurfaced on the front pages of Malawi’s media. Another couple’s arrest – this time, that of Cuthbert Kulemeka and Kelvin Gonani – triggered media interest and public furor.

‘Kulemeka and Gonani were arrested Dec. 7 [2015] under Section 153 of Malawi’s penal code that criminalizes “carnal knowledge of any person against the order of nature” – locally interpreted to mean sodomy. A sodomy conviction can bring a maximum penalty of 14 years imprisonment with hard labor in Malawi.

‘Back in 2010, when Monjeza and Chimbalanga were arrested and then convicted, international donors objected vociferously. Malawi responded. Only 11 days after the pair were sentenced to 14 years in prison, then-President Bingu wa Mutharika pardoned Monjeza and Chimbalanga – not coincidentally, during an official visit from UN Secretary General Ban Ki-Moon.

‘That’s what happened again this time. U.S. Ambassador to Malawi Virginia Palmer called on the Malawi government “to drop the charges … as quickly as possible,” in a statement published on the Embassy’s Facebook page. German Ambassador to Malawi Peter Woeste urged the Malawi government to honor its policy “not to arrest, detain, charge or pursue people engaged in consensual same-sex activity.”

‘Objections also erupted from local minority rights advocacy organizations, notably the Center for Development of People (CEDEP) and the Center for Human Rights and Rehabilitation (CHRR). Both condemned the arrest and demanded that the government immediately release Kulemeka and Gonani.

‘And that’s exactly what the Malawi government did. In December [2015], the Minister of Justice Samuel Tembenu issued a statement saying the government is committed to “adhere to universally accepted human rights standards,” to “review the penal laws on homosexuality,” and to abide by a “moratorium on arrests and prosecution of consensual homosexual acts.”

5.1.5 The CHRR, in an assessment of the government’s performance in 2016, posted on 9 January 2017, stated that they would like to commend the government for, ‘…taking bold steps in curbing violence against sexual minorities’ and ‘equally worth appaulding is the moratorium [the] government is implementing on legal status of same-sex relationships in the country.’ They also noted that ‘the government needs to act on reports of violence against the sexual minority groups in the country as one way of protecting their various rights’.

5.1.6 CPIT was only able to find the following report of arrests or convictions against LGBT people since the annulment of the moratorium in February 2016:

5.1.7 In December 2016, the newspaper Nyasatimes reported a conviction of two gay men, although the laws used were not specific anti-gay laws:

‘Lilongwe Magistrate Court has convicted and fined two gay men for outraging public decency after they were caught having sex in public place in the capital city…They were answering to offences relating to idle and disorderly persons in public place contrary to Sections 180 to 184 of the Penal Code of the Laws of Malawi. The couple pleaded guilty for engaging in sexual activity. Initially, Gomani and Luka pleaded not guilty to the case but later changed plea after the police prosecution team said they were ready with witnesses. Magistrate

Arthur Mtalimanja said the two men need to be taught a lesson by being fined K50,000 each for their “unacceptable behaviour”\(^\text{24}\)

6. Access to healthcare

6.1.1 The CHRR in their 2014 (and most recent) annual report, covering events between 1 January and 31 December 2014, stated that:

‘The LGBTI persons were left out from public health support initiatives including from HIV information, support and services. Such information is necessary to enable LGBTI persons to make informed decisions and consequently reduce their vulnerability to HIV. However, a major highlight of the year 2014 was the Government’s adoption of the HIV policy that includes programmes targeting gay, bisexual ad other men who have sex with men (MSM). Specifically, government sought US$400,000 from the Global Fund to be used to fund programmes for this group. It is however unclear how the Government would effectively implement these programmes in a context where same sex relations remain criminalised.’\(^\text{25}\)

6.1.2 The UN Human Rights Council noted in its 23 February 2015 review on Malawi that:

‘UNCT stated that the criminalization of consensual same sex relations, societal stigma and discrimination had a detrimental impact on the enjoyment of the right to health. LGBTI persons were often not included in public health and support initiatives, such as education programmes or the provision of disease and infection prevention and care, and were denied access to necessary information, support and services to make informed decisions and to reduce their vulnerability to HIV.’\(^\text{26}\)

6.1.3 The USSD report for 2015 noted:

‘Societal discrimination against persons with HIV/AIDS remained a problem, especially in rural areas. Many individuals preferred to keep silent about 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.’\(^\text{27}\)


6.1.4 In May 2016 the All Africa Website published an article which stated:

‘…mostly people from sexual minorities [in Malawi] feel they have to live a low profile which makes it hard to reach them with HIV and reproductive health services. This is the case in spite of being more at risk of HIV. Timothy Mtambo, executive director of the Centre for Human Rights and Rehabilitation, said: “Studies we’ve conducted in hospitals and health centres reveal homosexuals are not being treated when found with sexual health complications. Instead of treating them, the medical personnel would rather start by publicising to their colleagues. You can see why many people never go to the hospital [… ] Most health providers hide behind the laws of the country as a scapegoat for not treating them.”’

6.1.5 In January 2017 Deutsche Welle (DW) reported on the discrimination one homosexual man, who they called “Precious”, faced when trying to obtain health care. The article quoted him as saying:

‘“I had a sexual health issue that required medical attention. I was disappointed with the way the nurse at the health facility handled the situation. After the routine diagnosis, she asked me if I was homosexual. I said 'yes' because I wanted help. She told me that I was evil and my future was doomed because God does not allow that,…She then called her colleagues to come and see me. They took turns pouring insults on me. One of them openly said I did not deserve medical attention. Instead, I should be arrested for indulging in homosexuality, which is an offence. I was totally upset and I left the clinic for a drug store so I could treat myself.”’

6.1.6 The DW article continued:

‘Minority rights group CEDEP is campaigning for an end to this discrimination and hostility. Maria Ngulube runs Linkages, a project in which CEDEP and other organizations are endeavoring to ensure that everyone, including the LGBT community, has equal access to health care.

‘“We have had cases of the community complaining of maltreatment at the health centers and clinics, so the project decided to engage the health workers themselves,” said Ngulube.

‘CEDEP and its partners have trained more than 50 health workers in Malawi since the program started in April 2016. The program, which Ngulube plans to expand, offers guidance in how to address the specific health needs of sexual minorities.

‘Ngulube says the religious beliefs and affiliations of health workers and the institutions where they work often contribute to anti-LGBT discrimination. Apart from turning to the public hospitals, which are few in number, much of

7. **Societal attitudes**

7.1.1 In an Afrobarometer survey conducted in 2014, 93 percent of Malawians said they would not like to have homosexuals as neighbours.

7.1.2 The Nyasa Times stated in their article, No to Gay Rights in Malawi [2015], that:

‘The Malawi President Peter Mutharika has been urged by the Church of Central Africa Presbyterian (CCAP) Livingstonia Synod Moderator Douglas Chipofya to be bold like Kenyan’s President Uhuru Kenyatta, who flatly rejected Barack Obama’s calls for gay rights, during Obama’s visit to the country. The CCAP Livingstonia Synod spiritual father termed homosexuality

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as ‘pure evil’ and ‘animal-like behaviour’. Chipofya was asked to offer an opening prayer at the annual Ngoni event, but took advantage of his time on the microphone to appeal against same-sex marriages. He asked the President, who was in attendance, to firmly stand against “alien cultural influences”.

7.1.3 ‘Culture is good, but we should not allow some people to take advantage of our cultural celebrations to bring alien practices,” said Chipofya. He continued that “…homosexuality is pure evil. I appeal to you, the State president, to do as your Kenyan counterpart did to Obama. As a church and Malawians, we ask you to say no to this evil.”32

7.1.4 The Human Dignity Report updated on 25 October 2015 noted some homophobic statements by public figures. For example, on 2 May 2014, the report noted: ‘Leader of the Malawi Congress Party Dr Lazarus Chakwera made a link between homosexuality and child abuse, claiming that homosexuality is a form of ‘child exploitation’.”33

7.1.5 The same source reported that, on 18 February 2014, ‘Dr Salmin Omar Idruss, Secretary-General of the Muslim Association of Malawi, called for the death penalty to be introduced: “Even animals like goats don’t do this, what more with human beings like us who were blessed with wisdom by the Almighty God? The offenders need to be handed the death penalty as a way of making sure that the issue is curbed.”34

7.1.6 However in regard to the comments of Dr Idruss, the Nyasa Times reported:

‘Malawi’s Justice and Constitutional Affairs Minister, Fahad Assani, has trashed calls by the Muslims Association of Malawi (MAM) to toughen the punishment for homosexual acts to include death penalty.

‘MAM general secretary Shiek Salmim Omar Idruss said those convicted of homosexual acts should face a death penalty and not 14 years jail as the law states now.

‘Idruss argued that capital punishment was the only way to rid society of homosexuality. However, Assani said pushing such a law there will be an international outcry, which could see some countries suspend aid to the country. Speaking in a telephone interview with Nyasa Times, Assani said Malawi is a democratic country and cannot promote homophobia and impose death penalty on gays.”35


7.1.7  Pink News reported on 18 March 2016 about Malawi Catholic bishops’ views on homosexuality:

‘Catholic bishops in Malawi have attacked the government for placing a moratorium on ‘harmful’ homosexual laws.

‘In a letter to parishioners, the bishops condemned homosexuality and the government’s actions.

‘They said that although the homosexual “condition is disordered but not sinful in itself”, if a person was to act on their feelings and have sex or a relationship, “these are objectively evil and totally unacceptable”.’36

7.1.8  Mambaonline (a South African gay news site) reported on 8 December 2016:

‘Christian leaders have led hundreds of people in marches to demonstrate against legalising homosexuality and abortion in Malawi.

‘Under the banner of the Citizen March for Life and Family, the events were held in a number of cities across the country on Tuesday [8 December 2016].

‘The marches were organised by the Episcopal Conference of Malawi (ECM) and the Evangelical Association of Malawi (EAM).

‘The Times and the Nyasa Times reported that the protests attracted people from various denominations, including priests from the Catholic Church and Rastafarians, as well as a number of politicians.

‘Marchers held up signs proclaiming, “Homosexuality is an Abomination B4 God” and “Man + Woman = Marriage,” and a host of anti-abortion messages…

‘While activists have called for the decriminalisation of homosexuality, there have been no moves or campaigns to legalise same sex-marriage in Malawi; a fact which religious leaders have ignored. They have instead used the contentious issue to drum up hysterical opposition against the LGBTI community; a strategy also seen in other African nations.’37

7.1.9  The Civic Freedom Monitor, report on Malawi, updated 18 November 2016, observed, ‘…some advances in deepening human rights in Malawi have at times received resistance from the citizenry, particularly on Gay, Lesbian, Bisexual, Transgender (LGBT) issues.’38


8. Societal treatment

8.1.1 The USSD report for 2014 noted that public discussion of LGBT rights increased during 2014\(^39\) and the USSD report for 2015 stated:

‘From January to September, the Center for Human Rights and Rehabilitation and the Center for Development of People documented 40 instances of abuse based on sexual orientation and gender identity. The nature of the abuses fell into three broad categories: stigma, harassment, and violence. The Weekend Nation newspaper published a weekly column entitled “Sexual Minority Forum” written by the leaders of human rights NGOs to shed light on conditions affecting LGBTI persons and their rights.’\(^40\)

See paragraph 7.1.6 for more information on the Centre for Development of People.

8.1.2 There are few reported cases of abuse against LGBT people although Nyasatimes reported an attack on a gay man in Lilongwe in February 2016\(^41\).

8.1.3 The UN Human Rights Committee noted in its Concluding Observations in a report dated 19 August 2014 that, ‘The Committee is concerned that the Malawi Human Rights Commission does not function fully independently and is not yet adequately funded. The reluctance of the Commission to engage on issues related to the rights of LGBTI persons is also a source of concern for the Committee.’\(^42\)

8.1.4 The International Gay and Lesbian Human Rights Commission [IGLHRC] continued that:

‘IGLHRC, CEDEP and 3 other civil society groups submitted shadow reports that document deficiencies regarding Malawi’s legal and policy framework to protect civil and political rights, including the continued explicit criminalization of consensual sexual acts between adults of the same sex. “The Committee raised the criminalization of consensual adult same-sex sexual acts as a serious concern,” said Marianne Møllmann, Director of Programs of IGLHRC. “The Committee understands that, when people are criminalized because of their real or perceived sexual orientation, this affects their ability to get jobs, go to school, or access potentially life-saving health treatment.”’\(^43\)

8.1.5 According to the The Marabi Post, in their article, ‘Caught Doing It – Two Malawians Girls Dismissed From School Over Lesbianism Act’:

‘Two girls have been dismissed from Michiru Secondary School in Blantyre for allegedly being found in a lesbianism act. The Malawi Penal Code, under Section 137A provides that any female person who, whether in public or private, commits any act of gross indecency with another female person, or procures another female person to commit any act of gross indecency with her, or attempts to procure the commission of any such act by any female person with herself or with another female person, whether in public or private, shall be guilty of an offence and shall be liable to imprisonment for five years.’

8.1.6 An article of 14 February 2015 on Global Gayz, called ‘Gay Malawi: Focused and Determined’, looked at the Center for Development of People (CEDEP), founded in 2005, with a ‘vision of health education and social support for the Malawi gay community’:

‘CEDEP now has its own offices in a modest 6-room house in the outskirts of downtown Blantyre. “Our target population is the LGBT community and sex workers and prisoners because they are left out of the government’s AIDS services and health education, which aims only at the larger hetero society. They think MSM [men who have sex with men] do not exist so we try to educate them about gay issues and human rights as well as educate our community about safe sex and being proud of who they are,” said Gift [Trapence, programme director]. It’s a tall order and a daunting challenge.

‘To that end, CEDEP’s leaders (three and a half paid staff) and some of its few hundred members across the country, mostly from urban areas, conduct outreach workshops focusing on health and human rights…and make lobbying efforts to the National AIDS Commission (NAC).

“…over the course of three years the NAC has become more willing to listen and is warming up to CEDEP’s presence even though CEDEP proposals and requests get delayed in the shuffle.” [Gift said]

‘CEDEP holds two meetings a month…at their offices…where members (15-20 at any one time) gather to talk about personal or organizational matters. A local psychologist facilitates the meeting as issues are raised such as sexual behavior, sexual identity, relationships, health education, coming out, and family/marriage issues.’

8.1.7 On 22 January 2016 the United Nations human rights office expressed concern over developments in Malawi, after the spokesperson of one of the country’s main political parties called for gay and lesbian people to be killed, describing them as "worse than dogs":


The spokesperson for the Office of the UN High Commissioner for Human Rights (OHCHR), Rupert Colville, told the regular bi-weekly press briefing in Geneva that "the statements were made earlier this month by People's Party spokesperson Kenneth Msonda on his personal Facebook page and repeated in media interviews."

'A criminal case was subsequently lodged against Mr. Msonda by two civil society organizations and he was due today to appear before the Blantyre Magistrate Court on charges of inciting others to break the law.

'However, the OHCHR spokesperson said that yesterday the director of public prosecutions decided to discontinue the case - underlining that the State would not prosecute Mr. Msonda.

'Mr. Colville said: "We are concerned that the failure to prosecute this case sends a dangerous message that inciting others to kill gay people is legitimate and will be tolerated by the authorities - in effect encouraging violent threats and attacks on the gay and lesbian community in Malawi."

'In May 2015, Malawi accepted a recommendation under the Human Rights Council's Universal Periodic Review in Geneva to "take effective measures to protect lesbian, gay, bisexual, transgender and intersex persons from violence, and prosecute the perpetrators of violent attacks."

"The Government of Malawi has a responsibility, enshrined in international human rights law, to protect all individuals from hatred and violence based on their sexual orientation and gender identity, and to hold to account anyone who either engages in such violence or incites others to do so," said Mr. Colville, concluding: "We urge the Government to meet its responsibilities in this regard."46

8.1.8 In May 2016 the All Africa Website published an article which stated:

'Failure by the government to come up with a clear-cut stance on homosexuality is endangering the lives of gays and lesbians in Malawi. This is the clear message from activists lobbying for the rights of minority groups ahead of International Day Against Homophobia and Transphobia (IDAHOT) on 17 May… Daliso [name changed], 25, from Blantyre says: "I started having feelings for boys when I was 13 years. I now have a boyfriend who lives here in the city and we have been in relationship for something like a year." Then he added quickly: "I also have a girlfriend to wave off suspicion from friends and relatives." Daliso is scared to tell his relatives about his sexuality. "I tried to tell some close friends but most of them have since been shunning me. Of course I don't trust even medical personnel, so I can't access reproductive health services." 47

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Version control and contacts

Contacts
If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then email the Country Policy and Information Team.

If you notice any formatting errors in this note (broken links, spelling mistakes and so on) or have any comments about the layout or navigability, you can email the Guidance, Rules and Forms Team.

Clearance
Below is information on when this note was cleared:

- version 3.0
- valid from 22 February 2017

Changes from last version of this note
Updated country information and guidance

Back to Contents
Tab 6
Human Rights Council
Working Group on the Universal Periodic Review
Twenty-second session

Compilation prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21

Malawi

The present report is a compilation of the information contained in reports of the treaty bodies and special procedures — including observations and comments by the State concerned —, in reports of the United Nations High Commissioner for Human Rights, and in other relevant official United Nations documents. It is presented in a summarized manner owing to word-limit constraints. For the full texts, please refer to the documents referenced. The report does not contain any opinions, views or suggestions on the part of the Office of the United Nations High Commissioner for Human Rights other than those contained in public reports and statements issued by the Office. It follows the general guidelines adopted by the Human Rights Council in its decision 17/119. Information included herein has been systematically referenced in endnotes. The report has been prepared taking into consideration the periodicity of the review, and developments during that period.
# I. Background and framework

## A. Scope of international obligations

<table>
<thead>
<tr>
<th>Status during previous cycle</th>
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<tr>
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<td>ICCPR (1993)</td>
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<td>CRC (1991)</td>
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<td>CRPD (2009)</td>
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<td>ICERD, art. 14</td>
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<td>CAT, art. 20 (1996)</td>
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<td>ICCPR, art. 41</td>
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<td>OP-CEDAW (signature, 2000)</td>
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## Other main relevant international instruments

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<td>Conventions on refugees and stateless persons</td>
<td>Convention on the Prevention and Punishment of the Crime of Genocide</td>
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<tr>
<td>Geneva Conventions of 12 August 1949 and Additional Protocols I and II</td>
<td>ILO Conventions Nos. 169 and 189</td>
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<td>ILO fundamental conventions</td>
<td>Additional Protocol III to the 1949 Geneva Conventions</td>
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<tr>
<td>Rome Statute of the International Criminal Court</td>
<td>UNESCO Convention against Discrimination in Education</td>
<td></td>
</tr>
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</table>
1. In 2014, the Human Rights Committee (HR Committee) requested Malawi to consider acceding to ICCPR-OP 2.

2. The Office of the United Nations High Commissioner for Refugees (UNHCR) stated that the reservations to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol were a major obstacle to refugees’ ability to enjoy their rights, access services and attain self-reliance. UNHCR recommended that Malawi withdraw the reservations and accede to the 1961 Convention on the Reduction of Statelessness.

3. The United Nations Educational, Scientific and Cultural Organization (UNESCO) stated that Malawi was not a party to the 1960 UNESCO Convention against Discrimination in Education.

B. Constitutional and legislative framework

4. The United Nations county team (UNCT) stated that during the universal periodic review on 1 November 2010 (2010 review), Malawi had expressed support for recommendation 102.5 to amend or repeal, as a matter of urgency, the Witchcraft Act, but that the Witchcraft Act was still under review by the Law Commission. Malawi had also expressed support for recommendation 102.4, to ensure that, inter alia, the Marriage, Divorce and Family Relations Bill entered into force as soon as possible. However, that Bill had yet to be enacted into law.

5. UNCT called for the enactment of the Marriage and Divorce Family Relations Bill, with provisions for the full and free consent of both partners to a marriage, and for the minimum age of marriage to be 18 years. HR Committee urged Malawi to expedite the enactment of the bill and to ensure that it set the minimum age of marriage in accordance with international standards.

6. The Special Rapporteur on the right to food recommended that Malawi establish a framework law on the right to food, building on the draft food security bill, through a consultative process with relevant stakeholders.

7. UNHCR recommended the enactment of the draft refugee law, pending since 2011.

8. UNESCO stated that defamation was a criminal offence. It recommended that defamation be decriminalized and incorporated into the Civil Code.

9. HR Committee expressed concern about delays in the adoption of the Access to Information Bill and about the potential of the draft E-Bill to limit freedom of expression. It stated that Malawi should expedite the adoption of the bill and ensure that its provisions and those of the E-Bill were in conformity with ICCPR.

10. HR Committee was concerned that the provisions of ICCPR were not given full effect in Malawi’s legislation, and urged Malawi to give them full effect in its legislation.

C. Institutional and human rights infrastructure and policy measures

Status of national human rights institutions

<table>
<thead>
<tr>
<th>National human rights institution</th>
<th>Status during previous cycle</th>
<th>Status during present cycle</th>
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</thead>
</table>

11. HR Committee was concerned that the Malawi Human Rights Commission did not function independently and was not adequately funded. It was also concerned at the
Commission’s reluctance to engage on lesbian, gay, bisexual, transgender and intersex (LGBTI) issues. It stated that Malawi should amend the Human Rights Commission Act to ensure that the Commission enjoyed full independence; provide the Commission with adequate resources; and establish mechanisms for the implementation of the Commission’s recommendations. Furthermore, the Commission should fully comply with its mandate and engage on all human rights issues, including those related to the rights of LGBTI persons.31

12. In 2014, the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) Sub-Committee on Accreditation noted the proposed amendments to the Human Rights Commission Act and that the Government intended to have the proposed amendments considered in Parliament during its February 2015 session. The draft bill would address all of the Sub-Committee’s previous recommendations.32

13. The Special Rapporteur on the right to food recommended that Malawi improve mechanisms and methodologies for the collection of adequately disaggregated data on poverty and food insecurity, with a view to improving the accuracy and reliability of different national surveys.33

14. UNCT stated that recommendation 102.11, which had been made during the 2010 review, relating to the adoption of a national action plan, legislation and policies for the protection of children’s rights, was not fully implemented.34 A national plan of action for vulnerable children (2014–2018), was in the process of being finalized, but the policy and national plan of action for children, mentioned in the recommendation, had yet to be finalized and implemented.35

II. Cooperation with human rights mechanisms

A. Cooperation with treaty bodies36

1. Reporting status

<table>
<thead>
<tr>
<th>Treaty body</th>
<th>Concluding observations included in previous review</th>
<th>Latest report submitted since previous review</th>
<th>Latest concluding observations</th>
<th>Reporting status</th>
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<td>CESCR</td>
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<td>February 2010</td>
<td>2014</td>
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<td>Seventh report pending consideration in 2015</td>
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<td>CAT</td>
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<td>Initial report overdue since 1997</td>
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<td>CRC</td>
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<td>Third to fifth reports overdue since 2013; initial OP-CRC-SC report overdue since 2011; initial OP-CRC-AC report overdue since 2012</td>
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2. Responses to specific follow-up requests by treaty bodies

Concluding observations

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<th>Subject matter</th>
<th>Submitted in</th>
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<tr>
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<td>2015</td>
<td>Extrajudicial killings; torture; sexual abuse of children; and forced and child marriages</td>
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<td>2013; additional information requested</td>
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B. Cooperation with special procedures

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<td>Visits agreed to in principle</td>
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<td>Visits requested</td>
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</tr>
<tr>
<td>Adequate housing</td>
<td>Human rights defenders</td>
</tr>
</tbody>
</table>

Responses to letters of allegation and urgent appeals

During the period under review, nine communications were sent. The Government replied to four communications.

III. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Equality and non-discrimination

15. UNCT stated that gender disparities existed in areas such as education, agriculture, trade, political participation, health and employment. This resulted in gender inequalities in the division of power, participation and control over resources and decision-making processes, and thus women remained disadvantaged in the socioeconomic, legal and political arenas.

16. The Special Rapporteur on the right to food indicated that women were among the ultra-poor and faced specific impediments to their enjoyment of the right to food. Given their traditional role in the family, women, in most cases, shouldered an unequal share of household responsibilities. Moreover, women constituted 70 per cent of the agricultural workforce, yet they were unequal to men in decision-making and control over production resources and land. The Special Rapporteur recommended that Malawi strengthen the integration of a gender perspective into food and nutrition security strategies and programmes.

17. While welcoming the adoption of the Gender Equality Act, HR Committee regretted that there were still laws in force which discriminated against women. It was particularly
concerned that, by law, women were denied rights equal to those with men with respect to nationality. It stated that Malawi should, inter alia, allocate adequate financial and human resources to the implementation of the Gender Equality Act and amend all laws that still discriminated against women, in particular sections 9 and 16 of the Citizenship Act, so as to ensure that nationality provisions applied equally to men and women. 45

18. UNCT stated that the Gender Equality Act (2013), which came into force in April 2014, prohibited harmful traditional practices, gender-based violence, sex discrimination and sexual harassment. It provided for the participation of women in decision-making positions in all spheres of life, especially public and political life, and equality of access to education and training, and recognized sexual and reproductive health rights. The Act proposed the introduction of quotas in education, employment and politics to ensure the visibility and substantive participation of women in those spheres. Efforts were in progress to develop implementation guidelines for the Act. 46

19. HR Committee was concerned that the draft bill on HIV/AIDS contained provisions which were not in conformity with ICCPR, such as those allowing a health service provider to disclose a person’s HIV status and providing for compulsory testing in certain circumstances. It stated that Malawi should review the draft bill on HIV/AIDS to ensure full compliance with ICCPR and international standards, and expedite its adoption. 47

20. UNCT stated that women’s experience of HIV and AIDS accentuated gender disparities and affected women’s roles at home and work and in society. The psychosocial and socioeconomic dimensions of HIV and AIDS were different for women and men because of women’s unequal status in the community. Gender inequality was a key variable in the high incidence of HIV and AIDS transmission among women. Vulnerability to HIV and AIDS was increased by a lack of respect for women’s sexual and reproductive health rights. Women’s subordinate position in society restricted the possibilities for women to take control of their lives to combat HIV and AIDS, leave a high-risk relationship or have adequate access to quality health care. 48

B. Right to life, liberty and security of the person

21. While welcoming the de facto moratorium on executions, HR Committee urged Malawi to consider abolishing the death penalty and to review the Penal Code to ensure that, if imposed, the death penalty was applicable only to the most serious crimes. It also stated that Malawi should provide adequate funds to resentence prisoners who had received the mandatory death penalty, and ensure the right to seek pardon or commutation of the death sentence. 49

22. HR Committee was concerned at the high number of reported cases of torture by law enforcement officers, and that the law on the use of firearms by police officers did not comply with international standards. It urged Malawi to investigate all cases of torture, prosecute alleged perpetrators and compensate victims, and to ensure that the Police Act complied with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officers. 50

23. The Working Group on Arbitrary Detention noted that four detainees had been kept in detention without trial for long periods and without minimum due process guarantees, including being promptly informed of the charges against them, and their rights to access legal counsel, to be presented before a judge and to be tried within a reasonable time. 51 It concluded that their detention was arbitrary, in contravention of articles 9 and 14 of ICCPR. 52

24. UNCT noted that during the 2010 review, Malawi had accepted a recommendation to, inter alia, promptly establish a Police Complaints Commission. 53 UNCT stated that an
Independent Police Complaints Commission had been established, but was yet to be operational.\footnote{54} Also, the Malawi Police Service had an Internal Affairs Unit with the mandate to investigate complaints against police officers, including violations of human rights, but the Unit was understaffed.\footnote{55}

25. HR Committee was concerned about the conditions of detention in prisons. It stated that Malawi should, inter alia, expedite the adoption of the Prison Act; strengthen the capacity and independence of the Prison Inspectorate; establish mechanisms to consistently consider the Inspectorate’s recommendations; and facilitate complaints from detainees.\footnote{56}

26. The Special Rapporteur on the right to food visited Maula Prison in the light of a 2009 High Court ruling concerning problems of severe overcrowding and inadequate food in prisons.\footnote{57} He mentioned that the Prison Service was only able to provide prisoners with one daily meal and that there were days when prisoners received no food.\footnote{58} He recommended that Malawi take immediate measures to ensure adequate food in prisons, including by raising current minimum standards in the new Prison Act.\footnote{59}

27. HR Committee was concerned that domestic violence remained widespread. It urged Malawi to expedite the review of the Prevention of Domestic Violence Act, explicitly criminalize spousal rape, bring alleged perpetrators to justice and strengthen the mechanisms to protect, compensate, rehabilitate and reintegrate victims.\footnote{60}

28. UNCT stated that violence against women and girls was widespread. Gender-based violence was rooted in socioeconomic and cultural factors at the household and community levels, including social-cultural and economic inequalities between men and women and the lack of empowerment of women. Sexual abuse of girls by teachers in schools, wife inheritance and sexual cleansing of widows were some of the aspects of gender-related violence. UNCT underscored the need for more gender-sensitive legislation and stronger enforcement of existing laws, greater support to victims and increased public awareness and promotion of gender equality.\footnote{61}

29. HR Committee was concerned about the persistence of traditional practices targeting widows, and urged explicit criminalization of “widow inheritance” and any other harmful traditional practices that discriminated against women and girls.\footnote{62}

30. HR Committee was concerned about reports on the prevalence of the practice of female genital mutilation, and urged Malawi to explicitly criminalize that practice.\footnote{63}

31. HR Committee was concerned about the persistent practice of forced and child marriages. It urged Malawi to expedite the adoption of the Marriage, Divorce and Family Relations Bill and to ensure that forced and child marriages were explicitly criminalized.\footnote{64}

32. HR Committee was concerned about the practice of ceremonies for girls which, inter alia, led to sexual abuse. It stated that Malawi should explicitly criminalize the practice of “sexual cleansing” rituals and ceremonies which led to sexual abuse, and to adopt a strategy to address such practices.\footnote{65}

33. HR Committee was concerned about the high prevalence of sexual abuse of children and that the Penal Code did not criminalize all forms of sexual abuse of boys. It urged Malawi to amend the Penal Code to criminalize all forms of sexual abuse of children, regardless of the sex of the child, bring perpetrators to justice and rehabilitate and compensate the victims.\footnote{66}

34. HR Committee was concerned about the high prevalence of child labour. It stated that Malawi should eliminate child labour by allocating adequate resources to the effective implementation of laws and relevant treaties.\footnote{67} Malawi should also develop a policy to reduce and prevent the phenomena of children in street situations.\footnote{68}
35. UNCT noted that, during the 2010 review, Malawi had accepted recommendations 102.12, 102.31, 102.32 and 102.33, all of which related, inter alia, to human trafficking. It stated that although the Child Care, Protection and Justice Act criminalized child trafficking, the existing legal framework that covered trafficking in persons was weak. It stated that the Law Commission had proposed the enactment of new legislation in that regard and the bill should have been submitted to Parliament in September 2014.69

36. HR Committee expressed concern about the prevalence of trafficking in persons, the lack of available official data and the delays in adopting specific legislation on trafficking. It deeply regretted the lack of adequate programmes for victims of trafficking. It stated that Malawi should expedite the adoption of a law on trafficking in persons, which provided for the criminalization of all forms of trafficking, sanctions and adequate assistance for victims, and that it bring alleged perpetrators to justice and ensure protection, assistance, rehabilitation and compensation for all victims.70

C. Administration of justice, including impunity and the rule of law

37. HR Committee was concerned about the high number of persons in pretrial detention; that pretrial detainees were not always held separately from convicted prisoners; and that the alternative measures to detention were not adequately applied in practice. It stated that Malawi should reduce the number of persons in pretrial detention; ensure that convicted persons were not detained with pretrial detainees; and increase the use of non-custodial penalties.71

38. HR Committee was concerned about the lack of sufficient judges, judicial officers and lawyers to address the backlog of court cases, and that the Legal Aid Office was under-resourced and understaffed. It stated that Malawi should develop a national policy for reducing the backlog of cases; strengthen the appeals procedure; increase the number of judges and judicial officers, in particular in rural areas; and implement the Legal Aid Act and the Legal Education and Legal Practitioners Act.72

39. HR Committee was concerned about reports of extrajudicial killings for which the alleged perpetrators had not yet been prosecuted or the prosecutions had not progressed expeditiously. It stated that Malawi should prosecute all alleged perpetrators of extrajudicial killings; expeditiously complete all prosecutions that had been initiated; and protect, rehabilitate and compensate the victims.73

40. UNCT stated that in sexual violence cases, women were unwilling to testify to their attacks because of the stigma associated with such attacks. It called for the formulation of special rules for court proceedings in cases of sexual violence. UNCT also stated that a key challenge to successfully prosecuting sexual violence offences was the requirement that the testimony of the victim be corroborated. In most cases, there was no corroborating evidence and Malawi did not have DNA testing facilities.74

41. UNCT stated that Malawi had made progress in strengthening the juvenile justice system: six child-friendly courts were operational in Blantyre, Zomba, Mzuzu, Nkhotakho, Salima and Mulanje; and 37 magistrates, 39 police prosecutors, 37 probation officers and 34 court clerks had been trained in juvenile justice. It considered that recommendation 102.37 made during the 2010 review, relating to juvenile justice, had been implemented.75

42. HR Committee was concerned that the age of criminal responsibility for children, which was set at 10 years in 2010, was still too low. It stated that Malawi should raise the age of criminal responsibility for children in accordance with international standards.76
D. Right to privacy, marriage and family life

43. HR Committee was concerned about searches without warrants and stated that Malawi should consider repealing section 35 of the Police Act in order to prevent arbitrary searches and interference with liberty and privacy.77

44. HR Committee stated that Malawi should explicitly provide by law that, in cases of divorce, courts fully recognize the value of non-financial contributions with regard to the acquisition of property during marriage.78

45. HR Committee was concerned that consensual same-sex sexual activity among consenting adults was still criminalized and about reports of violence against LGBTI persons. It stated that Malawi should review its legislation so as to explicitly include sexual orientation and gender identity among the prohibited grounds of discrimination, and to repeal the provisions that criminalized homosexuality and other consensual sexual activities among adults (arts. 137 (A), 153, 154 and 156 of the Penal Code). It also stated that Malawi should prosecute the perpetrators of violence against LGBTI persons; compensate the victims; and ensure that public officials refrained from using language that might encourage such violence.79

E. Freedom of expression, association and peaceful assembly, and right to participate in public and political life

46. HR Committee noted with satisfaction that Malawi had repealed section 46 of the Penal Code that empowered the Minister of Information to ban newspapers. However, it remained concerned about reports of journalists and human rights defenders being harassed and/or arrested by police. It stated that Malawi should ensure protection for journalists and human rights defenders from harassment and arbitrary arrest, prosecute those responsible and compensate the victims.80

47. In 2012, the Special Rapporteur on the situation of human rights defenders expressed deep concern about the situation of human rights defenders in Malawi, particularly with regard to restrictions on their rights to freedom of assembly and freedom of expression. She noted that human rights defenders who had exercised those rights had been subjected to violent attacks by security forces and other actors, which had resulted in injuries and even death.81

48. HR Committee noted that the Commission of Inquiry set up to investigate the handling of demonstrations in July 2011 had presented its findings in July 2012. It stated that Malawi should expeditiously prosecute all persons allegedly responsible for arrests, killings and ill-treatment in relation to the demonstrations and adequately compensate the victims.82

49. HR Committee stated that Malawi should guarantee the freedom of assembly and association, including by removing obstacles to the right to demonstrate and by applying the 48-hour notification rule.83

F. Right to work and to just and favourable conditions of work

50. The Special Rapporteur on the right to food stated that Malawi had one of the lowest national minimum wages worldwide, as a consequence of several decades of policies designed to produce cheap labour for the emerging estate sector by depressing the price of labour.84 He recommended that the Government: reform the national minimum wage to ensure for all workers, including casual/seasonal workers, a living wage, in line with
international human rights law; ensure that collective bargaining and the right to organize were respected in all sectors; and strengthen oversight of compliance with labour legislation, including through an adequately staffed and empowered labour inspectorate.  

51. HR Committee was concerned about reports that Rastafarians did not enjoy equal access to employment. It stated that Malawi should ensure equal access to employment for Rastafarians.  

G. Right to social security and to an adequate standard of living  

52. The Special Rapporteur on the right to food indicated that Malawi was among the poorest countries in the world, ranking 170th of 186 surveyed countries in the 2013 Human Development Index. He noted that the more than half of the population who live below the poverty line had seen little or no improvement in their situation over the past decade. One quarter of Malawians were considered “ultra poor”, with an income below the estimated cost of food that would provide the minimum daily recommended calorie intake. Inequality had worsened; and one third of the population was food insecure, with disrupted eating patterns and reduced food intake. The Special Rapporteur also noted that Malawi had one of the highest population growth rates in the region; its population was expected to triple to over 40 million by 2040. The Special Rapporteur advised that the country’s main agriculture support programme, the Farm Input Subsidy Programme (FISP), was in need of reform.  

53. The Special Rapporteur on the right to food recommended that the Government, inter alia: review and reform current agricultural input support programmes, in particular the FISP, which was aimed at supporting smallholder farmers and addressing food insecurity; ensure that the legal framework for the governance of land provided adequate protection against land grabbing and forced displacement, and gave specific attention to the specific obstacles faced by women; scale up school feeding programmes to achieve full national coverage, and source food for such programmes locally to create synergies with efforts to promote smallholder food production; scale up the social protection scheme of cash transfers to move away from donor-funded and time-bound projects towards a comprehensive system providing for a standing national social protection floor, while strengthening current mechanisms of community-based targeting.  

54. The Special Rapporteur on the right to food also observed that HIV/AIDS had resulted in a high number of “orphaned elderly”, who lacked the support of other family members, and of orphaned children being cared for by their grandparents or living in child-headed households.  

55. UNCT stated that in 2012/13, almost 2 million people were classified as food insecure and in 2013/14, about 1.85 million were classified as food insecure, despite a national surplus of maize production.  

H. Right to health  

56. HR Committee was deeply concerned about the high rates of maternal mortality, the general criminalization of abortion and the high percentage of unsafe abortion-related maternal deaths. While noting that a special commission had been set up in 2013 to review the abortion law, it was concerned about the excessive delays in reforming the law. It stated that Malawi should urgently review its legislation on abortion and provide for additional exceptions, such as in cases of pregnancy resulting from rape or incest, and when the pregnancy posed a risk to the health of the woman. The law should make reproductive
health services accessible for all women and adolescents, including in rural areas, and reduce maternal mortality.97

57. UNCT stated that the major causes of maternal deaths included haemorrhage, hypertension, sepsis and unsafe abortions. It mentioned the limited access to emergency obstetric care services; the unmet need for family planning; and the limited access to quality sexual and reproductive health information and services for women and girls, especially in rural and hard-to-reach areas. As a result of the high rate of teenage pregnancy, there was a large number of cases of obstetric fistula.98

58. HR Committee stated that Malawi should reduce teenage pregnancies by providing adequate sexual and reproductive health services.99

59. The Special Rapporteur on the right to food noted that levels of malnutrition were alarmingly high: about half of all children under 5 years of age showed signs of chronic malnutrition; an estimated 48 per cent were too short for their age (stunted); 30.6 per cent weighed too little for their age (underweight); and 11.4 per cent weighed too little for their height (wasted).100

60. HR Committee was concerned that LGBTI persons did not enjoy effective access to health services. It stated that Malawi should guarantee effective access to health services, including HIV/AIDS treatment, for LGBTI persons.101

61. UNCT stated that the criminalization of consensual same sex relations, societal stigma and discrimination had a detrimental impact on the enjoyment of the right to health. LGBTI persons were often not included in public health and support initiatives, such as education programmes or the provision of disease and infection prevention and care, and were denied access to necessary information, support and services to make informed decisions and to reduce their vulnerability to HIV.102

62. UNAIDS reported that since 2010, the number of new HIV infections in Malawi had decreased by 41 per cent.103 UNCT also reported a decline in the HIV epidemic and that Malawi was on track to achieve both goal 6 (Combat HIV/AIDS, malaria and other diseases) and goal 4 (Reduce child mortality) of the Millennium Development Goals.104

I. Right to education

63. UNESCO stated that Malawi did not offer compulsory and free education for all.105 It recommended that Malawi be encouraged to make primary education free and compulsory.106

64. HR Committee was concerned about reports that Rastafarian children were sometimes denied access to schools. Malawi should ensure equal access to education for Rastafarians.107

65. UNCT stated that despite the abolition of school fees in 1994, over 10 per cent of eligible children did not attend school. Net enrolment rates were high in grades 1 and 2 for both boys and girls, but completion rates for primary education were low at 26 per cent on average and only 16 per cent for girls; class sizes were huge, with a teacher-pupil ratio of 1:107 pupils. UNCT stated that the serious shortage of classrooms forced many children to learn outside in the open; only 20 per cent of children attending school had access to furniture; and teaching and learning materials were in short supply.108

66. UNESCO stated that Malawi had not taken sufficient measures to promote human rights education.109 It recommended that Malawi be encouraged to further promote human rights education.110
67. UNCT stated that gender parity in enrolment in secondary education had not been achieved and was unlikely to be achieved by the Millennium Development Goal target date of 2015.\textsuperscript{111}

J. Cultural rights

68. UNESCO stated that, as a party to the Convention concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention for the Safeguarding of the Intangible Cultural Heritage (2003) and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005), Malawi should be encouraged to fully implement the provisions that promoted access to and participation in cultural heritage and creative expressions, which were conducive to implementing the right to participate in cultural life.\textsuperscript{112}

K. Persons with disabilities

69. HR Committee was concerned about delays in implementing the Disability Act and the absence of programmes addressing the needs of persons with albinism. It stated that Malawi should allocate sufficient resources to the implementation of the Disability Act; ensure effective remedies in cases of violation of its provisions; and implement programmes specifically addressing the needs of persons with albinism.\textsuperscript{113}

L. Migrants, refugees and asylum seekers

70. HR Committee was concerned that Malawi had not granted refugee status to any asylum seeker since 2011. It was also concerned about reports that persons in need of international protection had been denied entry. It stated that Malawi should fully comply with the principle of non-refoulement and ensure that all persons in need of international protection received appropriate and fair treatment, and that decisions on refugee status determination were dealt with expeditiously.\textsuperscript{114}

71. UNHCR stated that the Eligibility Committee had not considered applications for refugee status for about two and a half years. It recommended that Malawi resuscitate the refugee eligibility determination process and hold refugee eligibility determination sessions on a regular basis, at least once a month.\textsuperscript{115}

72. UNHCR welcomed the compulsory universal birth registration process launched in 2012, and recommended that Malawi consider issuing birth certificates to children of refugees and asylum seekers born on its territory.\textsuperscript{116}

M. Right to development, and environmental issues

73. In 2014, the Special Rapporteur on the right to food noted that the 1994 Constitution of Malawi referred to access to food as part of the human right to development, and committed the State to “take all necessary measures for the realization of the right to development”. Consistent with the status of the right to food in domestic law and with the international obligations of the country, Malawian courts had recognized the justiciability of economic, social and cultural rights, including the right to adequate food.\textsuperscript{117}

74. The Special Rapporteur on the right to food indicated that, partly as the result of strong demographic growth, Malawi’s natural resources were under enormous pressure. While land degradation (aggravated depletion of soil fertility) was the most worrying sign
of the ecological crisis in Malawi, the country was also prone to natural disasters, in particular floods, droughts and dry spells. Droughts and floods pushed, on average, approximately 265,000 more people into poverty each year and caused an annual average loss of 1.7 per cent of gross domestic product.118

Notes


2 The following abbreviations are used in UPR documents:

- **ICERD** International Convention on the Elimination of All Forms of Racial Discrimination;
- **ICESCR** International Covenant on Economic, Social and Cultural Rights;
- **OP-ICESCR** Optional Protocol to ICESCR;
- **ICCPR** International Covenant on Civil and Political Rights;
- **ICCPR-OP 1** Optional Protocol to ICCPR;
- **ICCPR-OP 2** Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty;
- **CEDAW** Convention on the Elimination of All Forms of Discrimination against Women;
- **OP-CEDAW** Optional Protocol to CEDAW;
- **CAT** Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- **OP-CAT** Optional Protocol to CAT;
- **CRC** Convention on the Rights of the Child;
- **OP-CRC-AC** Optional Protocol to CRC on the involvement of children in armed conflict;
- **OP-CRC-SC** Optional Protocol to CRC on the sale of children, child prostitution and child pornography;
- **OP-CRC-IC** Optional Protocol to CRC on a communications procedure;
- **ICRMW** International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- **CRPD** Convention on the Rights of Persons with Disabilities;
- **OP-CRPD** Optional Protocol to CRPD;
- **ICPPED** International Convention for the Protection of All Persons from Enforced Disappearance.

3 Individual complaints: ICCPR-OP 1, art. 1; OP-CEDAW, art. 1; OP-CRPD, art. 1; OP-ICESCR, art. 1; OP-CRC-IC, art. 5; ICERD, art. 14; CAT, art. 22; ICRMW, art. 77; and ICPPED, art. 31. Inquiry procedure: OP-CEDAW, art. 8; CAT, art. 20; ICPPED, art. 33; OP-CRPD, art. 6; OP-ICESCR, art. 11; and OP-CRC-IC, art. 13. Inter-State complaints: ICCPR, art. 41; ICRMW, art. 76; ICPPED, art. 32; CAT, art. 21; OP-ICESCR, art. 10; and OP-CRC-IC, art. 12. Urgent action: ICPPED, art. 30.


5 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Geneva Convention relative to the Treatment of Prisoners of War (Third Convention); Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II). For the official status of ratifications, see International Committee of the Red Cross, www.icrc.org/IHL.
6 International Labour Organization Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105); Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation Convention, 1958 (No. 111); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182).
8 International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169); and Domestic Workers Convention, 2011 (No. 189).
9 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see International Committee of the Red Cross, www.icrc.org/IHL.
10 CCPR/C/MWI/CO/1/Add.1, para. 11.
11 UNHCR submission for the UPR of Malawi, p. 2.
12 Ibid., p. 2.
13 Ibid., p. 4.
14 UNESCO submission for the UPR of Malawi, para. 17.
15 See A/HRC/16/4.
16 UNCT submission for the UPR of Malawi, para. 4; see also A/HRC/16/4, para. 102.5.
17 UNCT submission, para. 4.
18 Ibid., para. 4; see also A/HRC/16/4, para 102.4.
19 UNCT submission, para. 4.
20 Ibid., para. 20.
22 A/HRC/25/57/Add.1, para. 83 (a).
23 UNHCR submission, p. 2.
24 UNESCO submission, para. 25.
25 Ibid., para. 35.
26 CCPR/C/MWI/CO/1/Add.1, para. 22.
27 Ibid., para. 5.
28 According to article 5 of the rules of procedure of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) Sub-Committee on Accreditation, the classifications for accreditation used by the Sub-Committee are: A: Voting Member (fully in compliance with each of the Paris Principles), B: Non-Voting Member (not fully in compliance with each of the Paris Principles or insufficient information provided to make a determination), C: No Status (not in compliance with the Paris Principles).
29 For the list of national human rights institutions with accreditation status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/27/40, annex.
30 Pending its re-accreditation, the NHRI retains its A status.
31 CCPR/C/MWI/CO/1/Add.1, para. 6.
33 A/HRC/25/57/Add.1, para. 83 (c).
34 UNCT submission, para. 8; see also A/HRC/16/4, para. 102.11.
35 UNCT submission, para. 8.
36 The following abbreviations are used in UPR documents:
   CERD Committee on the Elimination of Racial Discrimination;
   CESCER Committee on Economic, Social and Cultural Rights;
   HR Committee Human Rights Committee;
   CEDAW Committee on the Elimination of Discrimination against Women;
   CAT Committee against Torture;
   CRC Committee on the Rights of the Child;
CMW  Committee on the Protection of the Rights of All Migrant Workers and
Members of Their Families;
CRPD  Committee on the Rights of Persons with Disabilities;
CED  Committee on Enforced Disappearances;
SPT  Subcommittee on Prevention of Torture.

37 CCPR/C/MWI/CO/1/Add.1, para. 29.
38 CEDAW/C/MWI/CO/6, para. 52.
39 CEDAW/C/MWI/CO/6/Add.1.

See letter dated 15 November 2013 from the Rapporteur for follow-up on concluding observations of
CEDAW to the Permanent Representative of the Republic of Malawi to the United Nations, available
from http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/
MWI/INT_CEDAW_FUL_MWI_15778_E.pdf.

For the titles of special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/Themes.aspx and
www.ohchr.org/EN/HRBodies/SP/Pages/Countries.aspx.

UNCT submission, para. 12.
A/HRC/25/57/Add.1, para. 68.
Ibid., para. 83 (b).
CCPR/C/MWI/CO/1/Add.1, para. 7; also UNCT submission, para. 21.
UNCT submission, para. 18.
CCPR/C/MWI/CO/1/Add.1, para. 20.
UNCT submission, para. 13.
CCPR/C/MWI/CO/1/Add.1, para. 11.
Ibid., para. 13.
A/HRC/WGAD/2012/15, para. 52.
Ibid., para. 56.
UNCT submission, para. 30.
Ibid., para. 30.
Ibid., para. 30.
CCPR/C/MWI/CO/1/Add.1, para. 16.
A/HRC/25/57/Add.1, para. 70, referring to High Court of Malawi Lilongwe District Registry,
Constitutional case No. 15 of 2007, Masangano v. Attorney General, Minister of Home Affairs and

A/HRC/25/57/Add.1, para. 71.
Ibid., para. 83 (m).
CCPR/C/MWI/CO/1/Add.1, para. 14.
UNCT submission, para. 31.
CCPR/C/MWI/CO/1/Add.1, para. 8.
Ibid., para. 8.
Ibid., para. 25.
Ibid., para. 8.
Ibid., para. 24.
Ibid., para. 26.
Ibid., para. 26.
UNCT submission, para. 36.
CCPR/C/MWI/CO/1/Add.1, para. 17.
Ibid., para. 15.
Ibid., para. 18; see also UNCT submission, para. 37.
CCPR/C/MWI/CO/1/Add.1, para. 12; also UNCT submission, para. 26.
UNCT submission, para. 35.
Ibid., para. 38.
CCPR/C/MWI/CO/1/Add.1, para. 18.
Ibid., para. 20.
Ibid., para. 7.
Ibid., para. 10; also UNCT submission, para. 14.
CCPR/C/MWI/CO/1/Add.1, para. 22.
A/HRC/19/55/Add.2, para. 225.
Tab 7
Malawi's HIV prevalence is one of the highest in the world, with 9.2% of the adult population (aged 15-49) living with HIV. In 2018, an estimated one million Malawians were living with HIV and 13,000 Malawians died from AIDS-related illnesses. The Malawian HIV epidemic plays a critical role in the country’s life expectancy of 61 years for men and 67 for women.

Over the last decade, impressive efforts to reduce the HIV epidemic have been made at both national and local levels. In 2018, 90% of people living with HIV in Malawi were aware of their status, of whom 87% were on treatment. Of these people, 89% were virally suppressed, meaning the country is very close to reaching the UNAIDS 90-90-90 targets. This equates to 78% of all people living with HIV in Malawi on antiretroviral treatment (ART) and 69% of all people living with HIV virally suppressed.
Among children (0-14 years) treatment coverage is lower at only 61% of HIV-positive children accessing ART.5

New infections have dramatically declined from 66,000 new infections in 2005, to 38,000 in 2018.6 An impressive prevention of mother-to-child transmission (PMTCT) programme in Malawi has also driven down new HIV infections among children (ages 0-14). In 2018 there were 3,500 new paediatric infections, compared with 15,000 in 2010.7

Malawi’s HIV epidemic is generalised, which means it affects the general population as well as certain high-risk groups. Unprotected heterosexual sex between married or co-habiting partners accounts for the majority of all new HIV infections (67% in 2015), although unprotected casual heterosexual sex also accounts for a significant proportion of transmission (12% of new cases in 2015).8 Beyond this, several populations groups such as adolescent girls and young women, sex workers and men who have sex with men are particularly vulnerable to HIV.

The Malawian HIV epidemic varies greatly across the country, ranging from 4.9% of adults living with HIV in the Central East region to 17.7% of adults living with HIV in Blantyre City. HIV prevalence is also high in the urban districts of Lilongwe and Zomba and in the southern region of the country.9 In March and April 2019, Cyclones Idai and Kenneth caused huge damage in Malawi and lead to widespread flooding. This has left many people without healthcare, reducing access to HIV services. It is also increasing HIV risk, with reports of displaced women and girls being exposed to higher levels of sexual and gender-based violence in camps set up for those affected by the disaster.10

Groups most affected by HIV in Malawi

Women

HIV disproportionately affects women in Malawi. A national assessment of the impact of HIV on the
population, the Malawi Population-Based HIV Impact Assessment (MPHIA) carried out by the Malawian Ministry of Health in 2015-2016, found HIV prevalence among adult women (aged 15-64) to be 12.8%, compared with 8.2% among adult men.11 This disparity is especially prominent among 25- to 29-year-olds, as HIV prevalence is three times higher among women than men in this age group (13.6% vs 4.7%).12

Sexual violence is also an issue. Around 4% of married or ever-partnered women (ages 15-64) participating in MPHIA had experienced physical or sexual violence in the 12 months preceding the survey. Among adolescent women (ages 15-19) the proportion is higher at just under 6%. Most of the perpetrators of sexual violence against women are spouses, boyfriends or romantic partners (sexual violence is also known as ‘intimate partner violence’).13

Young people

Just under one-third of all new HIV infections (14,000 out of 38,000) in Malawi in 2018 occurred among young people (aged 15-24). Roughly two-thirds of new infections among young people were among young women (9,900 new infections among young women, compared to 4,200 among young men).14 In 2018, 4.3% of young women were living with HIV, compared to 2% of young men.15 Awareness of status is particularly low among HIV-positive young people, with around 67% of HIV-positive men aged 20-24 and 58% of HIV-positive women aged 15-19 unaware of their status.16

In 2015/16, the latest available data, it is estimated that 54% of young people living with HIV had been diagnosed (45% of HIV positive young men and 58% of HIV-positive young women). Among those diagnosed, 86% were on treatment, of whom 81% were virally suppressed.17

Early sexual debut is high in Malawi, with around 14% of young people having sexual intercourse before the age of 15 (19% of young men and 9% of young women).18

Furthermore, girls aged 15-19 are 10 times more likely to be married than their male counterparts, with around 45% of women having their first marriage before they turn 18, nearly one in two, and 9% before the age of 15.19 In an attempt to deal with this issue, Malawi increased the minimum age of marriage in 2017 from 15 to 18 for males and females, criminalising child marriage. However, many child marriages still occur.20

“…my father was given MK20,000 ($28 USD) and two mobile phones [as payment for the marriage]. I was so angry when my father told me to stop school and prepare for marriage. I had never thought of getting married before. My dream was to continue with my education and become self-reliant.” – Eliza, 16, who was offered for marriage at the age of 14.21
With young people engaging in sex at an early age, addressing the sexual and reproductive health needs of this population is critical. However, knowledge of HIV prevention among young people is poor, with just 40% of young people demonstrating sufficient knowledge of HIV prevention in 2016, with little variation between men and women. For both sexes, comprehensive knowledge about HIV generally increases with age, educational attainment, and wealth. Urban young people are more likely than rural young people to have knowledge of HIV prevention. Around 40% of 15 to 19-year-olds who had sex with a non-martial, non-cohabiting partner did not use a condom, a higher proportion than other age groups. Young people often face obstacles to accessing contraceptives and health services, which increases their risk of acquiring HIV and other sexually transmitted infections (STIs). Sexual violence is also an issue for young people. Around 23% of females and 13% of males aged 13-17 surveyed by UNICEF in 2013 reported experiencing sexual violence in the past 12 months.

**Sex workers**

Sex work is criminalised in Malawi, limiting the amount of available data on this key population, as well as the support and services sex workers are able to access.

In 2018, 55% of sex workers were estimated to be living with HIV. Although this is a decrease from 2014 when prevalence stood at 63%, this remains an unacceptably high level. There is evidence of growing positive trends in the adoption of safer behaviours by female sex workers that may help to further reduce HIV transmission in the coming years. In 2018, 65% of female sex workers reported using a condom with their most recent client and 91% of sex workers diagnosed with HIV were on treatment. However, it is estimated that around a quarter of HIV-positive sex workers (23%) were unaware of their status. Sex workers in Malawi face high levels of human rights abuses, including discrimination and stigma when seeking HIV services, further increasing their vulnerability to HIV. They also experience high levels of violence, discrimination and abuse from police, intimate partners, clients and members of the public.
In addition, sex workers in Malawi may be evicted from their homes and denied housing due to their occupation. Sex workers living with HIV have also reported being denied access to loans, bank accounts, property and social services due to their HIV status.30

Men who have sex with men (MSM)

Although data is limited, it is estimated that around 7% of men who have sex with men in Malawi are living with HIV.31 Although HIV prevalence tends to be higher in older men, a study published in 2017 found 11.8% of 18- to 19-year-old men who have sex with men were already living with HIV. This highlights the importance of targeting young people for HIV prevention and testing services, regardless of their gender or sexual orientation.32

Homosexuality is illegal in Malawi, punishable by up to 14 years in prison, although prosecutions were suspended in 2012.33 Nevertheless, men who have sex with men still face varying levels of punishment. For example, a police officer may still prosecute someone involved in same sex acts under the provision that they are ‘breaching the peace’.

Men who have sex with men experience assault, arbitrarily arrest and detainment as the hands of the police, sometimes without legal basis. Men who have sex with men may also be arrested if their sexual orientation is exposed when seeking healthcare, causing many to shun HIV and other sexual health services.34

Many men who have sex with men also face increased levels of stigma and violence from members of the public. A 2016 survey of around 200 men who have sex with men found that 39% had experienced a human rights abuse in some form, including 12% who had been raped.35

All of these factors create a hostile environment that increases men who have sex with men’s vulnerability to HIV while lessening their ability to access HIV prevention and treatment services.

High-risk behaviours are common, including multiple sexual partners, inconsistent condom use and exchanging sex for money.36 It is estimated that around 55% of men who have sex with men do not regularly use condoms.37

Children and orphans

An estimated 74,000 children (aged 0-14) were living with HIV in 2018 of whom 61% were receiving antiretroviral treatment.38 Thanks to a successful PMTCT programme, 9,600 new HIV infections among children were averted in 2018, with transmission rates from mother-to-child reduced to 8.8% at 12 months after birth.

There are an estimated 500,000 orphans in Malawi (ages 0-17) as a result of AIDS.39 Supporting the needs of orphans and other children made vulnerable by AIDS is identified as a main element of the national Malawian HIV response.40 Factors such as poverty are preventing the roll-out of adequate support and services for these children.
HIV testing and counselling (HTC) in Malawi

HIV testing and counselling (HTC) services have increased over the last few years in Malawi, surpassing national targets.

HTC services are provided in two ways: through client-initiated HTC (also known as ‘voluntary counselling and testing’), and provider-initiated HTC. Provider-initiated testing, which is when a healthworker offers an HIV test to a patient, occurs in a wide variety of settings, including healthcare facilities, mobile testing units, people’s homes and at national health events. In clinical settings, HIV testing is available in adult and paediatric inpatient wards, nutritional clinics, antenatal care, maternity and postnatal wards, out patient departments and sexual health clinics.41In comparison, 1.8 million people accessed HTC services in total during 2014.42 This suggests HIV testing services have significantly expanded in recent years.

Of the 1 million people that tested for HIV between April and June 2017, 37% were men and 63% were women. One in five of all people testing (20%) accessed HTC as part of a couple. Around half (48%) of those testing were aged 25 or above, 38% were aged 15-24 and 13% were under the age of 15.43

The testing discrepancy between men and women means women living with HIV are more likely to be aware of their status. In 2018, 94% of HIV-positive women diagnosed, compared to 89% of HIV-positive men.44

An analysis of HIV testing data collected through Malawi’s 2015/16 HIV Impact Assessment suggests that HIV testing programmes need to specifically target younger, unmarried men aged 15–19, men with poor education levels, and men who live in the central and southern regions of the country.45

Although HIV self-testing kits are not widely available, UNITAID’s 4-year Self-Testing Africa (STAR) project is trialling self-testing in the country. Initial results from 2016 suggest that, when HIV self-testing is provided as part of a community-based approach, it can increase uptake of testing services, particularly among men and adolescents, and connect people to HIV treatment, particularly among individuals who are at high risk of HIV infection. For example, 26% of those using the self-testing kits in 2016 were first-time testers, 26% were aged 16–24, and 49% were men (aged 16-65). Overall, testing coverage among men in areas where STAR operated increased by 24%.46

The 2015/16 HIV impact assessment survey found that 76% of men and 68% of women questioned said they would use an HIV self-test kit if it was available.47

Case study: Using community health workers to increase HIV testing

In 2015, Malawi piloted the HIV Diagnostic Assistant (HDA), a cadre of community-based, non-professional health workers who work to encourage others from their communities to test for HIV. A study measuring the impact of the lay healthcare workers found their presence significantly increased the number of people testing for HIV, leading to an increase in HIV diagnoses. It also helped to increase testing for other STIs, such as syphilis.

The number of tests conducted during the intervention increased by around 35,500. Rises in testing were seen across all sex, age, and testing subgroups. Of the 7.4 million people tested for HIV in the post deployment period, 2.6 million (34%) were attributable to the intervention.48
HIV prevention programmes in Malawi

In 2018, 38,000 people became newly infected with HIV in Malawi. Malawi’s National HIV and AIDS Strategic Plan 2015-2020 has various prevention policies and strategies for reducing new HIV infections. Some of these strategies are outlined below.

The country’s draft replacement HIV prevention strategy includes guidance on intervention packages for adolescents and young women and a number of key affected populations, such as sex workers and men who have sex with men, but does not mention people who use drugs and transgender people.

Condom availability and use

The provision of free condoms has been a major element of Malawi’s National HIV Prevention Strategy.

In 2017, it was estimated that 77 million male condoms were required to meet need in Malawi, 59 million of which needed to be supplied by the public sector. The Global Fund to Fight AIDS, Tuberculosis and Malaria procured the bulk of publically-provided male condoms that year, totalling around 70 million, which suggests a shortage of approximately 16 million.

Malawian men demonstrate one of the highest rates of condom use at last high-risk sex (with a non-marital, non-cohabiting partner) in Eastern and Southern Africa, at 76% (in 2016). However, condom use among Malawian women engaging in high-risk sex is significantly lower at 50%.

HIV education and approach to sex education

Raising awareness about how to prevent HIV is a key part of Malawi’s prevention strategy. This is covered in life skills education (LSE) for young people who are both in-school and out-of school. LSE subjects include the promotion of mutual faithfulness and the use of male and female condoms.

Before 2010, LSE for young people in school was irregular. By 2014, still the most recent data available in 2019, all students in primary and secondary schools were exposed to LSE. However, only 53,600 of a target of 150,000 young people out-of school had received LSE.

A study investigating LSE in four primary schools in the Zomba district, Malawi found the quality of lessons on offer are affected by a number of factors. These include poor teaching conditions, inaccessible language in teachers’ LSE guides, a lack of community support for sex education and teachers feeling that it is inappropriate to teach sexual education to 9 and 10-year-olds.

Radio shows are also used to raise awareness of HIV prevention in Malawi. For example, Health Policy Plus (HP+) is helping young people produce local weekly radio programs on HIV and family planning, which have the potential to reach around 3.3 million people. Around 200 adolescents (ages 14 to 19) have been trained to produce the shows and others run clubs that encourage other young people to listen. In the programme’s first three listening areas, after eight months, 60% of young people and parents surveyed were aware of the radio show and the government’s youth-friendly health services policy that the show’s presenters had discussed.
Prevention of mother-to-child transmission (PMTCT)

Malawi has demonstrated an unprecedented commitment to preventing transmission from mothers living with HIV to their infants in recent years. Major achievements include the expansion of sites providing prevention of mother-to-child transmission (PMTCT) services. In July 2011 Malawi became the first country to implement the Option B+ approach, which means that all pregnant women living with HIV are offered antiretroviral treatment for life – irrespective of CD4 count.

The impact of this has been huge. Between 2011 and 2018, the proportion of women with HIV who were diagnosed went from 49% to 94%. As of 2018, more than 95% of pregnant women were tested for HIV and more than 95% of those testing positive were on treatment. In the same year, more than 95% of at-risk newborns were tested for HIV within the first six weeks of life (known as ‘early infant diagnosis’). In addition to protecting the health of mothers, this has enabled Malawi to avert an estimated 71,000 new infections among children between 2010 and 2018, equating to a more than 70% decline in new HIV infections among infants and children during that time period.

Clara was 25 when she noticed she had the same symptoms as her parents. But despite knowing she was living with HIV, guidelines at the time only allowed access to antiretroviral treatment if her CD4 count had fallen below 200 (guidelines now recommend people start treatment as soon as they are diagnosed). She had to travel 400km just to get a CD4 count test, which confirmed she had advanced stage HIV infection and a CD4 count of only 32.

Today, treatment has made her viral load undetectable and her oldest daughter, who also lives with HIV, is in good health. Her youngest daughter was born HIV-negative, as a result of improved access to PMTCT services. Clara now co-ordinates national activities for women living with HIV, offers advice, encourages testing and works to combat stigma and discrimination.

The 2015 Malawi Progress Report identifies early infant diagnosis as a priority for the national HIV and AIDS response. In 2016, around 31% of infants were diagnosed within the first two months of birth. However, this is a decline from 2014 levels when 37% received early infant diagnosis. Addressing the delay between birth and diagnosis is crucial for reducing infant mortality as a result of HIV infection.

Voluntary medical male circumcision (VMMC)

Another effective prevention strategy that has been scaled-up across Malawi is voluntary medical male circumcision (VMMC), which is now a key national prevention strategy.

The availability of VMMC has increased since 2012. Around 199,400 circumcisions were conducted in 2018, more than double the number carried out in 2014, and up from just 589 in 2008. However, this is still below the country’s stated target of 250,000.

Overall, the proportion of circumcised men in Malawi has increased marginally, from 21.5% in 2010 to 27.8% in 2016. A number of barriers limit the uptake of VMMC. Misconceptions about the efficacy and unintended consequences of this intervention are high. Malawi’s National AIDS Commission (NAC) reports how some men perceive VMMC as a guaranteed protection against HIV, which may promote
high-risk sexual behaviour, while others have expressed concerns about its adverse effects on sexual pleasure and performance.

Malawi has been successful in recruiting circumcised men from communities targeted for VMMC to encourage other men to be circumcised. A study among men living in three districts in southern Malawi found 90% of those undertaking VMMC had heard about it from a community mobiliser.65

Pre-exposure prophylaxis (PrEP)

Pre-exposure prophylaxis (PrEP) is not widely available in Malawi, although a clinical trial among HIV-positive pregnant adolescents and young women (ages 16-24) and an implementation study for at-risk adults and adolescents are underway. As a result of these programmes, as of 2019 between 100-300 people were using PrEP, a figure that is projected to increase to around 1,000 by the end of the year.

In May 2018, the Minister of Health Atupele Muluzi described the government’s approach to PrEP as one of “caution”, suggesting national roll-out is not imminent.66

Antiretroviral treatment (ART) availability in Malawi

Malawi has a ‘test-and-treat’ strategy, which calls for all people living with HIV to begin antiretroviral treatment (ART) as soon as possible, irrespective of their CD4 count.67 Malawi’s ART rollout has significantly expanded, with 78% of all adults living with HIV receiving ART in 2018, an increase of 28% since 2015.68 In 2018, 89% of people diagnosed with HIV and on treatment were virally suppressed.69

In 2018, the percentage of men living with HIV who were on ART and virally suppressed was significantly lower than that of women (61%, compared to 79%). This is a direct result of the majority of Malawian men living with HIV being unaware of their HIV status and the success of Malawi’s PMTCT programme.
As a result of expanded access to treatment, AIDS-related deaths decreased by 55% between 2010 and 2018, with more Malawians living healthy lives on ART than ever before.70

In 2015, just 40% of children (aged 0-14) living with HIV were on ART. To improve treatment coverage for this age group, in 2016 Malawi began piloting easier-to-take ARV formulations for infants and young children.71 This has had an impact, with 61% of HIV-positive children on ART as of 2018.72

Despite these successes, treatment adherence levels in Malawi are lower than the rate of 85% recommended by the World Health Organization (WHO). In 2018, 65% of people living with HIV who had begun ART were still on it after 12 months, the lowest rate recorded since 2011.73 This is potentially due to the rapid expansion of the number of people on treatment. Adherence levels are lower among adolescents than adults. Recent research found that 45% of adolescents living with HIV reported missing ART in the past month. The most commonly reported reason was forgetting (more than 90%), travel from home (14%) and busy doing other things (11%). Alcohol use, violence in the home and low treatment self-efficacy were all associated with worse adherence.74

Drug resistance

Data on HIV drug resistance (HIVDR) in Malawi is limited, but globally prevalence of HIV drug resistance is now estimated to be 9%. In 2016, WHO estimated that pre-treatment resistance to NNRTIs (a type of antiretroviral treatment drug) had reached 11% in Southern Africa. Weak health systems, limited viral load monitoring, and low levels of adherence are key issues for Malawi in addressing drug resistance.

A 2017 study among HIV-positive pregnant women in Malawi found that, among those who were not virally suppressed, 35% tested positive for drug-resistant HIV, mainly due to NNRTIs.75

To respond to emerging HIV drug resistance, in 2018 the Malawi Ministry of Health began changing its first-line treatment regimen to include dolutegravir, an antiretroviral that has fewer side effects than other ARVs.76

Civil society’s role in Malawi

In Malawi, the law protects civil society, although government intimidation and policing sometimes impede activism and the work of civil society organisations (CSOs). Fears exist that the independence of CSOs will be further eroded by the restrictive 2017 NGO (Amendment) Bill.77

Non-government organisations (NGOs) play a vital role in representing the most vulnerable in society in a number of areas, including health. NGOs have made strides in furthering human rights by raising awareness against negative cultural traditions and beliefs such as child marriage. However, NGOs working on issues relating to men who have sex with men and other people who are LGBTI have had less of an impact.78

I wish for the day Malawians will accept us as we are. Being gay or lesbian in this country, you risk being excommunicated from church, fired from work, banished from home and even
HIV and tuberculosis (TB) in Malawi

HIV remains the most important risk factor for developing active TB in Malawi: in 2015/16, 47% of people with living with HIV who tested for TB were diagnosed as positive.80

TB is the leading cause of death among people living with HIV, accounting for around 3,700 AIDS-related deaths in 2018, around a quarter of all AIDS-related deaths that year.81 Despite high levels of TB/HIV co-infection, until the mid 2010s TB and HIV were traditionally treated under separate programmes. However, Malawi’s National TB Control Program (NTP) and the Malawian Ministry of Health are increasingly working together to integrate TB and HIV services.82

This strategy is having an impact. In 2017, 65% of people co-infected with HIV/TB were on treatment for both diseases, compared to 45% in 2015.83 However, only half of all people living with HIV were offered preventative TB treatment when they enrolled in HIV care.84

Barriers to the HIV response in Malawi

Cultural barriers

Malawi’s National HIV and AIDS Strategic Plan 2015-2020 recognises that certain cultural norms are a barrier to HIV prevention. Socio-cultural factors such as initiation ceremonies and rituals have been found to lead to unprotected sex, increasing young people’s vulnerability to HIV, especially among girls.85

Multiple and concurrent sexual partners, which can increase the transmission of HIV, is a feature of Malawian culture. The 2015-2016 health survey found that 13% of men had two or more partners during the 12 months prior to the survey, compared to 1% of women.86 For married men, this figure increases to 16%.87

A 2013 study based on in-depth interviews with around 70 women found marriages in Malawi to be characterised by such stark gender inequalities that marriage itself is a risk factor for HIV infection in women. Respondents generally reported they had remained faithful while their husbands had girlfriends or had taken an additional wife within a polygamous marriage, which is legal in Malawi.88

Legal barriers

Malawi has no legal restrictions that discriminate against people living with HIV entering and residing in the country. A long deliberated HIV Bill was rejected by parliament in December 2017, which would have made HIV testing and treatment mandatory for certain populations and sought to criminalise HIV exposure and transmission.89

However, punitive laws are hindering an effective response for key affected populations, particularly sex workers and men who have sex with men. In Malawi, same-sex sexual relations are illegal,
punishable with up to 14 years in prison. Although a moratorium on arrests and prosecutions was issued in 2012, something the Malawi High Court later ordered to be overturned, pending judicial review by the Constitutional Court.

Stigma and violence experienced by key populations, linked closely to their criminal status under Malawian law, often prevents these groups from accessing HIV testing, prevention and treatment services. For example, in a 2016 survey of Malawian men who have sex with men, 17.5% reported being afraid to seek healthcare of any kind. A report by Human Rights Watch in which 45 lesbian, gay, bisexual and transgender (LGBT) people were interviewed found evidence of routine discrimination and stigma in healthcare settings, coupled with high levels of abuse and violence in everyday life, meant many LGBT people did not seek HIV services and treatment.

HIV-related stigma is also an issue. In Malawi’s 2015/16 national HIV impact assessment survey, 11% of adults held discriminatory attitudes towards people living with HIV. Those with low levels of education were significantly more likely to hold such attitudes.

Data issues

While Malawi’s current national HIV reporting system is robust, until 2018 it produced limited age-and sex-disaggregated data. This has impeded the country’s response as it means there is a lack of information about which population groups are being reached with services effectively and which populations are currently under-served. In 2018, the US President’s Emergency Plan for AIDS Relief (PEPFAR) helped to improve data collection, and the Ministry of Health now has access to near real-time age-, sex-, and region-disaggregated data. However, as of 2018 no national data on people who inject drugs and very little on transgender people was available.

Structural and resource barriers

Gains made in addressing the HIV epidemic in Malawi are threatened by key weaknesses in the country’s overall health system. Malawi has one of the most severe health workforce crises in Africa, with the lowest physician-to-population ratio at 2:100,000 and second lowest nurse to population ratio at 28:100,000.

In 2017, of the 719 functioning health facilities across the country, 81% were in rural areas. Rural clinics are unevenly distributed, forcing many people to walk more than 10km to access services. In addition, 40% of public health facilities had no regular electricity supply, only half have running water, and two thirds do not have toilet facilities.

Another key issue is a lack of adequate infrastructure to meet the needs of HIV testing services as well other HIV treatment services. In 2016, 11% of facilities reported a stock-out of HIV testing kits. Laboratory systems are also weak and cannot efficiently support viral load testing.

In addition, although the Ministry of Health has sanctioned the use of community-based structures to implement and deliver HIV services interventions, resources for community-based organisations are scare.

Funding for HIV in Malawi

In 2017, Malawi received more than 95% of funding for its HIV response from international donors, the
biggest of which are the Global Fund to Fight AIDS, Tuberculosis and Malaria and PEPFAR. There is concern about how sustainable Malawi’s HIV response will be should international donors continue to reduce funds.

As in most other countries, there are also issues around how the country’s HIV budget is allocated. For example, under the 2017 Global Fund spending allocation, US$214 million was provided for ARVs and US$71.7 million for other HIV care and treatment services, making HIV treatment and care the biggest expenditure. In contrast, just US$29.8 million was allocated for HIV prevention among key populations and US$15.4 million for HIV testing. While it is unclear just how much of the Malawi’s total HIV budget is allocated to prevention, civil society organisations report that the proportion has been reducing in recent years.

Issues of corruption within the government have severely affected overseas development aid provision. Sometimes, funds are not available or inconsistently disbursed, impeding the rollout of HIV prevention programmes and the provision of treatment.

**The future of HIV in Malawi**

Malawi has made impressive progress in responding to its HIV epidemic, particularly PMTCT which has dramatically reduced infections in new-born babies.

In its 2015-2020 HIV strategy, NAC states that Malawi will aim to meet the UNAIDS 90-90-90 treatment targets. However, a number of gaps in the country’s response may lessen its ability to reach these goals. In particular, reaching the first target on testing, especially among men and young people, represents the country’s greatest challenge. In addition, an increase in spending on HIV prevention in needed to fund a number of important initiatives, such as effective behaviour change programmes for young people to increase HIV prevention knowledge and condom use.

Malawi faces challenges with regard to ensuring adequate funding for both its HIV response and its healthcare system in general, a challenge shared by many countries across sub-Saharan Africa. A severe shortage of health workers, poorly-equipped healthcare facilities and laboratories unable to carry out viral load testing continue to restrict progress.

Greater effort is also required to support sex workers, LGBTI people and men who have sex with men via comprehensive prevention programmes and campaigns that challenge stigma and discrimination. Unless these groups’ needs are properly addressed, significant gaps in Malawi’s HIV response will remain.

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Last full review: 23 April 2018
Next full review: 22 April 2021
Tab 8
“Be the change”: creating a voice for male sex workers in Malawi
27 May 2019

27 May 2019

“If I want to see the change, I need to be the change,” said Aniz Mitha, the Executive Director of Community Health Rights Advocacy (CHeRA), an organization that works with male sex workers in Malawi. When Mr Mitha speaks of change, he does so with the quiet and unwavering authority of someone who knows what he is talking about.

From a conservative Muslim family in Malawi, Mr Mitha was thrown out of the house at a young age when his parents found out that he was gay. With nowhere to go and no means to support himself, he
When he became ill, he took an HIV test, and he learned that he was living with HIV. Being an illegal immigrant, he couldn’t access health-care services in South Africa. He returned to Malawi, where he began HIV treatment and started CHeRA. “I thought: how can I help others not go through the same experience that I did?” he said.

CHeRA raises awareness and builds the capacity of male sex workers on HIV prevention and treatment, sexual and reproductive health and rights, economic empowerment, psychosocial support and access to justice. Through a UNAIDS funding arrangement, it recently reached more than 250 male sex workers in three priority districts in Malawi, distributed more than 30,000 condoms and lubricant and linked six male sex workers living with HIV to care and treatment. In another programme funded by the Global Fund to Fight AIDS, Tuberculosis and Malaria, the organization has trained 50 peer educators and distributed more than 6000 condoms and condom-compatible lubricant.

Mr Mitha is keenly aware of the many challenges that face male sex workers, having faced them himself. “In Malawi, sex work is not recognized as work, so there are no laws to protect sex workers. Also, most of our male sex workers are gay men or men who have sex with men, so they live in fear of arrest because homosexuality is illegal in Malawi,” he said.

Stigma and discrimination is institutional, he said. “Male sex workers are not recognized as a key population in the HIV response in Malawi, so we are not prioritized in government plans. And negative attitudes from health-care workers push us away from care.”

“Say I am being abused or beaten and I go to a police station,” continues Mr Mitha, “I will get questions like “Why you are dressed like this or why do you speak like this?” The abuse is institutionalized. It pushes us away, so even in terms of health care, we go to private hospitals where we pay money even if we don’t have money.”

CHeRA is now registered as a nongovernmental organization. Although started in 2016, it was only registered in 2017 after UNAIDS played a pivotal role in amending provisions in the Malawi HIV and AIDS Management Control Act of 2018 that criminalized or discriminated against certain groups, such as sex workers. This paved the way for organizations of lesbian, gay, bisexual, transgender and intersex people and sex workers to be registered.

Like many people who serve others, his work has spilled over into his private life. Knowing what it feels like to be disowned by one’s family, Mr Mitha gives shelter to people who have nowhere else to go, who stay as long as it takes until they can look after themselves.

He has built an unshakeable sense of self, family and community through his work and his life. “I am living openly with HIV and as a gay person; I am a role model to so many. They see that it is possible. I see a lot more people like me opening up and living openly as gay and with HIV,” he said.

Mr Mitha wants to grow CHeRA into an organization that is a strong advocate for equitable access to health care for male sex workers.

“We need more financial support to expand the work we do,” he said. “We provide access to HIV prevention information and services to a population that is being left behind. It is making a difference. When you are working as a community organization, it means what affects my community affects me too,” he said.
First-ever Jamaica transgender strategy looks beyond health
08 January 2021
Tab 9
“Let Posterity Judge”
Violence and Discrimination against LGBT people in Malawi
“Let Posterity Judge”
Violence and Discrimination against LGBT People in Malawi
Human Rights Watch defends the rights of people worldwide. We scrupulously investigate abuses, expose the facts widely, and pressure those with power to respect rights and secure justice. Human Rights Watch is an independent, international organization that works as part of a vibrant movement to uphold human dignity and advance the cause of human rights for all.


For more information, please visit our website: http://www.hrw.org
with notable success. With 36 staff members, approximately 300 peer educators in 14 locations across the country, and drop-in centers in Lilongwe and Blantyre, CEDEP can provide services to approximately 100 gay men and other MSM per month.

Nevertheless, in an environment where consensual adult same-sex conduct is still criminalized, despite the moratorium on arrests, access to HIV and other health services remains a challenge. As Gift Trapence of CEDEP noted:

Same-sex relations are criminalized and highly stigmatized in Malawian society, resulting in MSM being forced to remain ‘invisible’ or ‘underground.’ Although HIV prevalence is high amongst MSM, criminal law prevents health services from meeting their particular needs.... MSM are still afraid of the discriminatory laws and this affects their visibility and ability to access the health services. The suspension of the law depends on the good will of the government, and the law can still be applied if that good will is not there.”

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64 “Centre for the Development of People (CEDEP) – Malawi: Performing advocacy and outreach to improve healthcare and HIV prevention for GMT,” amfAR: Making AIDS History, http://www.amfar.org/center-for-the-development-of-people-cedep-malawi/; “In 2008, CEDEP performed a study among 200 MSM in the city of Blantyre. Twenty-one percent of the participants were HIV positive—approximately double the rate among the general population—and 95 percent did not previously know their status. The men also reported low and inconsistent condom use, little knowledge about how to protect themselves from HIV, and a reluctance to reveal their sexual orientation to healthcare staff for fear of discrimination. CEDEP began receiving amfAR funding to develop the country’s first GMT peer education program and its first program to educate healthcare providers about GMT-specific health needs. A follow-up study in 2012 in Blantyre—where CEDEP has performed extensive outreach among both GMT and healthcare providers—reported that the HIV rate in MSM had dropped to 12.5 percent, that 56 percent of the respondents had been tested for HIV, and 24 percent had been tested more than once in the past year.”

65 Human Rights Watch interview with CEDEP staff member, Lilongwe, May 2018. CEDEP runs programs in Lilongwe, Blantyre, Mzuzu, Zomba, Mangochi, Chikwawa, Mulange, Salima, Dedza, Mchinga, Kasungu.

Criminalization of consensual same-sex conduct in Malawi contributes to an environment in which lesbian, gay, bisexual and transgender (LGBT) individuals in Malawi face routine violence and discrimination in almost all aspects of their lives. The government pledged in 2012 to decriminalize same-sex conduct, but has not yet done so. The challenges facing LGBT people in the country have been further exacerbated by the lack of clarity and divergent opinions regarding the legality of a moratorium on arrests and prosecutions for consensual homosexual acts, issued in 2012 by the Ministry of Justice and Constitutional Affairs.

Based on interviews with 45 LGBT individuals in Lilongwe and Blantyre, “Let Posterity Judge,” documents the human rights impact of criminalization of adult consensual same-sex conduct on the lives of LGBT people in Malawi and finds that police often arbitrarily arrest and detain transgender people, and in some cases, physically assault them. Private individuals take advantage of the uncertain legal status of LGBT people to attack them with impunity, while health care providers frequently discriminate against them on the grounds of sexual orientation.

Human Rights Watch calls on the government of Malawi to abide by its 2012 commitment to decriminalize consensual same-sex conduct, and on parliament to repeal all the anti-homosexuality provisions in the penal code.
Tab 10
Stigma and Discrimination against People Living with HIV and AIDS in Malawi

Mercy Pindani1, Makhubela Nkondo2, Alfred Maluwa1*, Sadandaula Muheriwa1

1Kamuzu College of Nursing, University of Malawi, Lilongwe Campus, Lilongwe, Malawi
2University of South Africa, Pretoria, South Africa
Email: mercypindani@kcn.unima.mw, makhaon@unisa.ac.za, *aomaluwa@kcn.unima.mw, rmuheriwa@kcn.unima.mw

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Abstract

A study was conducted to explore stigma and discrimination among people living with HIV and AIDS who were on home based care in the Lilongwe district of Malawi. The study design was descriptive through sectional and utilized qualitative data collection and analysis method. Fifteen people living with HIV and AIDS, aged between 15 and 60 years were purposively sampled from three organizations, which were: Light House, National Association for people living with HIV and AIDS in Malawi and Lilongwe Diocese. Qualitative data were collected using an open ended interview guide during in-depth face to face interviews with the participants. The data were analysed using ATLAS. ti 5.0. Results show that all the participants were facing stigma and discrimination because they were living with HIV and AIDS. Distant relatives were the main source of stigma and discrimination followed by friends and church members. Most participants indicated that they felt they were discriminated because HIV infection is associated with bad behaviours such as prostitution or promiscuity. However some of them complained that they contracted the virus from their married partners and hence they did not deserve to be stigmatized or discriminated against. Results show that there is a need for creation of awareness among community members on the transmission of HIV and the need for home based care for the chronically ill people living with HIV and AIDS.

Keywords

People Living with HIV and AIDS, Community Home Based Care, Stigma and Discrimination, Primary Care Providers, HIV Transmission and Prevention

*Corresponding author.

1. Introduction

Globally, 33 million people are living with HIV of which 30.8 million are adults and 2.2 million are children [1]. The worst affected region is sub-Saharan Africa, with 22 million people (adults and children) living with HIV and AIDS. For example in 2008, women accounted for 50% of all adults living with HIV worldwide of which 59% were in sub-Saharan Africa [1]. In Malawi, the adult prevalence rate of HIV is at 10.6% [2]. Currently, about one million people, including children under the age of 15, are living with HIV and AIDS of which women constitute 60% [1].

An effective and affordable community home based care (CHBC) for people living with HIV and AIDS (PLWHA) has potential to positively impact the health and social status of patients, families and the community as a whole. The introduction of life prolonging drugs such as ARVs has made HIV and AIDS be one of the chronic illnesses. Due to limited bed space in most public hospitals, many chronically ill patients go home upon discharge from a health facility while continuous care is still required. For this reason in Malawi, CHBC for chronically ill patients is one of the interventions that were recommended for the care of PLWHA [4] [5]. In CHBC, the family has always and still remains the major provider of long term care for patients including PLWHA. CHBC is therefore the best way for most people to be cared for and to die peacefully [3]. Other positive effects of CHBC are that it raises awareness among community members about HIV and AIDS and reduces stigma thus preventing the spread of HIV and gets rid of myths and misconceptions about HIV and AIDS [3]. CHBC also helps communities understand issues of HIV and AIDS and makes it easier to provide support by tapping all possible community resources and helping to bring the community together to combat HIV and AIDS and advocate for more services [3]. However, HIV and AIDS infected members of the family can find themselves facing a lot of challenges including stigma and discrimination within the home [6].

Stigma remains the single most important barrier to public action [6]. AIDS related stigma refers to the prejudice and discrimination directed at people living with HIV and AIDS and the groups and communities that they are associated with. It causes people living with HIV and AIDS to be rejected from their community, shunned, discriminated against or even get physically hurt [7]. Research evidence shows that some HIV and AIDS patients face some kind of stigma and discrimination [7]. Stigma when directed at PLWHA complicates the fight against HIV and AIDS because when stigmatized the PLWHA have difficulties to cope with the illness at a personal level [7]. In addition, stigma also interferes with attempts to fight the AIDS epidemic as a whole. Studies on the lived experiences of PLWHA regarding stigma and discrimination are scarce in Malawi. Therefore, the aim of this study was to describe the lived experiences of HIV and AIDS patients who were on CHBC Programme regarding stigma and discrimination in the Lilongwe district of Malawi.

2. Methodology

The study design was descriptive and utilized qualitative phenomenological approach to data collection and analysis to provide comprehensive description of the experiences of PLWHA regarding their experiences with stigma and discrimination [8]. A total of 15 PLWHA were purposefully sampled and interviewed to provide in-depth information regarding their experiences with stigma and discrimination. The participants were chosen from 3 major organizations dealing with PLWHA in Lilongwe district. The organizations were: Light House which is a public/government institution, National Association for People Living with HIV and AIDS in Malawi, (NAPHAM), and the Lilongwe Diocese, a faith based organization. The interviews were audio-taped, transcribed verbatim and analyzed qualitatively using ATLAS. ti version 5 [9].

3. Inclusion and Exclusion Criteria

Participants who were recruited in the study were at least 14 years, living with HIV and AIDS in Lilongwe district and were enrolled into a community home based care program for not less than 6 months. PLWHA who were below 14 years or residing in other districts other than Lilongwe or those residing in Lilongwe but not enrolled in CHBC were excluded from the study.

4. Ethical Issues

The study was approved by the Research and Ethics Committee of the University of South Africa (UNISA) and the University of Malawi, College of Medicine Research and Ethics Committee (COMREC). To access the par-
participants, the researcher obtained permission from the heads of Light House, NAPHAM and Lilongwe Diocese. Participation was voluntary and participants were informed that they could withdraw from the study at any time if they wished. Informed consent was obtained from each participant who met the inclusion criteria including the minors where consent was obtained from their parents or guardians before being interviewed. The participants were allocated code numbers instead of names to ensure confidentiality and anonymity.

5. Data Collection

A total of 15 in-depth face to face interviews were conducted by the senior author who was then a Ph.D. student and was assisted with two trained research assistants who were also state registered nurses. The participants were identified by nurses who were working in the three CHBC institutions in Lilongwe. Researchers confirmed that participants met the inclusion criteria and consented to the study. Interviews were conducted at a private place within the PLWHA’s homes. Each interview was audio taped and field notes were manually taken. During the interviews, demographic data which included age, sex, marital status, occupation, religion and level of education were collected. An open ended interview guide was used to seek in-depth information on stigma and discrimination. Probes were made to understand the participants’ responses and comments regarding stigma and discrimination. Concentration was placed on the theme of the study which was participants’ perception of being stigmatized and discriminated. Specifically, information was collected regarding perception of the participants on who stigmatized them, reasons for being stigmatized and signs that indicated stigma and discrimination. Finally, participants were also asked whether the people who stigmatized them had received HIV and AIDS education or not. Each interview lasted between 45 and 60 minutes.

6. Trustworthiness

Four criteria [10] for enhancing rigor in qualitative research (credibility, confirmability, dependability, and transferability) were used to ensure trustworthiness of the results. The qualitative data were validated to ensure confirmability [8]. Credibility was guaranteed by using the member checking approach in which the researchers referred back to 7 selected participants to verify the data and interpretation of the findings. Confirmability was ensured through the process of bracketing where by all previous knowledge, beliefs and common understanding about stigma and discrimination towards PLWHA were set aside. Dependability was ensured through the review of the results by an independent person. Transferability was established through collection of data that included field notes, together with a rich mix of participants’ narrations.

7. Data Analysis

Data were analysed using ATLAS. ti version 5 [9]. The interviews were transcribed verbatim. The transcribed data from each interview were read and key words and significant statements were selected and reviewed. Words with similar meanings were placed into categories of major themes and sub themes. Code directorate was used to check whether the definitions of the codes were true and valid. Code directorate also helped to interpret the findings by attaching meaning and significance to the analysis. The emerging theme and sub themes are reported as results of the study.

8. Results

8.1. Demographic Characteristics of the Participants

The demographic characteristics of the participants are summarized in Table 1. Most of the participants (8) were aged between 26 and 45 years, while 4 were aged between 20 and 25 years. There was one teenager and those aged between 46 and 60 years (2) were few (Table 1). There were more female (9) than male (6) participants. The majority of the participants were female housewives (6). There were 3 people that were engaged in small businesses (Table 1). Other 3 participants were employed while 2 were pensioners and only one did not have any occupation. Regarding literacy and numeracy, a total of 12 participants were literate and numerate. The marital status of the participants shows that 6 were married, while 2 were single and another 2 were divorced. There were 4 widows while only one participant was a widower (Table 1).
Table 1. Summary of demographic characteristics for the participants.

<table>
<thead>
<tr>
<th>Demographic Characteristic</th>
<th>Number of participants</th>
</tr>
</thead>
<tbody>
<tr>
<td>Age group</td>
<td></td>
</tr>
<tr>
<td>13 to 19 (Teen age)</td>
<td>1</td>
</tr>
<tr>
<td>20 to 25</td>
<td>4</td>
</tr>
<tr>
<td>26 to 45</td>
<td>8</td>
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<tr>
<td>46 to 60</td>
<td>2</td>
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<tr>
<td>Sex of participants</td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>6</td>
</tr>
<tr>
<td>Female</td>
<td>9</td>
</tr>
<tr>
<td>Occupation of participants</td>
<td></td>
</tr>
<tr>
<td>Housewives</td>
<td>6</td>
</tr>
<tr>
<td>Business</td>
<td>3</td>
</tr>
<tr>
<td>Formal employment</td>
<td>3</td>
</tr>
<tr>
<td>Pensioners</td>
<td>2</td>
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<tr>
<td>No occupation</td>
<td>1</td>
</tr>
<tr>
<td>Literacy level of the participants</td>
<td></td>
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<tr>
<td>Literate and numerate</td>
<td>12</td>
</tr>
<tr>
<td>Illiterate</td>
<td>3</td>
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<tr>
<td>Marital status</td>
<td></td>
</tr>
<tr>
<td>Married</td>
<td>6</td>
</tr>
<tr>
<td>Single</td>
<td>2</td>
</tr>
<tr>
<td>Divorced</td>
<td>2</td>
</tr>
<tr>
<td>Widows</td>
<td>4</td>
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<tr>
<td>Widowers</td>
<td>1</td>
</tr>
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</table>

8.2. Emerging Themes

One major theme “stigma and discrimination” and four sub themes emerged from the participants’ narrations. The sub themes were:
1) Experience of PLWHA on stigma and discrimination;
2) Perception of PLWHA on the reasons for being stigmatized;
3) Perception of PLWHA on the signs of stigma and discrimination;
4) Perception of PLWHA on the impact of stigma and discrimination on their quality of life.

8.2.1. Experiences of PLWHA on Stigma and Discrimination

Results show that the participants in the study were cared by a close family member in the form of their own children, brother or sister or a spouse. In addition all the participants narrated to have experienced some form of stigma and discrimination for being HIV positive. A 32-year-old female participant had this to share:

“Stigma and discrimination is the biggest problem that we face in the villages. When people discover that you are HIV positive, they avoid you and shun from you. Sometimes even when you call them they reply saying that they are not around… they have gone away… when in actual fact, they are available but they just do not want to be associated with you anymore”.

Narrations from some of the participants indicated that they were aware that living with HIV and AIDS was not the end of life and therefore they were not worried even when they were being stigmatized and discriminated against. A 40-year-old male participant had this to share:

“Madam, as long as HIV and AIDS are there, stigma will always be there too. Who wants to get HIV today? Nobody. So I don’t blame them, let them discriminate me and one day they will understand when they have a member in their family with HIV. I did not invite HIV myself. I got it from my husband and where he got it, I
Another 48-year-old female participant lamented that it was normal to live with HIV and AIDS and therefore, it was also normal to be stigmatized and discriminated against.

“It is normal to be discriminated and I don’t get worried because even some people who do not have HIV are also discriminated especially those who are poor and what more with me? Until the time when everybody will understand what HIV is, then we shall be one. I am happy that my volunteer does not discriminate me instead she is discriminated because she is associated with CHBC services”.

Most of the participants cited distant relatives (especially those from the extended family relationship), friends and church members as the ones who stigmatized them most. However, participants’ narrations suggest that close family members who were the main care givers did not stigmatize or discriminate against the participants.

“My relatives stigmatize me, especially those from a distant relationship. They do not give me any assistance.

When they see members of the CHBC team coming to my house, they take advantage and laugh at me for having HIV and AIDS”. A 19-year-old female participant narrated.

Results show that gossip was also another challenge. In addition to the distant relations, friends and church members were also at the centre of gossip towards the PLWHA. A 35-year-old female participant narrated her experience as follows:

“The biggest source of stigma and discrimination is unfortunately our own distant relatives and they are the same people that are expected to provide care to us. As a result, the home based care burdens only the close family members such as spouses and children. Gossip is also another challenge, the distant relatives, friends and even fellow church members gossip a lot”.

The stigma and discrimination from friends and church members was a source of frustration by the participants as narrated by a 50-year-old male participant.

“I am discriminated against by a lot of friends even fellow church members. They do not show it openly, but I know through their actions that they are discriminating against me. For example, sometimes when we are in a group, and we want to form smaller groups, some people are not willing to be in the same group with me and let alone to sit near me”.

A 58-year-old female participant also narrated her experience on being stigmatized and discriminated by her Church members, she explained that:

“Some church members that I used to chat with before I got sick do not come to visit me anymore. For example, when prayers are taking place at my house, some members do not come. What does that mean? And what are they afraid of, they are not away but they don’t come. I know that they are afraid because they think that they might contract HIV from me”.

8.2.2. Perception of PLWHA on Reasons for Being Stigmatized

The participants’ narrations suggest that they felt they were stigmatized and discriminated against because HIV and AIDS is a life-threatening disease and nobody would want to associate with a life threatening condition. A 40-year-old male participant explained as follows. “HIV is a killer, who would want to associate with HIV positive people? Nobody can willingly accept to acquire HIV so it is not wrong to avoid us”.

Another group of participants stated that HIV infection is associated with behaviours such as prostitution or promiscuity and therefore people felt that HIV and AIDS patients deserve shame. HIV infection is therefore often thought to be the result of personal irresponsibility. This point as shared by a 40-year-old female participant as follows:

“HIV infection is associated with behaviours such as prostitution or promiscuity, homosexuality and drug addiction. People think if you have HIV and AIDS you are an outcast and hence deserve shame”.

The perception that PLWHA deserve punishment was also raised by a 38-year-old male participant who narrated that: “Religious or moral beliefs lead some people to believe that being infected with HIV is the result of moral fault such as promiscuity or deviant sex behaviour that deserves punishment”.

The participants’ narrations confirmed that some participants experienced stigma and discrimination as a form of punishment. A female teenager reported that her father was using stigma and discrimination to punish her for running away from home and getting married to a man he never approved. She narrated her experience as follows:

“My father doesn’t want to see me and he doesn’t want me to be part of the family because I misbehaved earlier by running away from the family to get married to a certain man. When he learnt that I was HIV positive, he
made sure that he does not get concerned anymore”.

Some participants indicated that most people do not know about how HIV is transmitted and they fear contracting it through contacts or close association with the PLWHA. A 26-year-old female participant narrated her experience as follows: “There is a lot of inaccurate information about HIV and AIDS on how it is transmitted. People are afraid of contracting the disease, therefore, HIV and AIDS patients are stigmatized and discriminated”.

Participants in the study were able to identify that some relatives, friends and communities were failing to cope and therefore did not accept to live with PLWHA in their homes because they were afraid of contracting the virus. One participant narrated her experience like this: “Health care workers tried to explain to my distant family members on the importance of accepting me but they refused and do not seem to understand. I am happy that the health workers and my volunteer do not discriminate against me”.

Most participants explained that they felt their distant family care givers were discriminating against because they had little knowledge of HIV and AIDS in general. They therefore indicated a need for community members to be given adequate information regarding HIV and AIDS so that they give proper care to their HIV and AIDS patients.

8.2.3. Perception of PLWHA on Signs that Indicated Stigma and Discrimination

All the participants explained that they suspected that people were stigmatizing and discriminating against them because most of their friends and distant relatives stopped visiting their homes. A 52-year-old male participant shared:

“You know madam; I am a victim of stigma and discrimination in this village. Even some of my distant relatives and friends stopped coming to my house long time ago when they discovered that I was HIV positive”.

Some of the participants’ narrations indicated that if friends and relatives came to visit them, then they opted to stay very far from them to avoid contracting the HIV as was narrated by a 32-year-old female participant: “It pains me when I see my friends not wanting to stay close to me for long period of time as we used to do in the past. I know some of my friends are still friendly to me but there are some who have changed tremendously”.

Stigma and discrimination from friends are threatening. Some participants’ narrations indicated that they noticed that some friends shunned away from them and in the process they lost best friends. A 28-year-old female participant narrated that: “Stigma and discrimination is the major concern to us the PLWHA. You notice that you have lost friends immediately they know about your positive HIV status. Even some of the best friends start shunning away from you with no proper reason”.

Similar sentiments were shared by a 50-year-old male participant who also said: “The other sign is that sometimes, you greet them when they are passing by but they do not answer you. I do not know why, but may be one day I will know the answers. I am just worried about my children because they are still young. What will happen to them when I die? Who will take care of them in view of this discrimination?”

8.2.4. Perception of PLWHA on the Impact of Stigma and Discrimination towards Their Quality of Life

Results show that some individuals stigmatized patients because they were not aware of the consequences of the practice. The PLWHA explained that stigma and discrimination can make people reluctant to access HIV testing, treatment and care and therefore it must be discouraged among the community members. The majority of the participants pointed out that the close relatives of PLWHA that portrayed good attitude to their patients in return gave encouragement and hope to the patients. The narrations of participants also suggested that care givers who were close family members did not show any negative attitudes towards them. However, as the illness progressed, the community members and distant relations, developed negative attitudes towards the PLWHA and started to stigmatize and discriminate against them as was narrated by a 58-year-old male participant:

“I have problems with the attitude of my distant relations and other community members which keep on deteriorating every day. I think they are tired of me and my illness and therefore most of the times they are discriminating against me. I have lost trust in them and whenever I see them, I feel sicker than before”.

A 36-year-old female participant affirmed that absence of discrimination from close relatives made her feel good and encouraged. “This good behaviour from my relatives gives me courage and some hope for better life. I am encouraged that I am not different from any other person because of my HIV positive status. I live a happy life. The pain that is in me is always lessened because they always comfort and encourage me. With the ARVs
that I am able to receive, nowadays I have very good life”.

Similar sentiments were made by a 40-year-old male participant: “They are good to me. I have hope for the future. Yes, they love me and I want to live longer because they are not bothered with my sickness. When they are happy, I am also more than happy and I can move up and down with happiness. I know this means that my life is improving”.

On the other hand, other participants affirmed the view that stigma and discrimination towards them caused loss of hope, giving up life quickly and therefore leading to experience of poor quality of life. An 18-year-old female participant explained this: “Stigma and discrimination make me feel miserable and sometimes I wish I could die early because I know I am bothering innocent lives. Sometimes I don’t want to eat and I know my health is going down slowly”.

Some participants felt that when people were discriminating against them it meant they were too ill and were about to die: “It makes the patient feel bad because you think you are very ill and therefore your condition goes down. In my case in such situations, I don’t want to eat. I feel I am a burden to the people and it is better if I die to relieve them. Sometimes it reminds me of my late husband, and I think of the same situation happening to my children when I die. Then I cry internally the whole day with no comfort”.

9. Discussion

In this study, most of the participants were aged between 26 and 45 years. These results agree with the 2010 Malawi Demographic Health Survey which reported that HIV prevalence increases with age for both men and women [2]. The results also show that most of the participants were women which further agree with the 2010 Malawi Demographic Health Survey that in Malawi, women are at the greatest risk of contracting HIV than men of the same age group [2].

The results that almost all the participants in the study faced some form of stigma and discrimination show a need for community sensitization on HIV and AIDS. Results show that stigma and discrimination should not be ignored or overlooked in the care of HIV and AIDS patients. In Malawi, like in many other African countries the high prevalence rate of HIV has necessitated the introduction of home based care where high level of support comes from close family members [3]. Family support is associated with better adjustment and coping treatment adherence during home based care of PLWHA [11].

In most cases, HIV-related stigma and discrimination severely hamper efforts to effectively fight the HIV and AIDS epidemic. Stigma remains the single most important barrier to public action. It is a main reason why too many people are afraid to see a doctor to determine whether they have the disease, or to seek treatment if they are HIV positive. It makes AIDS the silent killer, because people fear the social disgrace of speaking about it, or easily taking the available precautions. Stigma is a chief reason why the AIDS epidemic continues to devastate societies around the world [7].

Similar findings were reported by the Pan American Health Organization (PAHO) that stigma and discrimination threaten the quality of patient care as well as efforts to control the epidemic’s spread [12]. WHO also cites fear of stigma and discrimination as the main reason why people are reluctant to be tested, to disclose HIV status or to take antiretroviral drugs. These factors all contribute to the expansion of the epidemic and a higher number of AIDS related deaths. Unwillingness to take an HIV test means that more people are diagnosed late, when the virus has already progressed to AIDS, making treatment less effective and causing early death [7].

Results of this study show that although HIV and AIDS have been around for a decade now, there are still misconceptions which have contributed to a lot of mixed reactions from people. The fear surrounding the emerging epidemic in the 1980s is still fresh in many people’s minds. At that time very little was known about the transmissibility of the virus, which made people become scared of those infected due to fear of contagion which was the same experience with participants of this study [7].

According to a study which was done in Tanzania, it was found that PLWHA expressed concern that attitudes and misconceptions on HIV and AIDS have a great impact on the overall well being of HIV and AIDS patients [13]. Therefore, providers who have negative attitudes and misconceptions towards HIV and AIDS will not provide good quality care to the patients therefore affecting patient’s quality of life.

Other studies have reported that PLWHA preferred to be cared by their volunteers [13]. However in this study, the volunteers visited PLWHA at regular intervals but the main care givers on daily basis were the close relatives. Thus, providers are able to relate to service users and offer peer support which may make the infected in-
individuals feel comfortable.

Regarding stigma against the PLWHA, Nettleton [14] observed that stigma is not easy to fight because of its social construction. He further argued that while medicine has its own meaning of the body in relation to illness and health as reflected in the signs and symptoms, individuals have their own social meanings for the HIV and AIDS signs and symptoms and these differences may pose difficulties in curbing stigma [14].

In this study the sources of stigma and discrimination for most of the participants were relatives, friends and church members. In Malawi, there is clear evidence that families especially close relatives such as children, siblings and spouses play an important role in providing support and care for PLWHA [15]. The fact that there were some responses from participants indicating discrimination by church members implies that churches were also a source of stigma to HIV and AIDS patients. This is not desirable because religion has always been part of social life in most of the countries including Malawi. However, religion has also always been an important form of social control especially in the areas of sexuality. It provides important ethical guidelines for living, for interpreting natural events including disasters and misfortune, and for coping with life’s milestones, from birth through illness to death [7]. Results show that HIV and AIDS pose new challenges to religion. The fact that its main mode of transmission is sexual, HIV and AIDS intensifies the tensions that are present around sexuality. Many religious groups have had ambivalent attitudes towards sexuality [7]. The epidemic is interpreted by some people as divine punishment for sexual transgressions from premarital sex to homosexuality. The stigma posed by religion can thus be powerful. People often avoid working with or supporting HIV and AIDS people because they are seen as sinners who deserve to become infected. Religious prejudices, mixed with misconceptions about HIV and AIDS, become a dangerous and volatile mixture that sends many people to their deaths [7].

Contrary to findings of this study, at a certain HIV and AIDS conference in 1990, Bishops of Southern Africa explained that “perhaps the AIDS crisis is God’s way of challenging us to care for one another, to support the dying and to appreciate the gift of life. AIDS need not be merely a crisis: It could also be a God given opportunity for moral and spiritual growth, a time to review our assumption about sin and morality and that the modern epidemic of AIDS calls for a pastoral response” [16].

This message of discouraging stigma and discrimination was also supported at the Bishops’ Conference of the Philippines in 1993 where it was stated that “for us, an encounter with people infected with HIV and AIDS should be a moment of grace and opportunity for us to be Christ’s compassionate presence to them as well as to experience His presence in them” [16].

AIDS related stigma refers to the prejudice and discrimination directed at PLWHA and the groups and communities that they are associated with [7]. In this study, PLWHA were being rejected by some members of their community, shunned, discriminated against and even became centres of gossip. Results also showed that the main reasons for discrimination was fear of contracting HIV and this was because some relatives and community members had little knowledge on HIV and AIDS transmission.

Providing services for PLWHA is a rewarding experience, but it is stressful, leading to depression and frustration especially when the care givers and the community are not given adequate information. In this study, lack of knowledge by some community members and relatives affected the quality of care for the participants as shown by the participants’ narration that most of the people stigmatized and, shunned them, and distanced themselves because they lacked information on HIV and AIDS. In Malawi, knowledge about HIV and AIDS among communities is high, but the people do not provide quality home based care because of fear and misconceptions about the disease [15]. In addition, limited knowledge on home based management of PLWHA created fear among the home based carers [15]. Consequently, the PLWHA are shunned by friends and other community members. These results are supported by a study in Botswana [17] where families that received detailed information about the condition of patients manifested more vigilant coping skills compared with families that had little information.

A continuum of care for persons with chronic illnesses is provided through CHBC when the patients are discharged from the health facilities and go home. It also gives hope through quality and appropriate care that helps family caregivers and sick members to maintain their independence and achieve the best possible quality of life [18]. It is an established component of the continuum of care and support advocated by WHO and UNAIDS and planned by many African countries including Malawi [19] [20]. According to a study by Mohammad and Gikonyo [21], CHBC is an example of the community-driven initiatives which focus on HIV and AIDS care and treatment activities.
10. Conclusion

Participants in this study faced stigma and discrimination which made it difficult for them to cope with their illness. Although close relatives were the main care givers, distant relatives, friends and church members were main people that stigmatized and discriminated against the PLWHA. Most of the PLWHA were aware that the major reason that made people stigmatize and discriminate against them was limited knowledge on the mode of HIV and AIDS transmission. Stigma and discrimination was evident to most PLWHA when suddenly they lost their best friends when they knew the HIV positive status of the PLWHA. Stigma and discrimination made the PLWHA think that their health was deteriorating and develop negative attitude towards their treatment. Consequently, stigma and discrimination made the PLWHA reluctant to access treatment and care thereby adversely affecting their quality of life. There is therefore a need to create community awareness about HIV and AIDS and the proper care of PLWHA in the CHBC groups in Malawi.

11. Recommendations

Some individuals stigmatized patients because they were not aware of the consequences of the practice. It is therefore recommended that the Ministry of Health and its partners make an effort to continue sensitizing the general public on various issues of HIV and AIDS including effects of stigma and discrimination on PLWHA. Considering that even church members stigmatize and discriminate against HIV and AIDS patients, it is recommended that an effort be made to involve faith based organizations in HIV and AIDS awareness campaigns. An effort should also be made to deliberately sensitize people on the effects of stigma and discrimination. Stigma and discrimination are barriers to effective prevention of HIV and AIDS, therefore the public should be reminded that practicing stigma and discrimination against PLWHA is a violation of their human rights.

12. Study Limitation

The study participants were drawn from urban and peri-urban areas of Lilongwe district and like in any qualitative study, the results may not be generalized to portray the perception of PLWHA on stigma and discrimination in Malawi, although the trend is similar.

Conflict of Interest

None of the authors had any conflict of interest in the manuscripts being published in the World Journal of AIDS.

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References


Tab 11
By Elizabeth Mandala, Mana

CHIWAYULA: In the wake of Covid19, the minority groups were at high risk of new infection

Chipembere Community Development Organization (CCDO), Executive Director Dalitso Chiwayula has urged Government and key stakeholders to work together in addressing challenges facing marginalized population including minority groups in accessing Health Services amid covid19.

The director was speaking this on Wednesday during an advocacy meeting with policy makers and health services Providers at Bvumbwe, Thyolo in Blantyre.

Chiwayula observed that in the wake of Covid19, the minority groups were at high risk of new infections due to some restricting conditions when seeking health services which do not often meet their health needs.
“The key populations Living with HIV do not easily access health services including HIV/Aids prevention and Covid19 information due to stigma and discrimination, and increased cases of Gender Based Violence (GBV).

“Unfriendly attitude by some health service providers keep the key populations away from seeking health services. Therefore, instead of preventing new infections including Covid19, a certain section of our society lack information and because is left unattended and thus unknowingly spreading the virus,” he explained.

Concurring with Chiwayula, one of the beneficiaries from the key population attending advocacy meeting who sought for anonymity, complained that he often did not visit the health facility because most health workers were not approachable and often ask questions that make him reluctant to go for health services.

Responding to these remarks, a Clinical Officer at Bvumbwe Health Centre, Madalitso Banda said one of the challenges restricting the provision of quality health services at the health facility was lack of a special private room designated for such key populations and medicine for Sexually transmitted infections (STI) treatment.

“We must admit that sometimes we send back members of such special groups seeking treatment at the health center because we are running out of stock for STI medicine, and despite reporting the issue to the district health authorities, takes long to get a feedback,” said Banda, sending out an SOS to the responsible authorities at the district level.

CCDO is implementing the project called “Accelerating Access to ART in response to Covid19” in Thyolo district under Covid19 Rapid Response Fund with financial support from Frontline AIDS in United Kingdom. Mana/em
| Tab 12 |
Coronavirus: find our latest information on our COVID-19 and HIV hub

MALAWI

In Malawi we are working with partners to respond to HIV-related stigma, discrimination and violence that affects lesbian, gay, bisexual and transgender people.

The HIV situation in Malawi is described as a generalised epidemic. However, lesbian, gay, bisexual and transgender (LGBT) people and men who have sex with men (MSM) experience considerable levels of stigma and discrimination. This has huge knock-on effects on the risk of HIV transmission.
Malawian civil society organisations that are led by, or work with, LGBT and MSM people are eligible to apply for funding from the Rapid Response Fund. The grants can be used to respond to stigma, discrimination, and threats of violence that limit access to HIV services for LGBT and MSM people.

One of the success stories from the Rapid Response Fund in Malawi comes from Matofu and his son Suphi. They faced horrendous levels of abuse at a refugee camp in the country. With a grant provided to a Frontline AIDS partner, the pair were supported to move to Canada. Here, they now have refugee status and Suphi is about to start school.

**DID YOU KNOW?**

In Malawi in 2019:

- 8.9% of people in Malawi were living with HIV.
- There were 33,000 new HIV infections.
- 55% of sex workers were living with HIV.

**OUR PROGRAMMES IN MALAWI**
BLANTYRE, Malawi, Oct 12 (Thomson Reuters Foundation) - Malawian student Kondwani has fought against the stigma of being HIV-positive for most of his life, but COVID-19 has reignited old prejudices and given rise to a new term of abuse - “corona carrier”.

A widely held misconception that HIV-positive people are at high risk of catching the coronavirus is fueling discrimination and making it harder for them to access the medical care they need, health activists in the southern African country said.

Kondwani, 24, said it was also spreading anxiety among the 1.1 million people who live with HIV in Malawi - which has one of the world’s highest HIV rates, according to UK-based charity Avert.

“This stigma is bringing unnecessary fear on those living with HIV,” Kondwani, who asked to give only his first name, told the Thomson Reuters Foundation.

“(The truth is) everyone can contract it and everyone can die,” the agriculture student added.
The evidence for any link between HIV and COVID-19 is still evolving, said Peter Godfrey-Faussett, senior scientific advisor for UNAIDS, the joint U.N. programme on AIDS/HIV.

“While being HIV-positive does appear to slightly increase the risk for catching COVID-19 or for developing stronger symptoms, the risk is still much, much lower than for other conditions or characteristics such as advanced age, obesity or diabetes,” he said in an email.

However, many HIV-positive Malawians are now so scared of becoming infected with COVID-19 they are staying at home - skipping appointments to pick up medication or missing support group meetings, health workers and campaigners said.

There has also been a 35% drop in the number of HIV tests conducted during the lockdown, said Nuha Ceesay, UNAIDS’ country director, and health activists fear the COVID-19 pandemic could roll back years of steady progress to tackle HIV/AIDS in Malawi.

“"If you cough or sneeze, people assume you have COVID, especially if they already know you are HIV-positive. People are now afraid to talk openly about their status,” said Grace Ngulube, 25, a Malawian health activist based in Blantyre.

‘AFRAID TO VISIT HOSPITALS’

According to the U.S. Centers for Disease Control and Prevention (CDC), key risk factors for people with HIV getting very ill if they catch COVID-19 are having a low CD4 cell count or not receiving effective antiretroviral (ART) treatment.

Of the 1.1 million HIV-positive Malawians, some 802,000 are taking antiretroviral medication, said Ceesay from UNAIDS.

Malawi has been relatively mildly affected by the coronavirus so far, with 5,800 confirmed cases and about 180 deaths, according to the African Centre for Disease Control.
But the pandemic has dealt a serious blow to the economy, forcing the government to channel budget resources toward healthcare and seek external financing to plug its fiscal deficit and ensure food security.

It has also forced aid groups and healthcare facilities in the country of nearly 18 million to rethink medical treatment and education campaigns for major public health crises such as HIV/AIDS.

“Voluntary male circumcision and HIV awareness programmes were suspended, mainly to make sure people don’t gather in crowds and expose them to COVID-19 risks,” Ceesay said.

Hope Banda, a 22-year-old community development student, said she and other HIV-positive people had been treated with suspicion by staff during recent hospital visits.

“Most of us are now afraid to visit hospitals because at the gate they check our health passport books,” Banda said, speaking at her grandmother’s home in Blantyre.

Health passports in Malawi document a patient’s medical history - including their HIV status.

The director of the Health Ministry’s HIV Treatment Unit Rose Nyirenda dismissed Banda’s allegations that HIV-positive people were being treated any differently.

“I don’t think it’s true,” Nyirenda said, adding that only if people were actively coughing from asthma or tuberculosis could they possibly be stigmatised as having COVID-19.

“Why should they pick on someone with HIV? Because most of the people with HIV are on antiretrovirals and just live a normal life,” she said in a phone interview.

Her department has sought to reduce congestion in wards and consulting rooms during the pandemic by dispensing enough medication to last patients for six months.
‘CORONA CARRIERS’

Violet Banda, who helps run the youth-led support group HIV(y+), lamented the uptick in long-standing stigma affecting her group’s roughly 8,000 members.

“We’ve now seen a trend where some of our members are being accused of being corona carriers,” she said, adding that some members had been finding it harder to check their viral loads or access sexual health services as hospitals prioritise COVID-19.

“People just need to get information from credible sources,” she added.

Banda’s priority during the pandemic has been ensuring her members can access reliable health information about how to keep themselves healthy.

“We’ve been distributing personal protective equipment to our members while educating them on HIV and coronavirus,” she said.

Lockdown restrictions have complicated such efforts, but door-to-door visits, online chats and phone calls have become part of groups’ support programmes during the pandemic.

Ngulube, the Blantyre-based activist who founded the National Association of Young People Living with HIV, has been using WhatsApp to keep in touch with members too scared to meet in person.

Echoing Banda, she said knowledge was key to fighting fear and prejudice against people living with HIV:

“We need civic education to fight these dangerous misconceptions.”

This story is one in a series supported by The Global Fund to Fight AIDS, Tuberculosis and Malaria. www.theglobalfund.org
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MORE FROM REUTERS
Tab 14
Stigmatization of people living with HIV/AIDS is critically derailing calls for inclusion in development activities across the country, a key stakeholder has said.

According to the Malawi Network of People Living with HIV and Aids (MANET+), the country is still lagging behind in ending discrimination – a thing the body says is hindering people living with HIV/AIDS from partaking in development activities.

This follows a revelation by an anonymous person who is living with HIV/AIDS in Tisawasale, a special program which aired on local media earlier this week.

In narrating her story, she said that she has faced outright discrimination and stigma ever since members of her community learnt of her status.

“When I go to fetch water, people there will out-rightly deny to touch the borehole handle immediately after me. Others would even be seen making derogatory gestures to me. This is very sad for me to live in this community,” she said.
In an interview, MANET+ Executive Director Lawrence Khonyongwa, said that it is unfortunate that stigma and discrimination remain two of the challenges that persons living with HIV/AIDS face in accessing health services.

“These two challenges are what we are decrying. This, as we are saying has led to the exclusion of people living with HIV/AIDS in activities for national development,” said Khonyongwa.

MANET+ has since urged government and stakeholders to intensify measures and campaigns that will work towards ending stigma over people living with HIV/AIDS in the country.

According to UNAIDS in Malawi by 2018 there were about 1 million people living with HIV.

Credit: MIJ Online

(Visited 10 times, 1 visits today)
Tab 15
A Boy Grows into a Man Through Teen Club

Pemphero, 17, does not remember a day that did not begin with taking antiretroviral (ARV) medication. He also cannot remember his parents, who died from AIDS-related causes when he was still a toddler. Pemphero grew up in the homes of relatives in his village outside Mchinji, Malawi. He figured that every child started the day by drinking ARVs.

By the time he was 10, however, Pemphero started to notice that other children did not share his routine.

"Why am I drinking medicine every day?" Pemphero asked his grandmother.
That’s when she brought him to the Mchinji District Hospital, where an HIV counselor explained to Pempherio that he is unlike other children and requires daily medication to stay well. Without using the word “HIV,” the counselor encouraged Pempherio to continue taking his medicine. He also invited Pempherio to join a teen club supported by the Elizabeth Glaser Pediatric AIDS Foundation <http://www.pedaids.org>, which provides psychosocial support for children living with HIV.
The club is divided into two groups: preteens and adolescents, meeting at separate times. Most younger children in the club—like Pemphero at the time—are unaware of the fact that they are living with HIV, but they do know that other children in the club also take medicine each day to stay strong and healthy.

This partial disclosure of HIV status is a common method of preparing children to accept their HIV status at a later date when they are more mature and capable of understanding and accepting this reality. The children in the club meet once a month
to pick up their medication, listen to health talks, and play games together at the hospital—jump rope, football, netball, bao (mancala), cards, and checkers.

“Before I started coming to the club, I felt that I was alone,” says Pempherio. “But I immediately made a friend at the teen club, and I started to feel more comfortable.”

“It's a big challenge because if you have lost a parent, the one you are staying with cannot manage to help you or handle you the way that parents can handle you. The one you are staying with cannot afford to support you the way that a parent can.”
Three years ago, when he was 14, Pemphero moved out of his village to live with his sister Florence and her husband, Stanley, near the center of Mchinji. Now he lives within walking distance of his school as well as the hospital where he picks up his medication and attends teen club. Stanley, a local government official, has taken on the role of guardian and mentor.
"I have tried to have the food that will help him," says Stanley. "I have tried to encourage him in the arts, and I have tried to encourage him in terms of education. When he tried to give up and said that there is no future, I give him examples of people who have succeeded."

At the time of his move, Pemphero was old enough to graduate to the adolescent teen club. The HIV counselor workers disclosed his HIV status to him, confirming Pemphero suspicions: he had been infected with HIV while his mother was pregnant with him or during breastfeeding. Still, the teen was stunned.

"After I received the message that I am HIV-positive, I was not happy," says Pemphero. "I thought, 'Why am I like this? What will happen when I apply for a job and they ask about my status? Can I have a wife? Will my friends judge me?'"
“At that time, I wanted to kill myself because I felt that I was not an important person,” Pemphero remembers. Stigma is still a factor for many children and adolescents living with HIV in Malawi. Pemphero says that he has experienced schoolmates who no longer play with him after learning that he takes ARVs.

“If the teen club did not exist, it would be difficult to understand and accept my HIV status,” says Pemphero. “Taking the treatment would be so hard. But I have learned from teen club that I can be healthy. I no longer think about killing myself. I realize that there are many young kids with the same status as mine. I realize that I can get a job.”

“When a new boy comes to the club, I say to him, ‘You’re welcome here in our teen club. How many times do you take ARVs in a day? When we have taken them, we stay healthy. But if we don’t take the ARVs for a long period of time we become sick and start to feel pain. When you start taking them you are not supposed to stop. Thank you.’”
“The teen club has given me the comfort and confidence to live a good life,” he says.

Pemphero enjoys playing football and doing calisthenics with his friends at Teen Club. But his favorite activities are writing dramas and poetry. Usually, his writing focuses on discrimination and other challenges of living with HIV. With a little prompting, he recites this poem in Chichewa, the official language of Malawi:

Who knows if I can be in secondary school?

Who knows if I can be in college?

Who knows if I can have children?

Who knows if I will ever be in the office working?

Only god knows that I can be in the office working.
Only god knows that I can have children.

Only god knows that I can be in college.

Only god knows that I can be in secondary school.