

# Malawi 2023 Human Rights Report

## Executive Summary

There were no significant changes in the human rights situation in Malawi during the year.

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

In some cases, the government took credible steps to identify and prosecute officials who may have committed human rights abuses.

## Section 1. Respect for the Integrity of the Person

### a. Arbitrary Deprivation of Life and Other Unlawful or

## **Politically Motivated Killings**

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

### **b. Disappearance**

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

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

The constitution prohibited the use of torture or cruel, inhuman, and degrading treatment or punishment, but there were credible reports government officials employed these practices. Police sometimes used excessive force and other unlawful practices, including torture, to coerce confessions from detained suspects. A 2021 report by the government-chartered Malawi Human Rights Commission (MHRC), the most recent available, stated torture was widespread in prisons. In August, the nongovernmental organization (NGO) Center for Human Rights Education, Advice, and Assistance provided free legal assistance to 102 inmates who claimed to have been tortured in various detention centers.

NGOs that assisted persons engaged in commercial sex reported police

officers regularly demanded sexual favors from such individuals under the threat of arrest.

Impunity was a widespread problem in the security forces, particularly the police. Perpetrators of abuses were occasionally punished administratively, but investigations often were delayed, abandoned, or remained inconclusive.

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

Prison conditions remained harsh and life threatening due to gross overcrowding, inadequate food and potable water, and unsanitary conditions.

**Abusive Physical Conditions:** According to the prison inspectorate's 2021 report, the most recent available, inspectors found recurring problems of serious overcrowding, poor sanitation, insufficient food and potable water, a lack of health care, and poor ventilation and lighting, and prisoner abuse. In 2022, the prison inspectorate reported a total prison population of 16,704 in a space with a designed holding capacity of 7,000. The MHRC and NGOs reported that such conditions continued during the year.

**Administration:** Each prison had a designated welfare officer, some of whom had received specialized training, to receive prisoner complaints regarding conditions. The complaints process, however, was oral and informal, allowed for censorship, and provided little follow up.

Prisoners sometimes had the opportunity to submit complaints to NGOs that recorded cases for inclusion in government advocacy and reports, but this rarely resulted in action on individual cases. From January to August, the MHRC received 11 complaints regarding the rights of prisoners. NGOs attributed the low number of submitted complaints to fear of retaliation by authorities.

**Independent Monitoring:** The government permitted domestic and international NGOs and media to visit and monitor prison conditions.

#### **d. Arbitrary Arrest or Detention**

The constitution and law prohibited arbitrary arrest and detention, but the government did not always observe these prohibitions. The law provided for the right of any person to challenge the lawfulness of their arrest or detention but did 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 rarely challenged the legality of their detention.

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

Police could arrest suspects without a warrant if they had reasonable grounds to believe a crime was being or had been committed, and most arrests were made without warrants. Only in cases involving corruption or

white-collar crime were arrest warrants issued by a duly authorized official based on evidence presented. The law provided detainees the right to have access to legal counsel and be released from detention or informed of charges by a court within 48 hours of arrest, but authorities often ignored these rights. Police use of temporary remand warrants to circumvent the 48-hour rule was reportedly widespread. Police frequently demanded bribes to authorize bail. Bail was often granted to reduce overcrowding in jails, rather than because of legal merit. While relatives were sometimes denied access to detainees, there were no reports detainees were held incommunicado for extended periods of time.

Detainees who could afford counsel were able to meet with counsel in a timely manner. While the law required the government to provide free legal services to indigent detainees through the Legal Aid Bureau, such aid was provided almost exclusively to suspects charged with homicide.

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

**Pretrial Detention:** Lengthy pretrial detention was a problem and, despite a statutory 90-day limit on pretrial detention, the actual length of pretrial

detention frequently equaled or exceeded the maximum sentence for the alleged crime. Authorities reportedly held most detainees charged with homicide for two to three years before trial. There was evidence some detainees charged with homicide remained in prison awaiting trial for even longer periods, but reliable information on the number and status of these detainees was unavailable. The judiciary's administrative problems led to court backlogs that effectively denied expeditious trials for most defendants and kept some defendants in pretrial detention for long periods.

### **e. Denial of Fair Public Trial**

The constitution and law provided for an independent judiciary, and the government generally respected judicial independence and impartiality. The judicial system, however, was reportedly inefficient and handicapped by corruption.

### **Trial Procedures**

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

Defendants had the right to have an attorney, and, if indigent, an attorney was provided at state expense, but such assistance was usually limited to homicide cases. The law did not specify a length of time for the accused to prepare a defense. The slow pace of trials afforded defendants adequate

time to prepare, but facilities to accommodate defendants awaiting final disposition of their cases were inadequate. All persons had the right of appeal; however, appeals were often delayed for years and sometimes never addressed by a higher court.

### **Political Prisoners and Detainees**

There were no reports of political prisoners or detainees.

### **f. Transnational Repression**

Not applicable.

### **g. Property Seizure and Restitution**

Not applicable.

### **h. Arbitrary or Unlawful Interference with Privacy, Family, Home, or Correspondence**

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

The law permitted police officers of the rank of subinspector or higher to conduct searches without a warrant if they had reasonable grounds to believe they could not otherwise obtain evidence needed for an investigation without undue delay. Before conducting a warrantless search,

police procedures required the officer to write a reasonable-grounds justification and give a copy to the owner or occupant of the place to be searched. The Independent Complaints Commission, an independent body that investigated police misconduct, reported five complaints regarding unlawful police entry. In one such case, on July 26 police unlawfully entered a shop in Salima owned by a Rwandan national and allegedly stole money.

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

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

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

**Violence and Harassment:** In February, police arrested Dorica Mtenje, a journalist for the online publication *Maravi Post*, regarding a story she did not write or publish. Police stated the detention followed a complaint from the national intelligence service director. Mtenje was detained for 12 hours and charged with offensive communication and defamation. The government did not pursue the case after her release from custody.

**Libel/Slander Laws:** According to Freedom House, the law provided for criminal penalties of up to two years' imprisonment for libel, although it



noted most cases were prosecuted as civil matters or settled out of court. According to the NGO End Blasphemy Laws, the law made insulting the religion of another person a misdemeanor, punishable by imprisonment of up to a year. The NGO found no indication this law was enforced.

**Nongovernmental Impact:** According to the Committee to Protect Journalists, on May 17 members of the ruling Malawi Congress Party (MCP) assaulted Francis Mzindiko, a photographer for the *Times Group* newspaper, as he covered a fistfight between members of the MCP and the United Transformation Movement in Blantyre. The MCP supporters demanded that Mzindiko delete his photographs; when he refused, they slapped him, stole a camera lens, and deleted the footage. On May 19, MCP officials and Minister of Information Moses Kikuyu each issued apologies regarding the incident.

## **Internet Freedom**

The government did not restrict or disrupt access to the internet or censor online content.

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

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

## **Freedom of Association**

The government required registration of all NGOs and political parties. A 2022 amendment to the NGO law required all NGOs to register with the NGO Regulatory Authority and provided this body the power to sanction and deregister NGOs deemed to be out of compliance with the law. Civil society groups expressed concern regarding a provision in the amendment that prohibited NGOs from engaging in “politicking” without defining the term, saying the provision could be used to hinder accountability organizations from monitoring good governance. The law also provided for potential imputed criminal liability for NGOs and their trustees, managers, and chief executives with penalties including fines and prison sentences of up to two years.

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

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

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

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

**In-country Movement:** Refugees and asylum seekers were subject to an encampment policy that restricted their movements.

## **e. Protection of Refugees**

The government did not always cooperate with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to refugees, returning refugees, asylum seekers, and other persons of concern.

**Access to Asylum:** The law provided for the granting of refugee status. The government failed to review the cases of most asylum seekers.

Citing legal prohibitions on same-sex conduct, the government continued to refuse registration of perceived lesbian, gay, bisexual, transgender, queer, or intersex (LGBTQI+) asylum seekers or granting refugee status based on sexual orientation or gender identity. UNHCR registered persons of concern in its database and conducted refugee status determinations for these applicants. According to UNHCR, 10 asylum seekers from the Democratic Republic of the Congo (DRC) were arrested, detained by immigration authorities in Mzuzu, and later expelled for illegally entering the country in March. An additional 19 asylum seekers from the DRC, including 15 children, were also expelled without due process in September. In all these cases, the asylum seekers were expelled before undergoing refugee status determination.

**Abuse of Refugees and Asylum Seekers:** The government forced all refugees and asylum seekers living outside the Dzaleka Refugee Camp to return to the camp beginning May 17. During the relocation process, refugees and asylum seekers reported abuse by police including physical violence, extortion, verbal abuse, and threats. Refugees were evicted from their homes without an opportunity to collect their personal belongings. There were reports of police officers stealing money and property from the refugees and asylum seekers. After being rounded up by police, they were held in criminal detention facilities before being transferred to the Dzaleka camp. Those subjected to detention included women (some pregnant or nursing), children, and those with chronic illnesses. Refugees and asylum seekers reported that, while detained, they were not given food or access to medication or medical attention. UNHCR was not allowed access to those detained at the beginning of the relocation process.

The relocation was done without augmenting services at the Dzaleka camp, and the relocated refugees were left without food, shelter, or means of livelihood. Pressure for water, health care, and other services strained the already congested camp.

**Freedom of Movement:** Refugees were subject to an encampment policy that restricted them to the Dzaleka camp, the only official designated refugee camp in the country. The camp, initially built for 10,000 occupants, held more than 55,000 persons of concern. Severe overcrowding increased

a range of risks, including gender-based violence, the spread of communicable diseases, lack of adequate shelter, and over-burdened resources such as insufficient water, sanitation, and hygiene facilities.

The government stopped issuing Conventional Travel Documents to refugees during the year.

**Employment:** The government did not allow refugees to seek employment or educational opportunities outside the Dzaleka camp. Most refugees were dependent on donor-funded humanitarian assistance. The prohibition on employment forced many refugees to work in the informal economy, placing them at risk of exploitation. Multiple NGOs reported some refugees engaged in commercial sex to obtain income to supplement food rations and other necessities.

**Access to Basic Services:** While local laws and the justice system applied to refugees, inefficiencies and inadequate resources limited access to the system. Law enforcement capacity was extremely limited at the Dzaleka camp, with only 15 police officers who rotated positions frequently.

### **Section 3. Freedom to Participate in the Political Process**

The constitution and law provided 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**

**Abuses or Irregularities in Recent Elections:** National elections, last conducted in the 2020 presidential election that was judicially ordered after legal challenges to flawed 2019 polling, were widely reported to be fair and free of major abuses and irregularities.

**Participation of Women and Members of Marginalized or Vulnerable Groups:** Cultural and traditional gender bias and lower levels of literacy, education, and economic empowerment prevented women from participating in the political process to the same extent as men. Women were largely rejected as candidates by political parties, and they reported harassment and intimidation when campaigning as independents. The law made no specific reference to LGBTQI+ participation in the political process but, because same-sex conduct was illegal under the law, there was a de facto exclusion of openly LGBTQI+ persons.

## **Section 4. Corruption in Government**

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

**Corruption:** The government continued implementation of an action plan to pursue cases of corruption, review how past corruption scandals were perpetrated, and introduce internal controls and systems to prevent further occurrences. Due to deficits in professionalism within the civil service and lack of oversight and enforcement, progress on the action plan and the effectiveness of internal controls was limited and movement on investigations and promised reforms was slow. Reports of serious corruption implicated all branches of government.

In December 2022, police arrested Anti-Corruption Bureau (ACB) Director General Martha Chizuma on charges connected to a leaked audio recording of her private telephone conversation in which she discussed the challenges of investigating and prosecuting corruption cases tied to British businessman Zuneth Sattar. Public condemnation of Chizuma's arrest was immediate. Civil society and anticorruption advocates noted the arrest took place just days after the ACB's arrest of Vice President Saulos Chilima on corruption allegations and at a time when the ACB's Sattar investigation into alleged bribetaking by Chilima and other key members of the existing government, including cabinet-level officials, had reached an advanced stage. A group of civil society organizations claimed Chizuma's arrest was directly linked to her tough stance against corruption and was a deliberate attempt by "invisible forces" to sideline her and undermine ACB work. President Chakwera subsequently announced a commission of inquiry had been established to investigate the circumstances behind her arrest. In its January findings,

however, the commission failed to explain who ordered her arrest. The commission's recommendation that action be taken to deal with Chizuma's conduct strengthened civil society's perception that she was being deliberately undermined.

For additional information concerning corruption in the country, please see the Department of State's *Investment Climate Statement* for the country, and the Department of State's *International Narcotics Control Strategy Report*, which includes information on financial crimes.

## **Section 5. Governmental Posture Towards International and Nongovernmental Monitoring and Investigation of Alleged Abuses of Human Rights**

A variety of domestic and international human rights groups generally operated without government restriction to monitor and investigate human rights conditions or cases and publish their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views.

**Government Human Rights Bodies:** The MHRC, an independent institution, was mandated by the constitution to promote and protect human rights and investigate human rights abuses. Although the MHRC was generally regarded as effective, limited capacity resulted in a backlog of cases, delayed



production of reports, and little investigation of human rights abuses. The ombudsperson and the law commissioner were ex officio members of the MHRC.

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

## **Section 6. Discrimination and Societal Abuses**

### **Women**

**Rape and Domestic Violence:** The law criminalized rape of women and girls but not men, with a maximum penalty of death or life imprisonment. A 2015 law expressly introduced the concept of spousal rape, but the law did not prescribe specific penalties and applied only to legally separated spouses. Spousal rape could be prosecuted under the rape provisions of the law. The government generally enforced the law effectively, and convicted rapists routinely received prison sentences.

Media reporting of rape and defilement (statutory rape) arrests and convictions was an almost daily occurrence. Although rape could be

punished by death, courts generally imposed lesser prison sentences. The maximum penalty for “indecent assault” on women and girls was 14 years’ imprisonment. A person convicted of “indecent assault” on a boy younger than age 14 could be imprisoned for up to seven years.

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

**Female Genital Mutilation/Cutting (FGM/C):** The law did not specifically prohibit FGM/C. There were no reports of FGM/C.

**Other Forms of Gender-based Violence or Harassment:** In some areas, widows were sometimes forced to have sex with male in-laws or a designee as part of a culturally mandated “sexual cleansing” ritual following the death of the husband. In some cases, widows were “inherited” by a brother-in-law or other male relative. The government and NGOs sought to abolish such practices by raising public awareness of the inherent dangers of such behavior, including the risk of HIV transmission.

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

Although sexual harassment was believed to be widespread, there was no information on its prevalence.

**Discrimination:** By law women had the same legal status and rights as men and could not be discriminated against based on gender or marital status, including in the workplace. Nevertheless, women had significantly lower levels of literacy and education, and lower rates of access to resources for farming. Widows often were victims of discriminatory and illegal inheritance practices in which most of an estate was taken by the deceased husband’s family. Although citizen men could sponsor their wives for naturalization, the law did not permit citizen women to sponsor their husbands for naturalization.

The law provided for a minimum level of child support, widows' rights, and maternity leave; however, few women and girls knew their rights or had access to the legal system and thus did not benefit from these protections.

Despite the law against discrimination based on gender or marital status, women did not have opportunities equal to those available to men in formal and informal employment sectors. Few women participated in the limited formal labor market, and underrepresentation in the employment of women in managerial and administrative jobs was particularly apparent. Households headed by women were overrepresented in the lowest quarter of income distribution.

**Reproductive Rights:** There were no reports of coerced abortion or involuntary sterilization on the part of government authorities.

Health-care clinics and local NGOs operated freely in disseminating information on family planning under the guidance of the Ministry of Health. According to the 2016 *Malawi Demographic and Health Survey* (MDHS), the most recent data available, 58 percent of girls and women of reproductive age used modern methods to meet family planning needs. The government provided free childbirth services, but availability depended upon access to hospitals and other medical facilities in rural areas. The government provided access to sexual and reproductive health services for survivors of sexual violence at no charge in public facilities, and providers were trained in using a screening checklist for patients who sought care due to sexual

violence. Emergency contraception as well as postexposure prophylaxis and other medications were generally available for the clinical management of rape, but the availability of contraceptives was often limited in rural areas.

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

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

apply for readmission after this period only by sending requests to the Ministry of Education as well as the school. Many teachers were reportedly unaware of this policy or unsure how to implement it.

## **Systemic Racial or Ethnic Violence and Discrimination**

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

## **Children**

**Education:** In a reversal of previous trends, girls outnumbered boys in primary school enrollment. Although initial secondary school enrollment rates for girls and boys were approximately the same, girls tended to drop out of secondary school at much higher rates and accounted for approximately 63 percent of all secondary school dropouts due to factors such as pregnancy, economic hardship, and marriage.

**Child Abuse:** Child abuse remained a serious problem. The law prohibited subjecting a child to any social or customary practice 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 government made some efforts to enforce the law.

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

**Child, Early, and Forced Marriage:** The law set the minimum age for marriage at 18, but the law was not enforced effectively. According to UNICEF, 46 percent of girls were married before age 18, and 9 percent of girls were married before 15. Some traditional leaders annulled early marriages and returned the girls involved to school. Public awareness messaging to prevent early marriage was carried out mainly by NGOs.

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

## Antisemitism

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

## Trafficking in Persons

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

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

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



The Constitutional Court began to hear arguments in two cases that sought to challenge the constitutionality of the country's laws criminalizing same-sex conduct. The cases were before the court at year's end.

In 2021, a court in Mangochi District convicted a transgender woman, Trizza Banda, of two counts of "obtaining by false pretense" based on presenting herself as a woman, and one count of "unnatural offense" for alleged same-sex sexual conduct. She was sentenced to eight years' imprisonment. A court heard her appeal in July and a decision was pending at year's end.

**Violence and Harassment:** The NGO Center for the Development of People documented numerous instances of abuse based on real or perceived sexual orientation or gender identity and expression. The nature of the abuses fell into three broad categories: stigma, harassment, and violence. Although victims were willing to report abuses to the NGO, they did not want their orientation revealed to their families or the public, so no investigations or prosecutions resulted. Additionally, LGBTQI+ persons feared unequal treatment by police, noting cases where community members attempted to register complaints for burglary but were instead threatened with arrest.

**Discrimination:** The law did not prohibit discrimination based on sexual orientation, gender identity or expression, or sex characteristics. A report by the NGO Nyasa Rainbow Alliance found that LGBTQI+ persons faced routine discrimination in almost all aspects of their daily lives, limiting their access to health and social services and hindering their social and economic

development. The government's *National Strategic Plan for HIV and AIDS (2020-25)* included transgender persons and men who have sex with men as key populations whose engagement was necessary to achieve plan goals.

The government continued to ban the registration of perceived LGBTQI+ asylum seekers and refused to grant refugee status based on sexual orientation or gender identity, citing legal prohibitions on same-sex conduct. LGBTQI+ refugees reported believing they were unsafe in the country.

**Availability of Legal Gender Recognition:** Legal gender recognition was not available.

**Involuntary or Coercive Medical or Psychological Practices:** Limited information was available regarding coercive medical or psychological practices that specifically targeted LGBTQI+ persons; however, the Nyasa Rainbow Alliance reported LGBTQI+ persons were at times categorized by police as “not of sound mind” and then subjected to forced psychological evaluations. The NGO also reported some LGBTQI+ persons were coerced by societal norms into opposite-sex marriages to avoid harassment, discrimination, and arbitrary arrest. There were no known reports that medically unnecessary “normalization” surgeries were performed on children or on nonconsenting adult intersex persons.

**Restrictions of Freedom of Expression, Association, or Peaceful Assembly:** The government permitted peaceful assembly of LGBTQI+ persons, including

permitting a Pride march in Lilongwe in June 2022. Freedom of association was somewhat restricted, as NGOs seeking to register as LGBTQI+ rights organizations continued to face government restrictions. In September 2022, the Supreme Court of Appeal ruled NGO Nyasa Rainbow Alliance could proceed with a 2017 challenge to the government's refusal to register it as an NGO. The case remained pending at year's end. The organization was initially refused registration on the grounds that promoting the human rights of LGBTQI+ persons was akin to advocating illegality. The NGO then removed reference to LGBTQI+ rights, but the government refused to reconsider its decision.

NGOs that supported the human rights of LGBTQI+ persons reported their senior officers were threatened and intimidated on social media, with users sharing their images and accusing them of undermining the country's cultural values. There was no government response to the threats.

## **Persons with Disabilities**

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

ability of persons with disabilities to obtain services and find and maintain employment.

The law prohibited 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 prohibited discrimination against persons with disabilities in political and public life and called for the government to take measures to provide access for them to transportation, information, and communication services. The law established a disability trust fund to support persons with disabilities, including improved access to both public and private facilities. Although the relevant law took effect in 2013, the government did not adopt standards and plans for its implementation and enforcement. The Ministry of Gender, Community Development, and Social Welfare was responsible for protecting the rights of persons with disabilities but did not do so. Discrimination against persons with disabilities in employment occurred. Some public and privately supported schools and training centers assisted persons with disabilities.

## **Other Societal Violence or Discrimination**

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

There were several attacks on persons with albinism driven by demand for body parts used in witchcraft rituals. Religious, traditional, civil society, and political leaders, including the president, denounced the attacks. In November 2022, an assailant broke into the house of a girl with albinism, age three, while she slept next to her grandmother, killed the girl, cut off her left arm, and absconded. Police arrested six suspects in connection with the girl's killing; one of the suspects was granted bail and the other five remained in custody awaiting trial at year's end.

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

## **Section 7. Worker Rights**

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

The law allowed workers, except for military personnel and police, to form and join trade unions of their choice without previous authorization. The law required unions to register with the Registrar of Trade Unions and

Employers' Organizations in the Ministry of Labour; registration requirements were not onerous, but failure to meet annual reporting requirements could result in cancellation of a union's registration. The law prescribed the articles trade union constitutions had to include and limited certain individuals from holding union offices or positions of responsibility. The law placed some restrictions on the right to collectively bargain, including requirements of prior authorization by authorities, and bargaining status. The law provided for unions to conduct their activities without government interference. The law also prohibited antiunion discrimination and provided for remedial measures in cases of dismissal for union activity. The law did not specifically prohibit retaliation against strikers or actions against unregistered unions.

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

The law allowed members of a registered union to strike after going through a mandatory mediation process overseen by the Ministry of Labour. A strike

could take place only after failure of a lengthy settlement procedure, including seven days' notice of a strike and a 21-day conciliation process as set out in the law. An October 2022 amendment to the Employment Act and Labour Relations Act allowed employers to deduct wages from striking employees if they were on strike for more than three days per year. The law also required the labor minister to apply to the Industrial Relations Court to determine whether a strike involved an "essential service," the interruption of which would endanger the life, health, or personal safety of part of the population. The law did not provide a specific list of essential services, but the October amendment authorized the labor minister to designate categories of workers deemed essential who were not allowed to strike. Before the amendment, members of a registered union in essential services had only a limited right to strike. There were no special laws or exemptions from regular labor laws in export-processing zones. The law did not apply to most workers who were in the informal sector without work contracts.

The government did not effectively enforce applicable labor laws.

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

Freedom of association and the right to collective bargaining were

adequately respected for those in the formal sector. Union membership among workers was low due to the small percentage of the workforce in the formal sector.

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

The law did not provide for the creation of trade unions for self-employed informal-sector workers, but approximately 15,000 of an estimated two million informal workers were organized in the Malawi Union for the Informal Sector (MUFIS), which was affiliated with the Congress of Trade Unions. MUFIS worked with district councils to address matters affecting informal workers due in part to a Ministry of Labour decision that MUFIS did not have sufficient standing to bargain collectively with employers.

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

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

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



## Employment

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

### d. Discrimination (see section 6)

### e. Acceptable Conditions of Work

**Wage and Hour Laws:** The labor minister set the minimum wage rate for all formal sectors based on recommendations of the Tripartite Wage Advisory Board composed of representatives of labor, government, and employers. The minimum wage was set below the World Bank's poverty income level.

The legal workweek was 48 hours, with a mandatory weekly 24-hour rest period. The law required premium payment for overtime work and prohibited compulsory overtime.

**Occupational Safety and Health:** The law established occupational safety and health (OSH) standards that were appropriate for the main industries in the country. Workers, particularly in industrial jobs, often worked without basic safety clothing and equipment. Workers harvesting tobacco leaves generally did not wear protective clothing and absorbed up to the equivalent of 50 cigarettes worth of dissolved nicotine daily through their skin. The government rarely identified in a proactive manner unsafe conditions or respond to workers' OSH complaints.

Workers had the right to remove themselves from dangerous work situations without jeopardy to continued employment. Workers dismissed for filing complaints regarding workplace conditions had the right to file a complaint at the Labour Office or sue the employer for wrongful dismissal; however, these processes were not widely publicized, and workers were unlikely to exercise these rights. Authorities did not effectively protect employees in this situation.

**Wage, Hour, and OSH Enforcement:** The Ministry of Labour was responsible for enforcement of wage and hour laws. By law, labor inspectors had the authority to make unannounced inspections but lacked the authority to initiate sanctions. The government did not provide information on the number of labor inspectors nor on government actions during the year to prevent violations, particularly for vulnerable groups.

The Ministry of Labour contained a Directorate of Occupational Safety and Health responsible for minimum standards, but the number of labor inspections was insufficient to enforce the law effectively. Inspectors had the authority to make unannounced inspections and initiate sanctions. The Ministry of Labour did not effectively enforce laws related to OSH, wages, or overtime. Workweek and annual leave standards were not effectively enforced, and employers frequently violated statutory time restrictions. Alleged violations of wage, hour, and overtime laws were believed to be widespread and, according to a 2017 Ministry of Labour report, were

common across both the private and public sectors. The Ministry of Labour's enforcement of health and safety standards was also poor. The law specified fines and imprisonment for violations, but these penalties were rarely applied against violators and, when applied, were less than those for similar crimes. No reports of jail terms were ever reported. The government rarely took actions to prevent violations, including for vulnerable populations.

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

More than 88 percent of the workforce was engaged in the informal sector. A study by the Congress of Trade Unions found informal workers endured unsafe and unhealthy working conditions, but labor laws did not protect workers outside the formal sector or part-time workers.