



MALAWI

COUNTRY OF ORIGIN INFORMATION (COI) REPORT

COI Service

31 OCTOBER 2012

SECURING OUR BORDER CONTROLLING MIGRATION

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Preface

- i This Country of Origin Information (COI) Report has been produced by COI service, United Kingdom Border Agency, for use by officials involved in the asylum/human rights determination process. The report provides general background information about the issues most commonly raised in asylum/human rights claims made in the United Kingdom. The main body of the report includes information available up to 26 September 2012. The report was issued on 31 October 2012 and reissued on 19 March 2013 with a correction to paragraph 22.14.
- ii The report is compiled wholly from material produced by a wide range of external information sources and does not contain any UK Border Agency opinion or policy. All information in the report is attributed, throughout the text, to the original source material, which is made available to those working in the asylum/human rights determination process.
- iii The report aims to provide a compilation of extracts from the source material identified, focusing on the main issues raised in asylum and human rights applications. In some sections where the topics covered arise infrequently in asylum/human rights claims only web links may be provided. It is not intended to be a detailed or comprehensive survey. For a more detailed account, the relevant source documents should be examined directly.
- iv The structure and format of the report reflects the way it is used by UK Border Agency decision makers and appeals presenting officers, who require quick electronic access to information on specific issues and use the contents page to go directly to the subject required. Key issues are usually covered in some depth within a dedicated section, but may also be referred to briefly in several other sections. Some repetition is therefore inherent in the structure of the report.
- v The information included in this report is limited to that which can be identified from source documents. While every effort is made to cover all relevant aspects of a particular topic it is not always possible to obtain the information concerned. For this reason, it is important to note that information included in the report should not be taken to imply anything beyond what is actually stated. For example, if it is stated that a particular law has been passed, this should not be taken to imply that it has been effectively implemented unless stated. Similarly, the absence of information does not necessarily mean that, for example, a particular event or action did not occur.
- vi As noted above, the Report is a compilation of extracts produced by a number of information sources. In compiling the report no attempt has been made to resolve discrepancies between information provided in different source documents though COI service will bring the discrepancies together and aim to provide a range of sources, where available, to ensure that a balanced picture is presented. For example, different source documents often contain different versions of names and spellings of individuals, places and political parties, etc. Reports do not aim to bring consistency of spelling

but to reflect faithfully the spellings used in the original source documents. Similarly, figures given in different source documents sometimes vary and these are simply quoted as per the original text. The term 'sic' has been used in this document only to denote incorrect spellings or typographical errors in quoted text; its use is not intended to imply any comment on the content of the material

- vii The report is based substantially upon source documents issued during the previous two years. However, some older source documents may have been included because they contain relevant information not available in more recent documents. All sources contain information considered relevant at the time this report was issued.
- viii This report and the accompanying source material are public documents. All reports are published on the UK Border Agency website and the great majority of the source material for the report is readily available in the public domain. Where the source documents identified are available in electronic form, the relevant weblink has been included together with the date that the link was accessed. Copies of less accessible source documents, such as those provided by government offices or subscription services, are available from COI service upon request.
- ix Reports are published regularly on the top 20 asylum intake countries. Reports on countries outside the top 20 countries may also be produced if there is a particular operational need. UK Border Agency officials also have constant access to an information request service for specific enquiries.
- x In producing this report, COI service has sought to provide an accurate, up to date, balanced and impartial compilation of extracts of the available source material. Any comments regarding this report or suggestions for additional source material are very welcome and should be submitted to COI service as below.

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Email: cois@homeoffice.gsi.gov.uk

Website: <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

INDEPENDENT ADVISORY GROUP ON COUNTRY INFORMATION

- xi 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 UK Border Agency's COI material. The IAGCI welcomes feedback on UK Border Agency's COI reports and other COI material. Information about the IAGCI's work can be found on the Independent Chief Inspector's website at <http://icinspector.independent.gov.uk/country-information-reviews/>

- xii In the course of its work the IAGCI reviews the content of selected UK Border Agency COI documents and makes recommendations specific to those documents and of a more general nature. A list of the Reports and other documents which have been reviewed by the IAGCI or the Advisory Panel on Country Information (the independent organisation which monitored UK Border Agency's COI material from September 2003 to October 2008) is available at <http://icinspector.independent.gov.uk/country-information-reviews/>
- xiii Please note: it is not the function of the IAGCI to endorse any UK Border Agency material or procedures. Some of the material examined by the Group relates to countries designated or proposed for designation to the Non-Suspensive Appeals (NSA) list. In such cases, the Group's work should not be taken to imply any endorsement of the decision or proposal to designate a particular country for NSA, nor of the NSA process itself. The IAGCI can be contacted at:

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Website: <http://icinspector.independent.gov.uk/country-information-reviews/>

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USEFUL NEWS SOURCES FOR FURTHER INFORMATION

A list of news sources with weblinks is provided below, which may be useful if additional up to date information is required to supplement that provided in this report. The full list of sources used in this report can be found in [Annex E – References to source material](#).

AlertNet (Thomson Reuters)

<http://www.alertnet.org/thenews/newsdesk/index.htm?news=all>

All Africa <http://allafrica.com/eritrea/>

British Broadcasting Corporation (BBC) <http://news.bbc.co.uk>

Cable News Network (CNN) <http://edition.cnn.com/WORLD/?fbid=i0gUtrVnUAY>

Integrated Regional Information Networks (IRIN) <http://www.irinnews.org/>

Reuters <http://www.reuters.com/>

Voice of America (VoA) News <http://www.voanews.com/english/news/>

UNHCR RefWorld <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain>

Ecoi.net www.ecoi.net

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Background Information

1. GEOGRAPHY

- 1.01 The Permanent Committee on Geographical Names (1 April 2012 version) recorded the official name of the country as the 'Republic of Malawi.' **[9]**. The Central Intelligence Agency (CIA) 'World Factbook' (last updated 13 September 2012) numbered the population at 16,323,044 (July 2012 estimate). **[3]**. The United States State Department (USSD) 'Background Note on Malawi' (last updated 4 May 2012), referred to the capital city of the country as Lilongwe, and the other main cities are Blantyre, Zomba and Mzuzu. Blantyre remains Malawi's commercial centre. **[1b]**
- 1.02 The Foreign and Commonwealth Office 'Malawi Country Profile', last reviewed on 16 May 2012, noted that: 'Malawi is a landlocked country in south central Africa bordered by Tanzania to the north, Zambia to the west and Mozambique to the east and south. Over 1/5 of the total land area of 118,000 sq km comprises of Lake Malawi.' **[2]**
- 1.03 Ethnologue's 'Languages of the World', Malawi (accessed on 22 August 2012), stated that the national or official languages of the country are Nyanja (Chewa), Tumbuka and English. **[18]**. The USSD 'Background Note' referred to the ethnic groups of the country as: Chewa, Nyanja, Tumbuka, Yao, Lomwe, Sena, Tonga, Ngoni, Ngonde, Asian, European; and the split of religions in the country as: Protestant 55%, Roman Catholic 20%, Muslim 20%, indigenous beliefs 3%, other 2%. **[1b]**
- See also [Ethnic groups](#) for details of ethnic demographics.
- 1.04 In the 'Malawi Public Holidays' section of the World Travel Guide website (2012 version), accessed on 23 July 2012, the following days are listed as public holidays in 2012:

Date	Name of public holiday
1 January	New Year's Day
15 January	Chilembwe Day Day
3 March	Martyrs' Day
6 April	Easter
1 May	Labour Day
14 June	Freedom Day
6 July	Republic Day

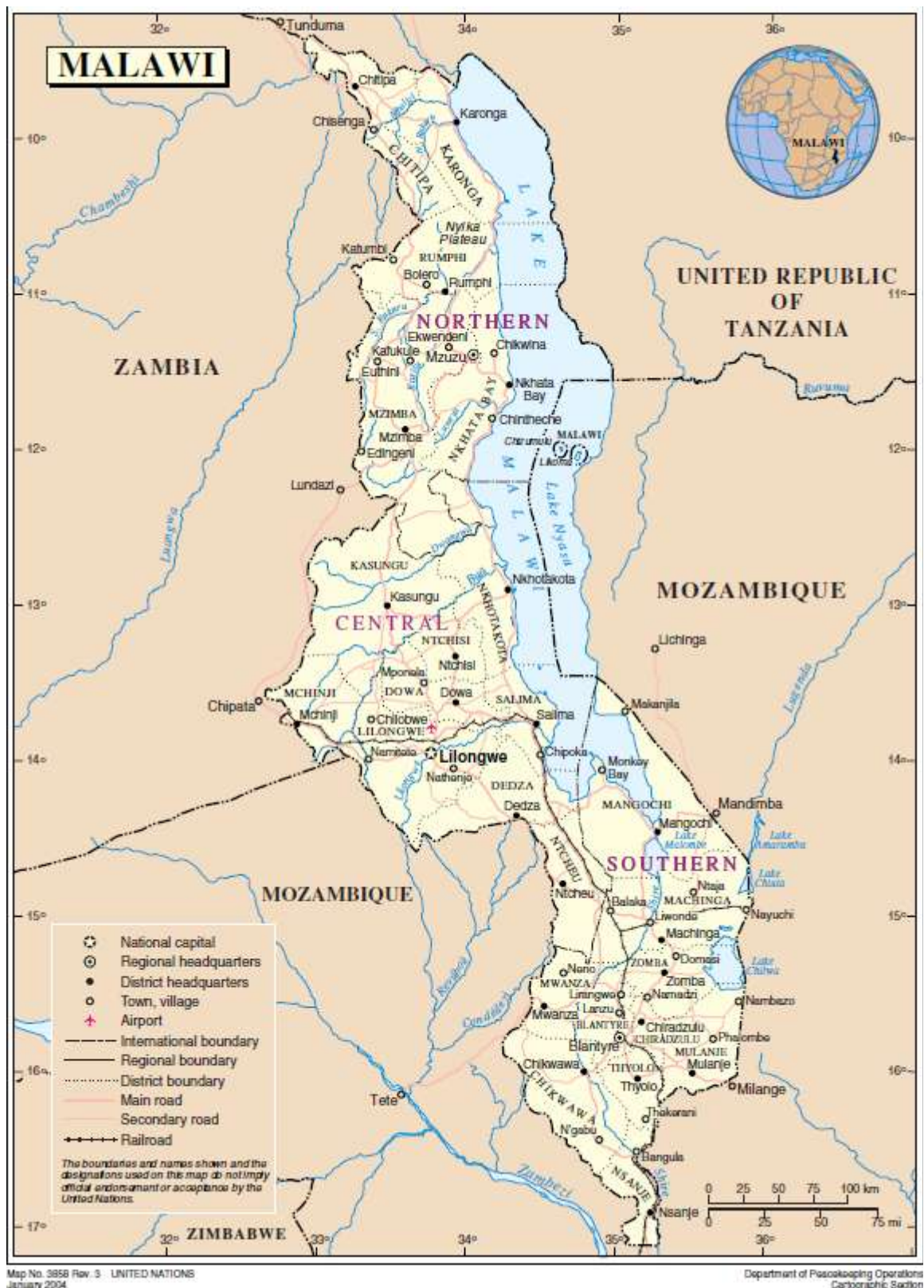
19 August	Eid Al Fitr
8 October	Mothers' Day
25 December	Christmas Day
26 December	Boxing Day

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MAP

1.05 Map of Malawi showing the main towns and cities:



Link to map: <http://www.un.org/Depts/Cartographic/map/profile/malawi.pdf>

Link to another map of Malawi:

http://www.nationsonline.org/oneworld/map/malawi_map.htm

2. ECONOMY

2.01 The XE Universal Currency Converter website, accessed on 3 September 2012, listed the following official market rates - one American dollar is equivalent to 267.65 Malawian Kwachas; one Euro is equivalent to 336.47 Malawian Kwachas, and one British pound is equivalent to 425.38 Malawian Kwachas. [38]

2.02 The United States State Department 'Background Note on Malawi' (updated on 4 May 2012) stated that Malawi's estimated Gross Domestic Product (GDP) in 2011 was US\$ 5.7 billion. Its annual real GDP growth rate in 2011 was 4.6%. The estimated per capita Gross National Income in 2010 was US\$330. The average inflation rate in 2011 was 7.5%. [1b]

2.03 A Nyasa Times report, 'Experts dispute Malawi's 3 per cent unemployment rate-report', dated 8 August 2012, stated that:

'Experts have disagreed with Malawi government figures that put the country's unemployment rate at 3 percent margin.

'In a published report in Business Times midweek publication, the country's medium term development strategy, the Malawi Growth Development Strategy (MDGS II) put Malawi among the fastest developing countries in the world with low unemployment levels like Singapore, Austria, Switzerland, British Virgin Islands, Cambodia, Cuba, Vietnam, Andorra and Tonga.

'According to the paper, the MDGS II would help the Malawi government lower unemployment by 1 percent come 2016; meaning by then unemployment would be pegged at 2 percent...But a Zomba based economist has disputed the figures saying they do not represent true situation on the ground.

'The analyst who the paper say did not want to be named, has argued that formula used to compute the figures is way out of this world as it looks at every Malawian who has a garden where s/he goes uses to produce maize as employed person...National Statistics Office Commissioner Charles Machinjili is on record as saying the way the population of Malawi is structured has bearing on unemployment figures as those that are involved in gainful tasks like farming are also considered employed.' [16f]

2.04 The Foreign and Commonwealth Office 'Country Profile on Malawi' (last reviewed on 16 May 2012) stated that:

'Malawi has few exploitable resources apart from land, which is at serious risk of degradation as a result of population pressure and poor farming methods. Agriculture remains the backbone of the economy, employing 85% of the working population. However, about 90% of these workers are engaged in subsistence farming. Tobacco is responsible for some 60% of

export earnings, with sugar, tea and coffee contributing about 5% each. Exports of uranium deposits in the north of Malawi started in mid-2009 and will run at 1,500 tonnes a year for at least ten years, generating an annual income of some \$100 million, about 5% of Malawi's GDP and 20% of foreign exchange earnings.' [2] (Economy)

- 2.05 A United Nations IRIN report, 'Malawi: Bumpy road to economic recovery', dated 18 May 2012, stated:

'A sizeable devaluation of Malawi's currency, aimed at reinvigorating the economy and wooing back international donors, has triggered steep increases in the price of basic goods and pushed many Malawians deeper into poverty.

'Former president Bingu wa Mutharika, who died suddenly in April 2012, had resisted calls by the International Monetary Fund (IMF) to devalue the Malawian kwacha as a way to boost exports, arguing that it would cause too much suffering to the poor. The kwacha remained pegged to the US dollar at a rate of 166, creating a parallel informal market in which the dollar was sold at more than 300 kwacha, draining foreign currency from the formal banking system.

'Mutharika's refusal to meet the IMF's demands and concerns about his increasingly autocratic style of governance resulted in a significant loss of donor support that at one time had accounted for 40 percent of the country's budget, and helped to push Malawi towards financial collapse.

'Malawi's new president, Joyce Banda, has moved quickly to restore relations with donors, in part by meeting the IMF's conditions for a support package. On 7 May [2012], she devalued the kwacha by nearly 50 percent and untied the currency from the dollar.

'In a statement by the Reserve Bank of Malawi on the same day, Governor Charles Chuka said the move was intended not only to improve the availability of forex and unlock donor flows, but also to reduce demand for imported consumer goods in favour of domestically produced goods. He noted that since the prices of most commodities already reflected the parallel market exchange rate, devaluation was not expected to trigger further price increases.

'However, the prices of many basic items have gone up by as much as 50 percent and fuel prices have risen by 30 percent, pushing up the cost of public transport by about 40 percent.' [58d]

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3. HISTORY

This section provides a brief history of the country the nineteenth century up to 2011, with the focus on the last three years. For further information about the history of Malawi, see the United States State Department [Background](#)

[Note on Malawi](#) [1b]; and the Foreign and Commonwealth Office [Country Profile](#). [2] See also [Annex A](#) for a chronology of major events.

For more recent news reports on Malawi, refer to the following weblinks: [BBC News](#); [Reuters](#); [All Africa](#); [Afol News](#), and [Africa Online](#).

See also [Latest news](#); [Opposition groups and political activists](#).

- 3.01 The Foreign and Commonwealth Office 'Country Profile on Malawi' (last reviewed on 16 May 2012) stated:

'Malawi takes its name from the Maravi (which means 'rays of light') empire which developed on the shore of Lake Malawi in the 16th and 17th centuries. In the 19th century Maravi was devastated by the arrival of Nguni invaders from the south, and Muslim slavers from the east, leading to the establishment of a British Protectorate of Nyasaland at the end of the 19th century. Christian missions, inspired by Livingstone's appeal to end the slave-trade, played a key role in promoting British intervention. Apart from local initiatives - most notably by John Chilembwe, an evangelical Christian minister (and national hero), in 1914 - there was little resistance to colonial rule until the 1950s when there were widespread protests against the unpopular Federation of Rhodesia and Nyasaland.

'Nyasaland achieved independence as Malawi in 1964. Hastings Banda, who had returned from a successful medical practice in London to lead African protest against the Federation, became the first prime minister. He quickly adopted an autocratic style, leading to ministerial rebellions in the 1960s, which in turn led to further repression. He also adopted a policy of détente with the remaining white-ruled states in southern Africa and, in contrast with the governments of Tanzania, Zambia and (after 1975) Mozambique, took a staunchly capitalist and pro-Western line. In the climate of the Cold War donors were prepared to tolerate his domestic idiosyncrasies, especially since - again in contrast to his neighbours - he managed an effective economy in one of the poorest countries in the world. But with the collapse of communism the props, both domestic and international, were kicked away. Under donor and popular pressure, as well as feeling the effects of age (he was at least 90), he conceded multi-party democracy in 1993. Bakili Muluzi and his United Democratic Front [UDF] (whose popular support was in the densely-populated south of the country) won the ensuing presidential and parliamentary elections in 1994.' [2]

- 3.02 The United States State Department 'Background Note on Malawi' (updated on 4 May 2012) noted that:

'[In the 1994 elections] The UDF won 82 of the 177 seats in the National Assembly and formed a coalition government with the Alliance for Democracy (AFORD). That coalition disbanded in June 1996, but some of its members remained in the government ... Malawi's newly written constitution (1995) eliminated special powers previously reserved for the Malawi Congress Party. Accelerated economic liberalization and structural reform accompanied the political transition. When Malawi held its second democratic elections on June 15, 1999, Dr. Muluzi was re-elected to serve a

second 5-year term as President, despite an MCP-AFORD alliance that ran a joint slate against the UDF.

'Malawi underwent its first transition between democratically elected presidents in May 2004, when the UDF's presidential candidate Bingu wa Mutharika defeated MCP candidate John Tembo and Gwanda Chakuamba, who was backed by a grouping of opposition parties. European Union and Commonwealth observers said although the election passed peacefully, they were concerned about "serious inadequacies" in the poll. The UDF did not win a majority of seats in parliament, as it had done in 1994 and 1999 elections. Through the successful manoeuvring of party chairperson and former President Bakili Muluzi, the party secured a majority by forming a 'government of national unity' with several opposition parties. President Bingu wa Mutharika left the UDF on February 5, 2005, citing differences with the party leadership, particularly over his anti-corruption campaign. He formed the Democratic Progressive Party (DPP) shortly thereafter, attracting a number of UDF and independent members of parliament (MPs) to his new party.' [1b]

3.03 The same USSD 'Background Note' added:

'On May 19, 2009, President Mutharika was reelected to a second 5-year term, defeating MCP candidate John Tembo. Ex-President Muluzi attempted to run as a candidate as well, but was barred by constitutional term limits. Mutharika's DPP won a majority in parliament, and the number of women in parliament increased from 27 to 41. The May 19 elections were marked by high voter turnout, and international and domestic observers agreed that the elections were generally free and fair.' [1b]

3.04 An Nyasa Times report, 'Malawians warned against possessing old national flag', dated 14 August 2010, noted:

'The Malawi government has warned citizens who still possess the old national flag that they risk arrest and prosecution. The new flag was launched last Saturday by President Bingu wa Mutharika after the national assembly passed the amended 'Flags, Emblem and Names Act'. The new flag, with red at the top, black in the middle and green at the bottom complete with a full sun in the middle, replaces the old one (black, red and green with a rising sun super-imposed on the top black colour). In the old flag, the black stripe represents the people of Africa while the colour red stands for the blood spilled as the southern African country struggled for independence. The colour green symbolizes the country's vegetation and the rising sun represents the dawn of freedom and hope on the African continent. Launching the new flag in the capital, Lilongwe, amid resistance from a cross section of individuals and interest groups, President Mutharika argued that Malawi had developed tremendously since independence from British colonialists in 1964. He said it did not make sense to still describe Malawi as 'a nation at dawn' 46 years after independence. But opponents described the reasons behind the change as unconvincing and unrealistic and the cost of changing the flag as unnecessary.' [16c]

LOCAL GOVERNMENT ELECTIONS

- 3.05 A Face of Malawi article, 'Malawi Postpones Much-Awaited Local Gov't to 2014', dated 25 May 2011, recorded:

'The Malawi Electoral Commission (MEC) has announced the postponement of the long-awaited Local Government Elections to 2014, the elections body said in a statement Tuesday evening. In a brief statement, the electoral body statement 'the decision by government to postpone the elections has been arrived at following consultations with President Bingu wa Mutharika'. No reasons were given for the postponement of the much-anticipated elections. This development comes in the wake of cries for the local polls from religious and civil society leaders as well as opposition leaders. Malawians have only gone to the polls for the local polls only once – in 2000 – since the southern African country re-introduced multiparty elections in 1994. This has left Malawian cities in the...state of having no mayors or councillors since 2005 to date. After the 2000 elections the next polls were scheduled to be held in 2005, a year after Mutharika assumed office.' [48]

- 3.06 The same 'Face of Malawi' article continued:

'...despite the Constitution stating that local polls must be held a year after the presidential and parliamentary elections, Mutharika's ruling Democratic Progressive Party (DPP) got around that 'small matter about the law' by amending the Local Government Act to empower the president to set the date for the holding of the local government elections. Then Electoral Commission earlier announced that the polls would be held on April 20, 2011, but as the preparations were underway Mutharika suspended the Commission on December 3, 2010 reportedly to pave way for an investigation into the misappropriation of millions of dollars at the electoral body. The Commission was only re-instated on April 1, 2011, only 19 days to the scheduled polls, when the much-hyped probe found that no such colossal sum of money was missing. But it was too late for the polls since ground was already lost but, before Tuesday's dramatic announcement the electoral body was consulting political parties when it would be feasible the elections. This latest development is set to anger the opposition and civil society leaders. The Malawi Elections Support Network (MESN), a grouping of civil society groups fighting for the polls, has demanded that the polls be held in six months or it will go to court to demand them.' [48]

FOREIGN DONOR AID TO MALAWI SUSPENDED

- 3.07 A BBC News report, 'UK and Malawi in tit-for-tat diplomatic expulsions', dated 27 April 2011, noted:

'The UK has ordered Malawi's high commissioner to leave the country over the 'unacceptable' expulsion of Britain's envoy to Lilongwe. Fergus Cochrane-Dyet was told to leave Malawi after he was quoted in a leaked cable as saying the president does not tolerate criticism....According to the diplomatic cable published by the local Weekend Nation newspaper last week, Mr Cochrane-Dyet described Malawi's President Bingu wa Mutharika

as 'becoming ever more autocratic and intolerant of criticism'...[the] British Foreign Secretary...said acting High Commissioner of Malawi Flossie Gomile-Chidyaonga and her dependants must leave the UK at 'the earliest opportunity' and hinted that the UK's aid to its former colony could be cut.' [7d]

- 3.08 A Department for International Development report of 14 July 2011, 'UK suspends financial support for Malawi government', stated:

'Malawi will no longer receive general budget support from the UK Government...this has now been suspended indefinitely. The Development Secretary took the decision after the Government of Malawi repeatedly failed to address UK concerns over economic management and governance. On governance, demonstrations have been suppressed, civil society organisations intimidated, and an Injunctions Bill passed that would make it easier for the Government to place restrictions on opponents without legal challenge. On the economy, the UK is concerned that Malawi's overvalued exchange rate has created chronic foreign exchange shortages which are having a serious impact on the Malawian private sector's ability to drive future growth. There are now daily fuel queues, tobacco exports have deteriorated and Malawi is off-track with its International Monetary Fund (IMF) programme. The decision is in line with international concern over Malawi's current position. The World Bank, the European Union, the African Development Bank, Germany and Norway have all suspended or ended general budget support to Malawi.' [41]

- 3.09 A Voice of America report, 'US Agency Puts Aid to Malawi "On Hold"', dated 26 July 2011, noted:

'The United States has put a \$350 million aid package to Malawi on hold, following deadly clashes between police and protesters in the southern African country. The Millennium Challenge Corporation, a U.S. government agency that assists developing countries, said Tuesday that it will review its partnership with Malawi. The agency has expressed concern about the government's use of force and restrictions on media reporting on the demonstrations. It said the developments call into question Malawi's commitment to good governance.' [29]

ANTI-GOVERNMENT PROTESTS: JULY 2011

- 3.10 A Guardian article, 'Malawi protesters killed during anti-regime riots', dated 21 July 2011, observed:

'At least 18 people have been killed, officials say, in two days of public unrest in Malawi, an unlikely stage for one of the biggest anti-government protests in sub-Saharan Africa this year. The protests, sparked by worsening fuel shortages, rising prices and high unemployment in the southern African country, have seen calls for president Bingu wa Mutharika to step down.

'Malawi's health ministry spokesman Henry Chimbali confirmed 10 deaths in the northern cities of Karonga and Mzuzu, where protesters ransacked the

offices of Mutharika's Democratic Progressive party (DPP) on Wednesday. The others died in the capital, Lilongwe, and the southern commercial hub of Blantyre after police and troops fired teargas to disperse crowds demanding that Mutharika quit. These figures are based on those casualties that are coming through to the hospitals,' Chimballi told Reuters. "Some died in hospital, while some were brought by police already dead." A further 41 people were injured, six critically, he added.

'The fierce crackdown in the normally peaceful nation is likely to intensify public anger against Mutharika. The campaign against him is led by a coalition of 80 groups which claim that Malawi is facing its worst shortages in 47 years of independence and is turning into an "autocratic kleptocracy".' [22a]

- 3.11 A United Nations IRIN article, 'Malawi's "Arab Spring"?', dated 25 July 2011, noted:

'Two days of protests in Malawi last week which saw at least 18 people killed were sparked by fears the fledgling democratic state was sliding back into one-party state rule, analysts told IRIN. The security forces' heavy-handed response to demonstrations, which reportedly saw the use of live ammunition, in the capital Lilongwe, its second city Blantyre and the main northern city of Mzuzu may have echoes of the 2011 "Arab Spring" but "the context is entirely different," Judy Smith-Höhn, a senior southern Africa researcher at South Africa's Pretoria-based think-tank the Institute for Security Studies (ISS), told IRIN...in many ways southern Africa experienced the tumultuous events being seen in North Africa and the Middle East in the 1990s "and yet people are constantly trying to use protests as southern Africa's 'Arab Spring'... North Africa should be learning from the experiences of southern Africa and not the other way around," Smith-Höhn said.

'Among the grievances of Malawi's protesters were repressive media legislation and poor economic management. Lilongwe-based political analyst Augustine Magolowondo told IRIN there was a "sense of betrayal" by the electorate after the 2009 elections saw President Bingu wa Mutharika overwhelmingly backed for a second term of office.

"A majority of Malawians relate what is happening now to the time of one-party authoritarianism and what is unfolding is people's resistance against such a development... [with Wa Mutharika] restricting civil and political rights in addition to increasingly undermining, if not suffocating, democratic accountability institutions," he said.' [58c]

- 3.12 An Aljazeera report, 'Malawi president given ultimatum', dated 26 July 2011, stated:

'The main organisers of anti-government protests in Malawi have announced an ultimatum for the African country's president to address their grievances or face more protests. Rafiq Hajat, director of the think-tank Institute for Policy Interaction, said on Tuesday that Bingu wa Mutharika has until August 16 to resolve persistent fuel and foreign exchange shortages in the country. He said if these demands were not addressed, protests would begin again

on August 17. A petition presented to the government demands an audit on Mutharika's finances as well as those of cabinet ministers. It also asks that state media not be used to threaten those with dissenting views.' [50]

- 3.13 A BBC News report, 'Malawi activists "in hiding after Mutharika threat"', dated 25 July 2011, noted:

'Key organisers of last week's anti-government protests in Malawi have gone into hiding amidst fears that they will be arrested. "I will smoke you out," President Bingu wa Mutharika warned six organisers on Friday. One of them, Rafiq Hajat, told the BBC he had gone into hiding and was leading a "solitary existence"...The president accused the protesters of committing treason. "If you go back to the streets, I will smoke you out. Enough is enough," Mr Mutharika said, after naming six of the organisers in a speech to policemen. They include Mr Hajat, the director of the Institute for Policy Interaction advocacy group, who told the BBC from an unknown location that he feared for his safety...Mr Hajat said the Acting Executive Director of the Malawi Human Rights Consultative Committee, McDonald Sembereka, was also in hiding while he understood that the group's chairman, Undule Mwakasungula, had fled Malawi. He said that the activists would not be intimidated and would organise further protests if their demands were not met.' [7e]

See [Opposition groups and political activists](#)

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4. RECENT DEVELOPMENTS (JANUARY TO SEPTEMBER 2012)

- 4.01 A Reuters news report, 'Malawi's President Mutharika dead', dated 6 April 2012, stated:

'Malawi President Bingu wa Mutharika has died after a heart attack, medical and government sources said on Friday [6 April], although few of his countrymen mourned a leader widely seen as an autocrat responsible for a stunning economic collapse.

'The 78-year-old was rushed to hospital in Lilongwe on Thursday [5 April] after collapsing but was dead on arrival, the sources said. State media said he had been flown to South Africa for treatment although his immediate whereabouts remained unclear.

'Medical sources said the former World Bank economist had been flown out because a power and energy crisis in the nation of 13 million was so severe the Lilongwe state hospital would have been unable to carry out a proper autopsy or even keep his body refrigerated.

'Many Malawians blamed Mutharika personally for the economic woes, which stemmed ultimately from a diplomatic spat with former colonial power Britain a year ago.' [23]

- 4.02 A BBC News report, 'Joyce Banda sworn in as new Malawi president', dated 7 April 2012, stated:

'Malawi's Vice-President Joyce Banda has been sworn in as president following the death of Bingu wa Mutharika.

'She becomes southern Africa's first female head of state after taking the oath before parliament in the Malawian capital, Lilongwe.

'Ms Banda, who had been vice-president since 2009, was cheered and applauded before, during and after the ceremony.

'Mr Mutharika, 78, went into cardiac arrest on Thursday [5 April], although his death was not confirmed until Saturday [7 April].

'The delay in announcing his death had prompted fears of a power struggle.

'There had been speculation that the late president's inner circle was trying to circumvent Malawi's constitution to prevent Ms Banda from taking over and instead install his brother, Foreign Minister Peter Mutharika.

'Ms Banda had fallen out with Mr Mutharika in 2010 and became one of his fiercest critics. She was expelled from the ruling Democratic People's Party (DPP) and formed the People's Party.

'She was elected as vice-president in 2009 and Mr Mutharika had failed in his attempts to have her removed from her post.

'In taking the oath of office, Ms Banda pledged to "defend and preserve the constitution" and to do right to all manner of people, according to law.

'She then asked parliament to stand for two minutes' silence as a tribute to Mr Mutharika.

'Asking Malawians to "focus on mourning our father," Ms Banda added: "It is with a great sense of humility and honour that I accept the huge responsibility of that the people of Malawi have entrusted me with." [7c]

- 4.03 A Nyasa Times report, 'Henry Mussa "sorry" for coup plot', dated 22 April 2012, stated that:

'Late on April 6 2012, a day after [President] Mutharika had suffered a cardiac arrest at the New State House and airlifted to South Africa, Malawi's former minister of Information and Civic Education Patricia Kaliati accompanied by fellow Cabinet ministers at the time Symon Vuwa Kaunda (Sports), Dr Jean Kalilani (Health) and Henry Mussa (Local Government and Rural Development) and deputy ministers Nicholas Dausi (in the Office of the President and Cabinet), and Kondwani Nakhumwa (Foreign Affairs and International Cooperation), said Banda could not assume the presidency because she formed her own political party, the People's Party (PP).

‘But by operation of Section 83 (4) of the Constitution, Banda automatically became President following Mutharika’s incapacitation and subsequent death.

‘But Mussa who is chair of a funeral committee for late Mutharika is pleading with Malawians for forgiveness, arguing that their decision to subvert the constitution was made out of “pressure” and “stupidity”.’ [16g]

- 4.04 A BBC News report, ‘Malawi’s Bingu wa Mutharika buried on his farm’, dated 23 April 2012, stated:

‘Former President Bingu wa Mutharika, who died on 5 April after a cardiac arrest, has been buried at his sprawling farm in southern Malawi.

‘Mr Mutharika was laid to rest next to his first wife Ethel in a huge white marble mausoleum called the Taj Mahal by local media.

‘Thousands of mourners and several African heads of state, including his close ally President Robert Mugabe of Zimbabwe, attended the state funeral.’ [7a]

- 4.05 A United Nations IRIN report, ‘Malawi: Need for food aid outpaces response’, dated 30 August 2012, stated:

‘Prolonged dry spells followed by poor harvests in Malawi’s maize-growing central and southern regions have created widespread food shortages, yet it has taken months to fully determine the extent of the crisis, and it may take several more to fund and implement a comprehensive response.

‘Estimates at the beginning of 2012 put the number of Malawians facing food shortages at about 202,000 in 10 districts, prompting the government to impose a ban on maize exports; the figure was later revised to include an additional 70,000. But a more detailed assessment by the Malawi Vulnerability Assessment Committee (MVAC) released in July [2012] found that 1.63 million people - 11 percent of the total population - might not have enough food to meet their basic needs over the next three to eight months. They are concentrated in 15 districts, all in Malawi’s central and southern regions, an area perennially plagued by unpredictable rains and poor harvests.

‘Part of the reason behind the steep increase in numbers was the move by incoming President Joyce Banda in May [2012] to devalue the local currency by nearly 50 percent. It was an effort to boost exports and woo back international donors that had abandoned the country during the final year of former President Bingu wa Mutharika’s increasingly autocratic rule.

‘The devaluation, widely viewed as “a necessary evil”, triggered substantial increases in the prices of many basic goods, including maize. For many rural households in drought-hit districts, the high maize prices have made it difficult or impossible to supplement poor harvests...Following the July [2012] MVAC findings, the Malawi government released a detailed response

plan. It appeals for international support to fund interventions in the food, agriculture, education and health sectors, at a cost of US\$89.3 million. According to the UN's Office for the Coordination of Humanitarian Affairs (OCHA), only \$18 million has so far been raised to cover the immediate need for food assistance.

'None of the households that IRIN interviewed had yet received any food aid, but according to World Food Programme (WFP) spokesperson Pamela Kuwali, food distributions began on 1 August [2012] in three districts and will reach 715,000 people in 10 districts by October [2012]. The Malawi government has contributed 25,000 metric tons of maize from the country's Strategic Grain Reserve, the UK's Department for International Development (DFID) has donated \$4.7 million to cover the costs of transporting and distributing food during the first three months of the relief operation, and US Agency for International Development (USAID) has given nearly \$8 million.' [58a]

- 4.06 A Tanzania Daily News report, 'Tanzania: Lake Dispute Amicably Resolved', dated 3 September 2012, stated:

'President Jakaya Kikwete has made it abundantly clear that Tanzania will not go into war with Malawi over the disputed Lake Nyasa border that apportions water rights to both nations.

'The president told the nation at the weekend that continual negotiations between Tanzania and Malawi, which have all along been cordial and progressive, should be given ample chance to produce an amicable solution to the dispute. He cautioned against inflammatory statements that he said could ruin the ongoing negotiations, ignite an explosive situation and raise a stink that could prove difficult to reverse.

'While Tanzania maintains that its border with Malawi traverses Lake Nyasa in the middle giving both countries territorial water, Malawi, which refers to the lake as Malawi, maintains that its border with Tanzania runs along the shoreline on the Tanzanian side. The exchange of verbal accusations and demands between Tanzanian and Malawian politicians in recent months has thrown citizens in both Tanzania and Malawi into a pandemonium, fearing that military combat could be on the horizon.' [40]

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5. CONSTITUTION

- 5.01 Jane's Sentinel Country Risk Assessment, section on Malawi, Internal Affairs (updated on 12 April 2012), observed:

'In its democratisation process, Malawi adopted a constitution that was slightly modified after a Constitutional Conference in January 1995. This constitution is long and complicated and many issues have to be clarified. Constitutional amendments are still regularly made. The constitution guarantees freedom of speech, religion and assembly and provides for a

presidential system with important parliamentary checks, notably on appointments, although not on ministerial appointments. Ministers can also be appointed from outside parliament.’ [11a]

A copy of the Malawian constitution can be found at the following link:
<http://www.sdn.org.mw/constitution/brfindx.html> [55]

See also [Political system](#) and [Judiciary](#).

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6. POLITICAL SYSTEM

- 6.01 The United States State Department ‘Background Note on Malawi’, published on 4 May 2012, stated that:

‘The Government of Malawi has been a multiparty democracy since 1994. Under the 1995 constitution, the president, who is both chief of state and head of the government, is chosen through universal direct suffrage every 5 years. Malawi’s vice president is elected with the president. The president has the option of appointing a second vice president, who must be from a different party. The members of the presidentially appointed cabinet can be drawn from either within or outside of the legislature. Malawi’s National Assembly has 193 seats, all directly elected to serve 5-year terms. The constitution also provides for a second house, a Senate of 80 seats, but to date no action has been taken to create the Senate. The Senate was intended to provide representation for traditional leaders and the different geographical districts, as well as various special interest groups, such as women, youth, and the disabled...local government is carried out in 28 districts within three regions administered by regional administrators and district commissioners who are appointed by the central government. Constitutionally mandated local elections are to be held 1 year after presidential and parliamentary elections.’ [1b]

See also [Political affiliation](#); [Women - political rights](#); [Constitution](#).

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Human Rights

7. INTRODUCTION

7.01 The Geneva Academy of International Humanitarian Law and Human Rights stated on its website (last updated 23 October 2010) that the Malawian government has ratified the following international conventions:

- the International Convention on the Elimination of All Forms of Racial Discrimination
- the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. [32]

7.02 The Geneva Academy's website also stated that: 'Malawi has ratified several of the most important international humanitarian and human rights law instruments, including the 1949 Geneva Conventions and their 1977 Additional Protocols. Malawi is also party to major conventions on terrorism and refugees, as well as to the Rome Statute of the International Criminal Court.' [32]

7.03 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated:

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

'Other human rights problems included arbitrary arrest and detention; lengthy pretrial detention; official corruption; occasional mob violence; societal violence against women; trafficking in persons; discrimination against lesbian, gay, bisexual, and transgender (LGBT) persons; and child labor.' [1a] (Executive Summary)

7.04 The Human Rights Watch 'World Report 2012: Malawi', published on 22 January 2012, summarised the human rights situation in Malawi:

'The human rights situation in Malawi deteriorated significantly in 2011, with President Bingu wa Mutharika's government acting in an increasingly repressive manner. Fuel and foreign currency shortages and increasing food prices have taken a toll on the country, reversing the economic gains made during Mutharika's first term in office.

'The government's failure to adequately address the country's economic problems and the clampdown on its critics triggered a protest by civil society activists. The government reacted to these street protests with increasing heavy-handedness.' [20b]

For information about specific human rights issues, see [Human rights violations by government forces](#); [Freedom of movement](#); [Freedom of speech and media](#); [Freedom of religion](#); [Freedom of political expression](#); [Freedom of association and assembly](#); [Prison and detention centre conditions](#); [Women](#); [Children](#).

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8. SECURITY FORCES

POLICE

- 8.01 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated that:

'The MPS [Malawi Police Service], controlled by the Ministry of Home Affairs and National Defense, had responsibility for law enforcement and maintenance of order. Police occasionally called on the army for support in operating roadblocks and assistance in manhunts.

'The police force was inefficient, poorly trained, and corrupt... Impunity was a problem. Inadequate resources and a lack of qualified candidates in the recruiting pool hampered efforts to improve MPS quality. Police service maintained a disciplinary committee chaired by the inspector general of police to investigate abuses; however, resources were limited and it met only sporadically. Officers were disciplined, but punishments often consisted of reassignment to another post or dismissal rather than more stringent sanctions.

'Police continued efforts to improve their investigative skills, including training in internal investigations, victims' rights, sexual abuse, domestic violence, and trafficking in persons. Police continued to receive foreign assistance for training officials and procuring equipment.' [1a] (section 1d)

- 8.02 An Agence France Presse report, 'New Malawi president fires police chief', dated 9 April 2012, stated that:

'Malawi's new President Joyce Banda has fired the nation's police chief and hired a new one, her office said on Monday, two days after she took office following her predecessor's death.

'Banda has "appointed commissioner Lot Dzonzi as the new inspector general of police with effect from April 8", replacing former top cop Peter Mukhito, said a statement from the office of the president and cabinet.

'The statement did not say why Mukhito, appointed by late president Bingu wa Mutharika two years ago, was axed.

'Mukhito, who rose from being a guard commander of Mutharika's security, has been accused of mishandling anti-government riots last year in which 19 people were killed, as well as the mysterious death of a university political activist who published a news sheet highly critical of the government.

‘The Malawi police service has about 8,000 officers.’ [39]

See also [Human rights violations by government forces.](#)

ARMED FORCES

- 8.03 The Malawi Armed Forces section of Jane’s ‘Sentinel Security Assessment - Southern Africa’, updated on 11 April 2012, provided the following information about Malawi’s armed forces:

‘Since Malawi has never been involved in, or been threatened by, a major domestic or international conflict, its armed forces are among the smallest and lowest-funded in the region. Money is not available for procurement and the military have few obvious requirements beyond the most basic kit. Nearly all defence spending goes towards wages and other non-capital necessities. Malawi has no formally independent air force or navy, although the army does have small air and marine wings, tasked largely with support roles...Malawi’s armed forces are all organisationally part of the army, which includes a small air wing and marine unit on Lake Malawi (Nyasa), and are responsible for Malawi’s external security. In capabilities and equipment, the army is not much different from the smaller paramilitary Mobile Police Force, which also has an air wing and a few armoured vehicles but reports through the Ministry of Home Affairs. The Mobile Police Force is responsible for internal security, counter-terrorism and border patrol.’ [11b]

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HUMAN RIGHTS VIOLATIONS BY GOVERNMENT FORCES

Arbitrary arrest and detention

- 8.04 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

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

‘On February 28 [2011] and March 1 [2011], police arrested 54 persons in Blantyre City in an apparent effort to round up criminals. All were later fined and released under a colonial-era rogue and vagabond law.

‘In December police arrested more than 4,000 persons in a nationwide sweep designed to increase security over the holiday season. Arrest charges included robbery, theft, and violation of the colonial-era rogue and vagabond law. A police spokesperson noted that of the 4,000 detained, some were in police custody, some were fined, and others were in pretrial detention.

‘During the year [2011] the MHRC received six complaints of arbitrary detention related to excessively long pretrial detention, denial of bail, and unheard appeals.

‘There were no further developments in the 2008 treason cases against former president Bakili Muluzi and nine other persons, most of whom had close ties to the United Democratic Front.’ [1a] (section 1d)

- 8.05 The Human Rights Watch report, ‘Malawi: Arrests Signal Deteriorating Rights Environment’, dated 23 March 2012, stated that:

‘The Malawi government’s recent surge of arrests and threats against critics reflects its broader crackdown on free speech and other basic rights, Human Rights Watch said today. On March 9, 2012, Malawi’s State House, the President’s office, issued a statement warning journalists and human rights activists that those who insulted President Bingu wa Mutharika faced prosecution and up to two years in prison.

‘On March 16, police without a warrant arrested John Kapito, the chairman of the government-funded Malawi Human Rights Commission and a prominent critic of the government’s human rights record in Lilongwe, the capital, accusing him of possessing guns and seditious materials. Police conducted an extensive search of Kapito’s home and car, apparently did not find weapons or the materials, but nonetheless charged him with possessing “materials with seditious words,” and undocumented foreign exchange. He was released on bail on the same day.

‘On March 21, police arrested Atupele Muluzi, a prominent member of the opposition United Democratic Front (UDF) party and son of former President Bakili Muluzi, and charged him with inciting violence. Three days earlier, police and party supporters engaged in violent clashes at a party rally in Lilongwe, which Muluzi had been scheduled to address. Local civil society activists believe the charges against Muluzi are politically motivated.

“Arresting government critics is just the latest sign of increasing repression in Malawi,” said Leslie Lefkow, deputy Africa director at Human Rights Watch. “President Mutharika should take urgent steps to end the harassment and arrests of people seen as opposing the government.”

‘Kapito has been threatened frequently by senior government officials who accuse the Malawi Human Rights Commission of operating outside its jurisdiction. In August 2011, the commission reported on the killing of 19 people by police during July protests throughout the country. The report concluded that the police used excessive force against the protesters, and called on the government to investigate the killings.

‘Kapito and Muluzi are among several critics of the government, including human rights activists, journalists, and opposition members, who have been targeted by state security forces and supporters of the ruling Democratic Progressive Party (DPP) in the past year for criticizing the government on human rights, governance, and the economy. Several human rights activists have been arbitrarily arrested while others have received death threats and been forced to go into hiding. There have been several firebomb attacks by unidentified assailants at the homes and offices of government critics.

‘On February 13, police arrested a prominent lawyer, Ralph Kasambara, and five of his security guards in Blantyre, after the guards apprehended three men carrying a petrol bomb at Kasambara’s offices. Police charged Kasambara and his guards with assault. Several days earlier, two national newspapers had published interviews in which Kasambara criticized President Mutharika’s record on human rights and governance, and called for his resignation. While the guards were immediately released on bail, Kasambara was detained for several days before being let out on bail. The three men who attempted the attack were released without charge.

‘In October 2011, police arrested five civil society activists – Habiba Osman, Billy Mayaya, Brian Nyasulu, Ben Chiza Mkandawire, and Comfort Chiseko – on charges of “holding an illegal demonstration.” They were taking part in a small, peaceful demonstration outside parliament, calling on President Mutharika to hold a referendum, resign, and hold an early election. The activists were released on bail five days later.’ [20c]

See also [Arrest and detention - legal rights](#).

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Torture

- 8.06 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

‘The constitution and law prohibit such practices [torture]; however, police used excessive force and other unlawful techniques, including sexual abuse, during the year [2011]. While senior officials publicly condemned prisoner mistreatment, their subordinates continued to employ unacceptable techniques. The Malawi Human Rights Commission (MHRC) and local nongovernmental organizations (NGOs) criticized police for human rights violations several times throughout the year.

‘On July 31 [2011], former soldier Ulemu Martin Nkhata was arrested and manhandled by police after he turned himself in. Allegedly, Nkhata illegally possessed a gun. He sustained several cuts on his body and was later hospitalized. While police claimed a mob beat Nkhata after he was caught stealing, Nkhata identified 13 policemen as his attackers. Nkhata’s wife backed up his story as she was at the police station when he turned himself in. A regional police spokesman claimed that he was not aware of alleged police brutality, and no further action was taken by the authorities.

‘On December 18 [2011], police officers beat Joseph Nyirenda at a football match. Nyirenda claimed that following the assault, police took him into custody and ordered him to pay 5,000 Malawian kwacha (MWK) (\$30) police bail. After complaining to a human rights organization, Nyirenda was admitted to Karonga District Hospital. At year’s end, no charges had been filed for alleged police brutality.’ [1a] (section 1c)

- 8.07 The Malawi Nation report, ‘MPS in drive against torture of suspects’, dated 10 May 2012, stated that:

‘To arrest the problem of torturing suspects to extract information, the Malawi Police Service (MPS) is training its officers in investigative interviewing skills.

‘Speaking when he opened a one-week training in Mponela, Dowa, Central Region Commissioner of Police Nelson Bophani said the project is the initiative of Inspector General of Police Lot Dzonzi and is aimed at equipping participants with modern techniques on how to interview complainants, witnesses and suspects using methodology grounded on human rights.

“You will agree with me that this [the training] is essential for the image of the Malawi Police Service which has of late been severely battered due to unlawful use of force during interrogation of suspects.

“Be informed that the current police administration expects high standards of professionalism and detached objectivity in dealing with suspects. Continuity and rule of law should lie at the heart of our actions,” Bophani told participants.

‘MPS has recently come under fire due to the increase in number of suspects’ deaths in police custody due to torture.

‘Bophani, however, admitted that the effectiveness of the new training would be hampered by the absence of lie detectors, recorders and adequate interview rooms.’ [61a]

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Extra-judicial killings

- 8.08 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

‘The government or its agents did not commit any politically motivated killings; however, security forces killed 20 persons on July 20 and 21 [2011] during and after demonstrations against the government in Lilongwe, Blantyre, Mzuzu, and Karonga.

‘The demonstration was organized to protest President Mutharika and his ruling DPP’s inaction on “poor economic and democratic governance.” An injunction banning public demonstrations throughout the country delayed the start of the protest, but after the injunction was lifted protests went ahead. Only protesters in Blantyre secured last-minute legal permission for the demonstrations. Protests in all cities devolved into violence on July 20, with police firing tear gas and warning shots and disorganized groups destroying property. Civil unrest continued the following day with widespread looting in major cities. In an attempt to restore order, police used tear gas and live bullets. The Malawi Defense Force (MDF) deployed on both July 20 and 21 to quell violence and restore calm. The final death count, including victims who died later from injuries, was 20 persons. None of those who died was a participant in the demonstrations.

'On November 30 [2011], a commission of inquiry into the events commenced work with several public hearings and another session planned for the northern region in early 2012. The commission has an eight-month window to complete its work. To date, police have admitted using live bullets and the inspector general of the Malawi Police Service (MPS) admitted to mishandling the protests and called for a return of bonuses paid to police who worked during the July unrest.

'On September 24 [2011], Robert Chasowa, vice president of "Youth for Freedom and Democracy" and a student at the Polytechnic School, was found dead on campus under controversial circumstances. Chasowa was under police watch for the publication of "Political Update," which was highly critical of the government. Police claimed that he committed suicide by falling from a building, and as evidence, produced two suicide notes. Irregularities in the letters raised suspicions and Chasowa's family demanded further investigation. A postmortem in October concluded that he died from head injuries sustained from assault by a blunt instrument and not as a result of a fall. A commission of inquiry was to investigate the circumstances surrounding Chasowa's death, but no one had been named to the panel by year's end.

'Police arbitrarily shot and killed suspects. For example, on December 20 [2011], police shot and killed four suspects in Limbe who were trying to escape after allegedly planning to break into a shop. The same night, police also shot and killed a man in Blantyre suspected of attempted robbery. No action reportedly was taken against the police officers responsible.

'Police were implicated in the death of several prisoners in custody. For example, in March Emmanuel Kafere died in a police cell at Mulenga police unit in Zomba. A postmortem indicated that Kafere died from internal bleeding after suffering head stab wounds, two broken legs, and a broken arm. The policeman accused of Kafere's death was charged with murder and appeared in court on March 21 [2011]. At year's end, he was being held in pretrial detention and the case was awaiting trial.' [1a] (section 1a)

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AVENUES OF COMPLAINT

- 8.09 The 'National Report' submitted by the Malawi government to the United Nations Working Group on the Universal Periodic Review of Malawi, dated 21 October 2010, stated:

'The Police Act passed in 2009 establishes a new legal framework for the operations of the Malawi Police Service. The Act establishes the Office of an Independent Complaints Commission to investigate complaints of brutality, deaths or misconduct at the hands of the police. It also creates a Lay Visitors Scheme which is a team of local people at every police station mandated to inspect conditions of detention at police stations...In its efforts to fight corruption, the Government has set up the Anti-Corruption Bureau in 1998 which is an independent organ of the state. It has the mandate to investigate

and prosecute corruption, abuse of office and other criminal cases related to corruption. There have been several cases where prominent personalities have been prosecuted for corruption.’ **[21c] (p7, paragraph 39)**

- 8.10 The ‘Stakeholder Summary’ prepared by the Office of the High Commissioner for Human Rights to the United Nations Working Group on the Universal Periodic Review for Malawi, dated 10 August 2010, stated that:

‘CHRR [The Centre for Human Rights and Rehabilitation] expressed concerns at impunity enjoyed by police officers accused of committing these crimes. It added that, while some officers had faced administrative sanctions, very few, had been brought to justice. CHRR recommended that Malawi develop and adopt measures to prevent, prosecute and punish acts of torture and ill treatment by law enforcement agencies and promptly establish the Police Complaint Commission as provided in the Malawi Police Act.’ **[21d] (p3, paragraph 15)**

Further information about the Ombudsman and the Malawi Human Rights Commission can be found at the Electoral Institute for the Sustainability of Democracy in Africa’s report published in 2009 - <http://www.eisa.org.za/PDF/rr46.pdf>. **[10]**

For more information about legal remedy see [Judiciary](#) and information on the MHRC and Ombudsman see [Human rights institutions, organisations and activists](#).

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9. MILITARY SERVICE

- 9.01 The Child Soldiers ‘Global Report 2008’, published on 20 May 2008, stated that:

‘There was no conscription, but the National Service Act provided that in case of a public emergency every citizen between the ages of 18 and 60 could be called for national service. In a letter to the Child Soldiers Coalition, the Malawi High Commission stated that the National Service Act did not exist; other sources stated that the Act remained in force as it had been neither declared unconstitutional nor repealed by an act of parliament.’ **[12]**

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10. JUDICIARY

ORGANISATION

- 10.01 The jurist.com website, updated on 18 August 2011, provided the following information about Malawi’s judicial system:

‘The Malawian legal system has three different levels of courts: magistrate courts, high courts, and the Supreme Court of Appeal. The magistrate courts are the lowest level of courts and handle both civil and criminal matters within their jurisdiction. They are located at the district and city level, with about one court in each of the nation's twenty-seven districts and one to two in its four cities. The High Courts of Malawi preside over the magistrate courts. These courts have unlimited jurisdiction over criminal and civil matters and also hear appeals from the magistrate courts. They are situated in the four cities of Malawi. The Supreme Court of Appeal is the highest appellate court, and it hears appeals from the high courts and other tribunals.’ [37]

INDEPENDENCE

- 10.02 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

‘The constitution and law provide for an independent judiciary, and the government generally respected judicial independence in practice. However, the judicial system was inefficient and handicapped by serious weaknesses, including poor record keeping, a shortage of attorneys and other trained personnel, heavy caseloads, and lack of resources...there is an independent and impartial judiciary in civil matters, and citizens have access to a court to bring lawsuits seeking damages for, or cessation of, human rights violations. The law provides for administrative and judicial remedies for alleged wrongs; however, a lack of resources and legal professionals restricted the number of cases pursued and resulted in a large backlog.’ [1a] (section 1e)

FAIR TRIAL

- 10.03 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

‘Defendants are presumed innocent and have the right to a public trial but not to a trial by jury. The Ministry of Justice continued its indefinite suspension of jury trials in murder cases, since murder suspects sometimes were incarcerated for years awaiting trial by jury. Juries were used in other types of cases. A Child Justice Court was set up in 2005 in Blantyre to handle cases involving child offenders. Defendants have the right to be present at their trial, are entitled to an attorney, and, if indigent, to have an attorney provided at state expense. Due to limited resources, such assistance generally was limited to homicide cases. Defendants have the right to present and challenge evidence and witnesses and have access to government-held evidence relevant to their cases. The law extends the above rights to all persons. All persons have the right of appeal; however, in practice appeals often were delayed for years and sometimes never addressed by the higher court.’ [1a] (section 1e)

- 10.04 The Freedom House ‘Freedom in the World 2012’ report, published on 27 August 2012, noted that: ‘During Mutharika’s first term, the generally independent judiciary became involved in political disputes and faced government hostility; the courts have rendered several significant decisions against the

government in recent years. However, due process is not always respected by the overburdened court system, which lacks resources, personnel, and training.’ [6b]

See also [Constitution](#).

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11. ARREST AND DETENTION – LEGAL RIGHTS

- 11.01 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

‘The law provides an accused person the right to challenge the legality of detention, have access to legal counsel, and be released on bail or informed of charges by a court within 48 hours; however, these rights were often ignored in practice. Most suspects were apprehended without a warrant if police had probable cause. While arrest warrants were normally issued by a duly authorized official based on evidence presented in cases involving corruption or white-collar crime, poorer citizens were often arrested without warrants. The use of temporary remand warrants to circumvent the 48-hour rule was widespread. Police frequently demanded bribes to authorize police bail, which was often granted to reduce prison overcrowding rather than on the merits of the case.

‘While the government is obligated to provide legal services to indigent detainees, in a vast majority of cases, such aid is only provided to homicide suspects. Due to limited resources, the Department of Legal Aid prioritizes its assistance, focusing on vulnerable groups such as women, children, the elderly, and those facing capital offense charges. Legal Aid access often was delayed, since there were only 24 lawyers and seven paralegals working as public defenders in the country. Relatives were sometimes denied access to detainees.’ [1a] (section 1d)

See also [Arbitrary arrest and detention](#).

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12. PRISON AND DETENTION CENTRE CONDITIONS

- 12.01 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, provided the following information about prison conditions:

‘Prison conditions remained harsh and potentially life threatening. Overcrowding, inadequate nutrition, substandard sanitation, poor health facilities, and inadequate infrastructure remained serious problems. Prisons and detention centers, while generally well ventilated, had no provisions for temperature control other than wood fires. Basic emergency medical care generally was available in the daytime, but unavailable after regular working hours. For more involved cases of illness and injury, referrals were made to district medical clinics. Potable water was available. Prison recordkeeping was considered generally reliable.

'The prison system's 30 facilities, built to accommodate approximately 5,500 inmates, routinely held at least double that number. According to the Prison Service, there were 12,033 inmates in the prison system at year's end. Police stations also held detainees, many for longer than the legal limit of 48 hours. Police stations were not built to accommodate humanely to long-term detention. A report on pretrial detention by Open Society Initiative for Southern Africa (OSISA) indicated that Lilongwe Police Station had 87 detainees, including four women and seven children. One of the detainees in Lilongwe had been held for seven months.

'Prison staffing remained inadequate despite efforts to recruit more staff. Daily prison rations were meager. Family members were allowed to bring food items, and inmates were encouraged to grow vegetables and raise livestock; however, malnutrition in the prison population remained a problem.

'While the exact number was not known, numerous inmates died in prison each month, largely due to HIV/AIDS, diarrhea, pneumonia, tuberculosis, and an inadequate diet. For example, 32 inmates died at Zomba Maximum Security Prison during the year [2011]. Eastern Region Prison spokesperson Kumbukani Chikomo attributed the deaths to prison congestion, which complicated identification and treatment of sick prisoners.

'In 2009 the High Court noted that overcrowding had contributed to the death of 259 inmates in a span of approximately 18 months. The court decreed that the government had 18 months (which expired May 2011) to improve prison conditions. At year's end, the prison system was not in compliance with the judgment.

'The 157 female prisoners were segregated within 16 prison compounds located in 30 facilities, and monitored by female guards and a female officer-in-charge, who keeps the keys to the female section of the prison. Pretrial detainees often were not held separately from convicted prisoners. The 2011 OSISA report found that the supervision of female detainees varied in police detention. In Lilongwe and Mzimba, both male and female officers supervise female detainees, while in Blantyre, Thyolo, and Zomba only female guards monitored female prisoners.' [1a] (section 1c)

12.02 Regarding prison visits by NGOs and relatives of prisoners, the United States State Department '2011 Human Rights Report: Malawi', stated:

'Prisoners generally were allowed to have visitors, observe their religious practices, and submit complaints to prison authorities.

'Community service programs were available as alternatives to prison terms for first-time offenders with permanent addresses who were convicted of less serious crimes.

'During the year [2011] the government permitted domestic and international NGOs, such as Amnesty International, and the media to visit and monitor prison conditions and to donate basic supplies. The International Committee of the Red Cross (ICRC) did not seek permission to visit any prisons during

the year. However, the NGO Irish Rule of Law International and senior foreign diplomats visited prisons during the year.’ [1a]
(section 1c)

- 12.03 The Amnesty International ‘Annual Report 2012’, published on 23 May 2012, stated that during 2011:

‘Prisons were overcrowded: the prison system, with a capacity of 6,000, was holding around 13,000 prisoners. Prison congestion was exacerbated by prolonged pre-trial detention, with pre-trial detainees forming up to 20 per cent of the prison population. Overcrowding, poor nutrition, poor sanitation and inadequate health facilities contributed to the spread of infections including tuberculosis and measles. Many prisoners relied on families and charities for supplementary food.’ [4a]

- 12.04 An Open Society Initiative for Southern Africa report, ‘Pre-trial detention in Malawi’, dated 23 November 2011, stated:

‘On Thursday 21st July 2011, an unprecedented study was launched in Lilongwe entitled – Pre-trial detention in Malawi: Understanding caseflow management and conditions of incarceration. The information contained in this report provides rigorously researched, empirical evidence which can be used to underpin future efforts by both government and civil society to influence legislation, policy and practice with a view to ensuring the appropriate use of pre-trial detention, promoting the speedy resolution of trials and improving prison conditions in line with the United Nations Standard Minimum Rules for the Treatment of Prisoners... While some good practices were identified, the overwhelming picture is that conditions of detention in police cells are poor, violate the rights of detainees in material ways and frequently exceed the 48-hour rule. The ageing state of many Malawian police stations and the insufficient capacity and nature of cell accommodation are the cause of many of the major concerns. Sufficient funds will remain a challenge for the foreseeable future, but this should not prevent an incremental process of reform and improvement. The Malawian Police Service should develop a time bound and monitored plan of action to incrementally improve conditions of detention, while police management should provide assertive and demonstrable leadership in relation to the human dignity of detainees and their right to physical and moral integrity – as well in relation to transparency and accountability, which are the cornerstones of a human rights-based detention system. The police training curriculum needs to be reviewed in relation to its focus on human rights standards and refresher training should be conducted on a regular basis.’ [60]

- 12.05 The ‘Stakeholder Summary’ prepared by the Office of the High Commissioner for Human Rights to the United Nations Working Group on the Universal Periodic Review for Malawi, dated 10 August 2010, stated:

‘CHRR [The Centre for Human Rights and Rehabilitation] expressed concern at the living conditions in prisons which remained poor despite the perennial calls by the Inspectorate of Prisons requesting the government to take immediate action. Joint submission 2 (JS2) indicated that the country’s

largest prison, Zomba Central Prison, had an official capacity of 800 prisoners but was holding almost 2,300 inmates in April 2010. CHRR indicated that the Prisons Authorities explained that this situation was the result of an increase in the number of inmates due to rising crime rates and delays in prosecuting criminal cases in courts, lack of human and financial capacity, shortage of prisons and deteriorating infrastructure and equipment. CHRR added that the Prisons Bill and Legal Aid Bill could lead to the improvement of these conditions if passed by the National Assembly.' [21d] (p3, paragraph 17)

- 12.06 The current International Centre of Prison Studies 'Prison Brief for Malawi', undated, accessed on 27 July 2012, is reproduced below:

Country	MALAWI
Ministry responsible	Ministry of Home Affairs and Internal Security
Prison administration	Malawi Prison Service
Contact address	National Prison Headquarters, PO Box 28, Zomba, Malawi
Telephone/fax/website	tel: +265 (1) 770 141 or 524 722 or 525 755 fax: +265 (1) 523 122 or 523 123 or 525 123 Web: www.mps.gov.mw
Head of prison administration (and title)	MacDonald L. Chaona Chief Commissioner of Prisons
Prison population total (including pre-trial detainees / remand prisoners)	12,033 at 31.12.2011 (national prison administration)
Prison population rate (per 100,000 of national population)	74 based on an estimated national population of 16.34 million at end of 2011 (from United Nations figures)
Pre-trial detainees / remand prisoners (percentage of prison population)	12.3% (31.12.2011)
Female prisoners (percentage of prison population)	12.3% (31.12.2011)
Juveniles / minors / young prisoners incl. definition (percentage of prison population)	4.0% (31.12.2011 - under 18)
Foreign prisoners (percentage of prison population)	4.0% (31.12.2011 - under 18)
Number of establishments / Institutions	30 (2011)
Official capacity of prison	5,500

system	(31.11.2011)		
Occupancy level (based on official capacity)	218.8% (31.12.2011)		
Recent prison population trend (year, prison population total, prison population rate)	1993	4,685	(47)
	1996	4,886	(46)
	1998	6,505	(58)
	2001	7,920	(64)
	2004	9,220	(69)
	2007	10,830	(74)
	2010	11,672	(73)

[47]

See sections on [Women, Children](#) and also [Arbitrary arrest and detention](#)

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13. DEATH PENALTY

- 13.01 The Amnesty International 'Death Sentences and Executions 2011' report, published on 27 March 2012, classed Malawi as one of those: 'Countries which retain the death penalty for ordinary crimes such as murder but can be considered abolitionist in practice in that they have not executed anyone during the past 10 years and are believed to have a policy or established practice of not carrying out executions.' [4b]
- 13.02 The Death Penalty Project 'Malawi Country Profile', undated, accessed on 15 July 2011, stated:

'Whilst Malawi retains the death penalty for murder, rape, treason, armed robbery and burglary with aggravated circumstances de jure, Malawi has not carried out an execution since 1992, and is therefore believed to have a policy or established practice of de facto abolition. In, 2009, no reported death sentences were handed down. Malawi abstained from voting in both the 2007 and 2008 UN General Assembly Resolutions on the adoption of a moratorium on the use of the death penalty. Although Malawi has been a party to the International Convention on Civil and Political Rights (ICCPR) since 1993, it has neither signed nor ratified the Second Optional Protocol to the ICCPR aiming at the abolition of the death penalty (1989).' [13]

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14. POLITICAL AFFILIATION

FREEDOM OF POLITICAL EXPRESSION

- 14.01 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated:

'The constitution and law provide citizens with the right to change their government peacefully, and citizens exercised this right in practice periodically through largely free and fair elections based on universal suffrage...although the government did not prohibit activities of opposition political parties, the parties alleged that the government encouraged opposition party divisions. Sporadic, minor violence occurred between supporters of rival political parties.

'Political Parties: While parties generally were allowed to operate without restriction or outside interference, there were instances of intimidation by members of the ruling DPP.

'The government delayed the registration of new political parties, which limited their ability to operate legally. Political parties were forced to resort to the courts for judicial relief. For example, the Peoples Party applied for registration in April, but its application was rejected. The party was finally registered July 28 [2011], but only after a Supreme Court ruling compelled the government to accept the application.' [1a] (section 3)

FREEDOM OF ASSOCIATION AND ASSEMBLY

14.02 The United States State Department '2011 Human Rights Report: Malawi' stated:

'The constitution and law provide for freedom of assembly, but the government fettered this right in practice. The law and government action chilled attempts of public protest. For example, the Police Act of 2010, which the Malawi Law Commission was reviewing at year's end, holds organizers accountable for any damages and injuries during a protest. City Councils and police routinely ignored or delayed responding to protest notifications, which prevented groups from receiving legal authorization to exercise their right to assemble. Injunctions and court orders were routinely used to block protests...the constitution and law provide for freedom of association, and the government generally respected this right. The government required all organizations, including political parties, to register with the Ministry of Justice. Registrations for new political parties and NGOs were routinely delayed and prevented domestic and international NGOs from registering. The Office of the President and cabinet were involved in the approval process for new registration, which added an element of politicization. On several occasions, ministers threatened to deregister NGOs involved in protests or with views contrary to those of the government, although at year's end, no organizations had been deregistered.' [1a] (section 2b)

14.03 The Human Rights Watch 'World Report 2012: Malawi', published on 22 January 2012, stated:

'The government has also shown increasing intolerance towards peaceful demonstrations. On October 11, police arrested five civil society activists - Habiba Osman, Billy Mayaya, Brian Nyasulu, Ben Chiza Mkandawire, and Comfort Chiseko - on charges of "holding an illegal demonstration." They were taking part in a small demonstration outside parliament, calling on

Mutharika to hold a referendum, for his resignation, and an early election. The activists were released on bail five days later.

‘The most brutal crackdown on a peaceful demonstration took place on July 20 when police fired live ammunition and tear gas at unarmed demonstrators and bystanders Lilongwe, the capital, Blantyre, and Mzuzu, killing 19 and leaving scores more wounded. The police also arrested around 500 demonstrators. The demonstrators were protesting deteriorating economic conditions and increasing repression by the authorities. On August 10 Mutharika said he would establish an independent commission of inquiry into the July killings. However, at this writing the government had not set up the commission and there had been little progress in investigating and bringing to account those responsible for the killings.

‘Further civil society vigils and demonstrations were planned for August 17 and 18 to commemorate those killed in July and to raise concerns about the economy and human rights situation. These nationwide protests were indefinitely postponed by the organizers after the High Court issued an injunction banning them. Persons believed to be affiliated with the ruling Democratic Progressive Party (DPP) had applied for the injunction.’ [20b]

OPPOSITION GROUPS AND POLITICAL ACTIVISTS

- 14.04 The Central Intelligence Agency (CIA) ‘World Factbook’ section on Malawi, updated on 13 September 2012, lists the names of various opposition groups and the names of their leaders:

‘Alliance for Democracy or AFORD [Dindi Nyasulu]; Congress of Democrats or CODE [Ralph Kasambara]...Malawi Congress Party or MCP [John Tembo]; Malawi Democratic Party or MDP [Kampelo Kalua]; Malawi Forum for Unity and Development or Mafunde [George Mnese]; Maravi People's Party [Uladi Mussa]; National Unity Party or NUP [Harry Chiume]; New Rainbow Coalition Party [Beatrice Mwale]; New Republican Party [Gwanda Chakuwamba]; People's Progressive Movement or PPM [Aleke Banda]; People's Transformation Movement or PETRA [Kamuzu Chibambo]; Republican Party or RP [Stanley Masauli]; United Democratic Front or UDF [Bakili Muluzi]; United Democratic Party [Kenedy Kalambo].’ [3]

- 14.05 A NewsTime Africa report, ‘Malawi’s DPP appoints Peter Mutharika as party president’, dated 9 April 2012, stated that: ‘The Democratic Progressive Party (DPP) has appointed fallen president Bingu wa Mutharika’s young brother Peter, to take over party leadership and steer the troubled party to the 2014 presidential and parliamentarily [sic] elections. A statement by the party secretary general Wakuda Kamanga says the decision was made when the elder Mutharika took ill on Thursday [5 April 2012].’ [52]

See also [Political system](#); [Women - political rights](#); [Annex B Political Organisations](#).

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15. FREEDOM OF SPEECH AND MEDIA

OVERVIEW

- 15.01 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, summarised the situation regarding freedom of speech and media in Malawi:

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

‘The government sometimes threatened the use of colonial-era antiseditious and treason laws to stifle criticism...Freedom of Press: The independent media were active and expressed a wide variety of views; however, the government imposed some restrictions, such as the use of onerous licensing and registration provisions. A broad spectrum of political opinion was available in the country’s newspapers. Independent newspapers included two dailies, one biweekly and four weeklies.

‘There were 16 private radio stations that broadcast primarily in urban areas and six community radio stations. State-owned Malawi Broadcast Corporation (MBC) TV was the sole national television broadcaster. In November the Malawi Communications Regulatory Authority awarded four new radio and television broadcasting licenses. Three of the successful license recipients were either owned by or closely connected to President Mutharika’s family.

‘In January [2011] President Mutharika signed a law empowering the government to “prohibit the publication or importation” of publications deemed to be “contrary to the public interest.” The MHRC took the controversial “media freedom law” to the High Court and the case was pending at year’s end. The law was also referred to the Malawi Law Commission for review in December [2011].’ [1a] (section 2a)

- 15.02 The Human Rights Watch ‘World Report 2012: Malawi’, published on 22 January 2012, stated:

‘In the past year [2011] Mutharika signed repressive new legislation, including Section 46 of the penal code, which allows the minister of information to ban publications deemed “contrary to the public interest.” The president also signed the Injunctions Law, which prevents Malawians from filing civil suits against government officials. These new laws, which were severely criticized by civil society activists, limit the ability of the media to operate freely and deny Malawians the protection of the law. [These laws have since been repealed – see below.]

‘Authorities also intimidated and harassed university lecturers and students who have been at the forefront of criticizing the government’s poor human rights and governance records. In September [2011] plainclothes police interrogated staff of the Polytechnic University of Malawi about the existence of a political group, Youth for Freedom and Democracy (YFD). A week later Robert Chasowa - vice-president of YFD, university student, and outspoken government critic - was found dead at the Polytechnic campus with a deep

cut to his head. Although police ruled his death a suicide, civil society activists accused the government of involvement in Chasowa's death.

'In February [2011] the inspector general of police, Peter Mukhito, interrogated University of Malawi lecturer Blessing Chisinga after he delivered a lecture on the causes of mass protests in Malawi. In reaction, university lecturers boycotted classes, demanding an apology from Mukhito and calling on the authorities to respect academic freedom. The Chancellor College section of the University of Malawi's academic staff union supported the boycott and Jessie Kabwila Kapusula, the union's acting president, received anonymous death threats. Kapasula and three colleagues were later dismissed by the university for supporting the boycott.' [20b]

- 15.03 The Freedom House report, 'Countries at the Crossroads 2012', published on 20 September 2012, noted that: 'Since Joyce Banda came to power [in April 2012], a number of highly positive developments have taken place, reversing the anti-democratic tendencies witnessed under President Mutharika. On President Banda's initiative, government repealed legislation that gave the executive the authority to ban publications deemed threatening to public interest. A new law that limited the power of the courts to issue injunctions has also been repealed.' [6c]

- 15.04 A Nyasa Times report, 'Malawi repeal injunctions law, pass disability bill', dated 25 May 2012, stated that:

'President Joyce Banda government scored top marks on Thursday when it successfully repealed the infamous Injunctions law and passed the Disability Bill in Parliament sitting in the capital city, Lilongwe.

'The injunction law – officially known as the Civil Procedure (Suits by or against the Government or Public Officers) Amendment Bill of 2010 – was passed in 2011 during the DPP regime after a heated debate in Parliament.

'It was labelled a "bad law" as it essentially grants the Malawian government immunity from ever being sued.

'It called for inter-partes [sic] hearing whenever an injunction is being sought against any arm of government and further requires that government be given notice of three days before the inter-partes hearing is conducted.

'Addressing Parliament, Justice Minister and Attorney General Ralph Kasambara said the Joyce Banda government decided to repeal the infamous Injunction Law following public outcry that government will abuse people as they will have no legal redress starting at injunction level.

'The House was stunned when former Cabinet Minister Symon Vuwa Kaunda who praised the Injunctions law, turned around to support the move to repeal it...Kasambara explained that since it has been repealed, the Injunction law is no longer a law.

“Basically, this means that now the right to access justice, the right to injunctions and other forms of relief against government have all been restored to Malawians,” he said.’ [16i]

- 15.05 A Nyasa Times report, ‘Malawi MPs vote to repeal media ban law, Sec 46’, dated 30 May 2012, stated that:

‘The Malawi National Assembly has scrapped off the draconian Section 46 of the Penal Code permitting the government to ban media outlets that information minister declares contrary to public interest.

‘Most of the MPs who spoke on the Bill supported the move to scrap the section with only a lone voice of DPP legislator for Thyolo south Eunice Napolo still supporting the undemocratic law.

‘Former Minister of Information Symon Vuwa Kaunda, who pushed and lobbied Parliament during President Bingu wa Mutharika’s time to pass the act, stunned the House when he made a u-turn supporting its scrapping off...the repealing of the media ban law was hailed by journalists as “victory for media freedom.”’ [16h]

- 15.06 The Freedom House ‘Freedom of the Press 2011’ report, published on 17 October 2011, stated:

‘The year [2010] saw both gains and setbacks for the media environment. While Malawi has strong constitutional guarantees for freedom of the press, the government continues to employ a strong hand in the operations of the media. Libel is not usually treated as a criminal offense, but publishing “false information likely to cause public alarm” is. In December 2010, a court in Lilongwe freed an editor, Gabriel Kamlomo, who had been imprisoned on that charge since July 2009. The judge ruled that the story published by Kamlomo was balanced in its reporting and based on substantial evidence. This marked a significant judicial gain for the media...The broadcast media are licensed by the Malawi Communications Regulatory Authority (MACRA), which is funded by the government and led by an executive director appointed by the president. During 2010, MACRA closed at least eight private radio stations that it deemed “pirate stations” operating without licenses in violation of national law. Operators of such stations can be subject to fines and up to 10 years’ imprisonment. Radio station owners and commentators argue that MACRA’s licensing process is slow and subject to political influence. In the past, MACRA has often harassed private radio stations critical of the government and temporarily taken them off the air. In October 2009, the Supreme Court of Appeal ordered MACRA to pay Joy Radio 13.8 million kwachas (about \$98,000) in compensation for shutting it down during the election period earlier that year. In July 2010, MACRA brought together parliament members and media managers in order to review the country’s Communication Act. MACRA representatives asserted that the original 1998 law does not address current trends in information communication. The revamping of the law marks an opportunity to provide for greater legal protections for the press, encourage the growth of privately

held media outlets, and turn the state-owned Malawi Broadcasting Company (MBC) into a public broadcaster.’ [6a]

- 15.07 The Freedom House ‘Freedom of the Press 2011’ report also stated:

‘The government has a reputation for actively interfering with the operations of private print media outlets. In 2010, there were a number of government interventions meant to hinder or stop the activities of various outlets. In August, President Bingu wa Mutharika threatened to shut down newspapers that “tarnished” the government’s image. This came after the Malawi News Daily published a story that cited a South African Development Community (SADC) report that stated that more than a million Malawians would require food aid if extremely dry or drought-like conditions were experienced in the southern section of the country...Malawi’s print sector consists mainly of 10 independent newspapers, including 2 dailies and 4 weeklies. While numerous private stations with a diverse array of opinions do exist, government-controlled media outlets continue to dominate the broadcast media market in Malawi. Radio remains the primary source of information for most people, and the Malawi Broadcast Corporation (MBC) is the largest station and the only one with national reach. Most privately owned stations are located in large urban centers in the south and do not broadcast to more rural sections of the country. Television Malawi (TVM), the state-controlled television station, continues to be the only domestic television network and has recently been merged with the MBC. Self-censorship is common, particularly at state-run outlets. State media also has substantial control over important information. For example, according to a letter from the Ministry of Information and Civic Education, only state media are allowed to cover live events involving people the government deems “VVIPs” (Very Very Important Persons).’ [6a]

- 15.08 The media section of the BBC ‘Country Profile on Malawi’, updated on 14 March 2012, lists the press agencies as: ‘The Nation’ (daily), ‘The Daily Times’ (private), and ‘Nyasa Times’ (online). Malawi’s only TV channel - ‘Television Malawi’ is state-run. Malawi Broadcasting Corporation - state-run, operates national Radio One and Radio Two. Other radio stations include Capital Radio (private), MIJ FM - operated by Malawi Institute of Journalism, FM 101 (private), Zodiak Broadcasting Station (private), and Radio Maria (Catholic). [7h]

INTERNET

- 15.09 The United States State Department ‘2011 Human Rights Report: Malawi’, stated: ‘There were no government restrictions on access to the Internet or reports that the government monitored e-mail or Internet chat rooms. Individuals and groups could engage in the expression of views via the Internet, including by e-mail. Lack of infrastructure and the high cost of Internet connections continued to limit Internet access.’ [1a] (section 2a)

JOURNALISTS

- 15.10 The United States State Department ‘2011 Human Rights Report: Malawi’ stated:

‘Journalists were harassed, intimidated, and threatened with arrest during the year [2011].

‘A few journalists reported that they received death threats. For example, Nation Publications Limited journalist Phillip Pemba reported death threats received in the aftermath of an article revealing that Robert Chasowa had dealings with police to stop the planned August 17 [2011] protests before his suspicious death in September [2011]. Similarly, a Radio Maria journalist received a death threat message on his cell phone after reporting on remarks by First Lady Callista Mutharika on the scarcity of fuel. In September a former employee of Malawi Institute of Journalism received death threats for allegedly publicizing a recording of “a private conversation” between President Mutharika’s brother and a former deputy minister of sports and culture. On October 20, a Capital Radio host received death threats due to his critical reporting. Investigations into these cases were pending at year’s end.

‘Police also questioned and arrested journalists. For example, on the weekend prior to the July 20 [2011] demonstrations, unidentified individuals set fire to vehicles belonging to private radio broadcaster Zodiak Radio, and when protests and civil unrest occurred as a result, journalists were detained and beaten while covering the events.

‘In October [2011] police questioned Weekend Nation Editor George Kasakula and Malawi News Deputy Editor Innocent Chitosi of Blantyre Newspapers Limited. These papers had carried detailed insights into Chasowa’s death and dealings with the police.’ [1a] (section 2a)

- 15.11 The Human Rights Watch ‘World Report 2012: Malawi’, published on 22 January 2012, stated:

‘Police and DPP supporters have also been implicated in the intimidation, arbitrary arrest, and beating of journalists attempting to report on political events in the country.

‘On October 11 [2011], police summoned deputy editor Innocent Chitosi and reporter Archibald Kasakura, both of Malawi News, as well as George Kasakula of Weekend Nation, after the two papers published stories about the death of student activist Chasowa. On September 12 [2011], police arrested journalist Ernest Mhwayo for allegedly taking pictures of President Mutharika’s farm without permission.

‘Police conducted a violent crackdown on journalists attempting to cover the July protests. According to the Media Institute of Southern Africa, police beat 14 journalists, arrested three, and harassed 10 more, as they attempted to cover the protests in Lilongwe and Blantyre. Authorities also prevented independent radio stations from reporting on the protests. On July 20 [2011] the Malawi Communications Regulatory Authorities, the state broadcasting

regulator, directed three independent radio stations, Capital FM, Joy Radio, and Zodiak Broadcasting Station (ZBS), to stop live coverage of the demonstrations because this was viewed as perpetuating violence. Although all the stations complied with the directive, they were taken off air for several hours on the following day, a move that denied Malawians vital information about how best to negotiate a dangerous situation.’ [20b]

- 15.12 The Committee to Protect Journalists (CPJ) ‘Attacks on the Press in 2011’ report, published on 22 February 2012, stated that:

‘Government officials...made use of court injunctions to silence critical coverage of public officials’ financial dealings. Authorities and ruling party supporters pushed back aggressively against coverage of nationwide protests over rising fuel costs and diminishing bank reserves: Police and security officers beat and detained journalists; the government blocked the transmissions of four private radio stations; and suspected ruling party supporters damaged two vehicles belonging to the private Zodiak Broadcasting Corp. The managers of a critical online news outlet, Nyasa Times, said they experienced a denial-of-service attack that took down their website during the protests.’ [51]

For further information on the treatment of prisoners, see [Prison and detention centre conditions](#).

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16. HUMAN RIGHTS INSTITUTIONS, ORGANISATIONS AND ACTIVISTS

- 16.01 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated:

‘A variety of domestic and international human rights groups generally operated without government restriction, training civic educators, advocating changes to existing laws and cultural practices, and investigating and publishing their findings on human rights cases. Government officials often were cooperative and responsive to their views.

‘UN and Other International Bodies: UN agencies and international NGOs had offices in the country and had access to investigate human rights abuses. The ICRC delegation for southern Africa, based in Harare, Zimbabwe, also covered the country.

‘Government Human Rights Bodies: The [Malawi Human Rights Commission] MHRC, an independent government agency, is charged with monitoring, auditing, promoting, and investigating violations of human rights. Continued resource shortfalls resulted in a backlog of cases, delayed production of reports, and hindered human rights monitoring. The MHRC reported that it received 460 complaints of human rights violations during the year.’ [1a] (section 5)

- 16.02 The same report also noted that:

‘Following the president’s March 6 [2011] directive to quell dissent, several members of civil society, including some of the July 20 [2011] protest organizers, were victims of attempted violence and arson. The home of one human rights activist and the office of another human rights organization were firebombed. Other activists faced attempted home or office invasions.

‘On October 14 [2011], four human rights activists were arrested and charged with sedition and conducting a demonstration without permission. The four had held placards calling President Mutharika a dictator during a demonstration coinciding with a regional summit. On October 19 [2011], the magistrate granted bail to all four and ordered them to report to the police every two weeks. At year’s end, the case was awaiting trial.’ [1a] (section 2)

- 16.03 The Human Rights Watch ‘World Report 2012: Malawi’, published on 22 January 2012, stated:

‘There is a climate of fear in the country as journalists and civil society activists who attempt to report on the human rights situation have come under increasing attack from security forces and supporters of the DPP. Several human rights activists have received death threats and been forced to go into hiding. In September [2011] unknown assailants threw petrol bombs at the homes and offices of several government critics, including activists McDonald Sembereka and Rafiq Hajat and opposition politician Salim Bagus. Human rights activists alleged that the government and DPP supporters orchestrated the attacks. At this writing the police had neither conducted any investigations nor arrested those responsible for the attacks.’ [20b]

- 16.04 The Amnesty International ‘Annual Report 2012’, published on 23 May 2012, stated that:

‘Human rights defenders and other critics of the government were harassed and intimidated including through death threats, forced entry to homes and offices, petrol bombings and other attacks. There were several suspicious break-ins at NGO offices. Threats and attacks were made either by people identifying themselves as aligned with the ruling Democratic Progressive Party (DPP) or by unidentified men believed to be state security agents. Human rights defenders speaking at international forums and those involved in organizing anti-government demonstrations were publicly criticized and threatened with violence and arrest by government officials, including President Mutharika.’ [4a]

- 16.05 The Freedom House report, ‘Countries at the Crossroads 2012’, published on 20 September 2012, noted that: ‘Since Joyce Banda came to power, a number of highly positive developments have taken place, reversing the anti-democratic tendencies witnessed under President Mutharika...the environment for civil society groups has improved considerably with groups and activists no longer facing the threats and attacks that they incurred in the two years before Mutharika’s death.’ [6c]

- 16.06 A Nyasa Times report, 'Kalinde elected head of Malawi Human Rights Commission', dated 7 September 2012, stated that:

'The only woman among the new commissioners for the state-funded Malawi Human Rights Commission (MHRC), Sophie Kalinde, has accepted her election as chairperson of the body.

'President Joyce Banda has appointed new members Benedicto Kondowe, Rodgers Nawa, Dalitso Kubalasa, Steven Mkoka, the Reverend Dr. Zacc Kawalala and Marshal Chilenga effective July 5 2012.

'Law commissioner Gertrude Hiwa and Ombudsman Tujilane Chizumila are ex-officio members.' [16a]

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17. CORRUPTION

- 17.01 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated:

'The law provides criminal penalties for official corruption, and the government has had some success prosecuting cases; however, officials frequently engaged in corrupt practices with impunity. The World Bank's 2010 Worldwide Governance Indicators reflected that corruption was a serious problem. President Mutharika spoke publicly against corruption and cautioned government officials to refrain from questionable activities. Efforts to combat corruption and promote transparency continued.

'The Malawi Anti-Corruption Bureau (ACB) investigated, indicted, and prosecuted persons charged with low-level corruption during the year; however, critics charged that the bureau generally avoided indictments of high-level government officials. The ACB was considered generally competent in its handling of low-level cases. Indictments of former high-level government officials proceeded slowly, often due to legal challenges filed in court by the accused. Surveys indicated that while a majority of citizens had been exposed to government anticorruption messages, only 15 percent knew how to report corruption to the ACB. The ACB reported that it completed 289 investigations during the year, which resulted in 77 referrals to prosecutors. A total of 65 corruption cases were prosecuted during the year, resulting in 11 convictions, five acquittals, and no withdrawals.' [1a] (section 4)

- 17.02 Malawi ranked 100th in Transparency International's '2011 Corruption Perceptions Index' (CPI) of 183 countries, published on 1 December 2011. Malawi was given an overall CPI score of 3. The CPI defines corruption as the abuse of public office for private gain, and measures the degree to which corruption is perceived to exist among a country's public officials and politicians. The CPI is a composite index that draws on multiple expert opinion surveys. The CPI scores range from 10 (low level of corruption) to 0 (high level of corruption). [54]

- 17.03 A Nyasa Times report, 'Malawi enters global scrutiny on corruption', dated 10 November 2011, stated:

'Impoverished Malawi will for the first time face global scrutiny on how it is tackling corruption following its inclusion in the Global Corruption Barometer 2011, according to Transparency International (TI).

'Malawi joins nine other Africa countries such as Sudan, South Sudan, Tanzania, Mozambique and Zimbabwe among others.

'TI's Senior Programme Coordinator for Africa and Middle East Annette Jaitner said this during a media briefing to journalists from Africa and Asia...Transparency International's secretariat in Berlin, Germany on Wednesday [9 November 2011].

'Jaitner said the report would be officially launched on November 22, 2011 in South Africa...In a thinly veiled disclosure of the 2011 major findings, Jaitner said property rights, land deals, Police and the education sector feature very high.

"Land deals are not properly transparent. People are displaced and are not properly compensated," she said.

'The Global Corruption Barometer, which started publishing its results in 2003 initially with 44 countries and will have 96 in 2011, explores the general public's views about corruption levels in their country and their government's efforts.

'The Barometer complements, Transparency International's Corruption Perception Index (CPI), which Malawi has for long been featured and (CPI) gathers the general public's perceptions about how key institutions are affected by corruption.

'Samantha Grant, TI's Programme Coordinator for Asia and the Pacific thinks her organization's increased funding despite the global crunch reflects recognition in the world that corruption is a big problem.

"With governments committing huge sums to tackle the world's most pressing problems, from the instability of financial markets to climate change and corruption – corruption remains an obstacle to achieving progress," according to TI.' [16b]

- 17.04 A South African Mail and Guardian 'Thought Leader opinion piece, 'Joyce Banda: Not your average president', dated 29 May 2012, stated that:

'[President] Banda is well aware that Malawi's public service is rife with corruption. She tackled this issue head-on throughout her speech [of 18 May 2012] – "I am therefore requiring all principal secretaries, chief executives and all public officers who are aware of instances of fraud, embezzlement and misprocurement involving public funds in their institutions or that has come to their knowledge, to bring those matters to my attention as soon as possible. If this information does not reach my office by the 18th of June 2012 and it is later discovered, there will be no sympathy for those involved." As part of her efforts to

“stamp out corruption” she intends to strengthen the anti-corruption bureau and office of the auditor general.’ [43]

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18. FREEDOM OF RELIGION

- 18.01 The United States State Department ‘International Religious Freedom Report for 2011: Malawi’, published on 30 July 2012, stated:

‘The constitution and other laws and policies protect religious freedom and, in practice, the government generally respected religious freedom. The government did not demonstrate a trend toward either improvement or deterioration in respect for and protection of the right to religious freedom.

‘There were no documented cases of societal abuses or discrimination based on religious affiliation, belief, or practice; however, there were isolated reports from religious minorities regarding limited employment and educational opportunities.’ **[1c] (Executive Summary)**

- 18.02 The United States State Department ‘International Religious Freedom Report for 2011’, also stated:

‘Religious groups must register with the government by submitting documentation to the Ministry of Justice detailing the structure and mission of their organization, along with a nominal fee. Once approved, a religious group must register formally with the Registrar General’s office.

‘Foreign missionaries are required to have employment permits. Missionaries and charitable workers pay lower fees for employment permits compared to other professionals...there were no reports of abuses of religious freedom. The government upheld constitutional provisions [sic] for religious freedom and protected the rights of citizens to hold and manifest their religious beliefs.

‘Despite the government’s requirement for registration, there were no reports that the government refused to register any religious groups during the year [2011].’ **[1c] (Section 2)**

RELIGIOUS DEMOGRAPHY

- 18.03 Regarding the religious make-up of the population, the United States State Department ‘International Religious Freedom Report for 2011: Malawi’, stated that:

‘The population of the country is 80 percent Christian. Among the Christian groups, the predominant denominations are the Roman Catholic Church and the Church of Central Africa Presbyterian, with smaller numbers of Anglicans, Baptists, evangelicals, and Seventh-day Adventists. Muslims constitute approximately 20 percent of the population, and the vast majority

of Muslims are Sunni. There are also Hindus and Baha'is, as well as small numbers of Rastafarians and Jews.' **[1c] (section 1)**

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19. ETHNIC GROUPS

- 19.01 The 'Africa Guide to Malawi', undated, accessed on 25 September 2012, stated that:

'The Malawi people are of Bantu origin with the ethnic groups including Chewa, Nyanja, Yao, Tumbuka, Lomwe, Sena, Tonga, Ngoni, Ngonde, Asian and European. The Chichewa (Chewa) people forming the largest part of population group and are largely in the central and southern parts of the country. The Yao people are predominately found around the southern area of Lake Malawi. Tumbuka are found mainly in the north of the country. There are very small populations of Asian and European people living mainly in the cities.' **[17]**

- 19.02 Jane's Sentinel Country Risk Assessment on Malawi (demography section), last updated on 5 July 2011, observed: 'There are between 20,000 and 40,000 Europeans (largely of British descent but also Portuguese, Greek and Afrikaner) and South Asians (mostly of Kachchi and Gujarati descent) in Malawi. Many Muslim Asians are involved in the retail trade. In a recent announcement, the Malawian government endorsed plans to repeal a 26-year-old law prohibiting Asians from running rural businesses.' **[11c]**

- 19.03 The government's 'National Report submitted to the Working Group on the Universal Periodic Review', 21 October 2010, stated:

'The Constitution in section 26 provides that every person has the right to use language and to participate in the cultural choice of his or her choice. Malawi is a country with rich and diverse culture and values which makes each tribe distinct from the others. Although there are several tribes, these coexist in harmony and the country has not experienced tribal wars so far which is an indication of the citizen's respect for the rights to culture of others. Government realizes that culture has a significant bearing on development of the country. The Constitution, in Section 26, provides that every person has the right to use the language and to participate in the cultural life of his choice. The country promotes the enjoyment of culture by its citizens. This is witnessed by the formation of numerous associations that promote their Heritage and there are several cultural and traditional dance troupes.' **[21c]**

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20. SEXUAL ORIENTATION AND GENDER IDENTITY

LEGAL RIGHTS

- 20.01 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

‘Consensual same-sex sexual activity is illegal and is punishable by up to 14 years in prison in addition to corporal punishment, including hard labor. The Malawi Penal Code outlaws “unnatural offenses” and “indecent practices between males.”

‘In January [2011] the president assented to a parliamentary penal code amendment that criminalizes “indecent practices between females.” The amendment codifies the illegality of consensual same-sex sexual activity between women, setting a maximum prison term of five years for convicted offenders.’ [1a] (section 6)

- 20.02 The International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) report, ‘State sponsored Homophobia: A world survey of laws prohibiting same sex activity among consenting adults’, published on 16 May 2012, noted that in Malawi male with male sexual intercourse was illegal and that female with female sexual intercourse became illegal in early 2011. The same ILGA survey quoted from the country’s penal code:

‘Penal Code Cap. 7:01 Laws of Malawi

‘Section 153 “Unnatural offences”

‘Anyone who –

‘(a) has carnal knowledge of any person against the order of nature; or (b) has carnal knowledge of any animal; or

‘(c) 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 156 “Indecent practices between males”

‘Any male 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.

‘In December 2010, the Parliament passed a bill amending the Penal Code of Malawi. In late January 2011, President Bingu Wa Mutharika assented to the bill, thus completing its enactment into law. 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.’ [19a]

20.03 A Human Rights Watch report, 'Malawi: Drop Charges Against Same-Sex Couple', dated 12 January 2010, noted that: 'Malawi's law criminalizing consensual homosexual conduct is a legacy of the country's colonial past...British colonial rulers imposed laws regulating sexual and social conduct in dozens of countries in Africa, Asia and the Pacific. These laws are now often defended by Asian and African governments in the name of native culture and tradition.' [20a]

20.04 The 'Stakeholder Summary' prepared by the Office of the High Commissioner for Human Rights to the United Nations Working Group on the 'Universal Periodic Review' for Malawi, dated 10 August 2010, stated:

'CDP [The Centre for the Development of People] underlined that provisions of the Criminal Code criminalizing same-sex activities violated the Constitution, which guaranteed the right to liberty, dignity, and security, prohibited discrimination on all grounds and protected the right to privacy, as well as provision of the African Charter on Human Rights and People's Rights. JS3 [Joint Submission 3] added that 'sex against the order of nature', as enshrined in section 153 of the Penal Code, was interpreted to cover homosexual activity and some heterosexual activities. JS3 recommended that Malawi repeal provisions of the penal code which criminalize same sex relationships / homosexuality. CHRR [The Centre for Human Rights and Rehabilitation] also recommended that Malawi review its legislation, which results in the discrimination, prosecution and punishment of people solely for their sexual orientation or gender identity and immediately and unconditionally release all prisoners who are held solely on these grounds.' [21d]

20.05 An International Commission of Jurists press release, 'Sex Between Women Now a Crime in Malawi: New Law Violates Human Rights Obligations of Malawi', dated 8 February 2011, observed:

'The Republic of Malawi has turned a deaf ear to the calls of UN Secretary-General Ban Ki-moon, High Commissioner for Human Rights Navanethem Pillay, and Archbishop Desmond Tutu and many others. 'Indecent practices between males' are already criminalized in Malawi. Last May Tionge Chimbanga and Steven Monjeza were convicted of this offense and were sentenced to 14 years in prison before receiving a presidential pardon. By adding 'indecent practices between females' to the Penal Code, the Republic of Malawi has not only acted contrary to its own human rights obligations, it has contributed to the severe stigmatization and discrimination experienced by gay and lesbian Malawians.' [14]

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TREATMENT BY, AND ATTITUDE OF, STATE AUTHORITIES

20.06 An International Commission of Jurists press release, 'Sex Between Women Now a Crime in Malawi: New Law Violates Human Rights of Malawi', dated 8 February 2011, noted:

'In December 2010, the Parliament passed a bill amending the Penal Code of Malawi. In late January 2011, President Bingu Wa Mutharika assented to the bill, thus completing its enactment into law. 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....speaking in Geneva last September, the UN Secretary-General Ban Ki-moon stated, 'Laws criminalizing people on grounds of sexual orientation and gender identity violate the principle of non-discrimination. They also fuel violence, help to legitimize homophobia and contribute to a climate of hate.' The Republic of Malawi has turned a deaf ear to the calls of UN Secretary-General Ban Kimoon, High Commissioner for Human Rights Navanethem Pillay, and Archbishop Desmond Tutu and many others. Indecent practices between males are already criminalized in Malawi. Last May Tionge Chimbalanga and Steven Monjeza were convicted of this offense and were sentenced to 14 years in prison before receiving a presidential pardon.' [14]

- 20.07 The United States State Department '2011 Human Rights Report: Malawi', stated that:

'An environment conducive to discrimination based on sexual orientation was created and maintained by senior government officials. On World Tourism Day in September [2011], the tourism minister said it was not proper for citizens to engage in same-sex sexual activity as "very un-Malawian." The mistaken notion that western donor countries were withholding financial aid unless the country permits same sex marriages enhanced a homophobic environment. In October [2011] the Malawi Council of Churches declared that the country needed aid, and millions of innocent citizens should not be penalized because same-sex sexual activity was outlawed.' [1a] (section 6)

- 20.08 An International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) article, 'Malawi: president says homosexuals worse than dogs', dated 19 May 2011, stated:

'[President] Mutharika addressing a Democratic Progressive Party (DPP) rally in Malawi's capital, Lilongwe sharply objected to rights activists calls to respect minority rights including that of gays and lesbians in the fight for HIV/Aids. He adopted Zimbabwean President Robert Mugabe's stance against homosexuals saying they area (sic) worse than dogs. 'You will never see dogs marry each other,' Mutharika told thousands of his supporters in remarks broadcast like on state radio MBC. 'These people want us to behave worse than dogs. I cannot allow it,' he said. Muthaeika (sic) said the sanctity of a family revolved around a father, a mother and children. Government has been accusing human rights groups campaigning for minority rights of being funded by foreign interests. Last year, the Malawi's first openly gay couple was convicted of practicing homosexuality and sentenced to the maximum 14 years in jail. The president pardoned the couple following international pressure.' [19b]

- 20.09 A Malawi Talk report, 'Malawi: Another "gay" arrest as police intensify hunt for homosexuals', dated 16 February 2010, stated:

'A 60-year-old man in the Malawi commercial capital, Blantyre, has been arrested for sodomising a 23-year-old man, the latest in a growing campaign to round up homosexuals in this highly (sic)-homophobic southern African country, police have disclosed... [a police source] that police investigations had uncovered a network of high-profile people who are involved homosexual acts...[the police source] said homosexuality was illegal in Malawi and it was the duty of the police to enforce the laws. [A police source] said the network of homosexuals was procuring 'unnatural sex' from mainly street kids and other vulnerable Malawians who are lured with promises of money or employment as house boys...the issue of homosexuality, largely frowned upon in Malawi whose laws are against same-sex liaisons, came to the fore following the arrest over Christmas of the southern African country's first openly gay couple... The continued hunt, arrest and prosecution of homosexuals comes amid a growing local and international campaign for Malawi to 'go easy' on gays and lesbians...police are also hunting for a group of underground gay rights activists, operating under the name Broad Coalition, who are distributing pro-gay rights leaflets.' [49]

- 20.10 The Amnesty International 'Annual Report 2012', published on 23 May 2012, stated that:

'On 18 May [2011], two prisoners of conscience, Steven Monjeza and Tiwonge Chimbalanga, were convicted on charges of "gross indecency" and "unnatural acts" after holding a same-sex engagement party in December 2009. Both were sentenced to 14 years with hard labour. On 29 May [2011] they were pardoned by President Mutharika, following a visit to Malawi by UN Secretary-General Ban Ki-moon. However, Tiwonge Chimbalanga went into hiding in fear of hate attacks.

'In its Universal Periodic Review, Malawi stated that it had no plans to legalize homosexuality.' [4a]

- 20.11 The UN Report of the Working Group on the Universal Periodic Review for Malawi of 4 January 2011, noted that: 'In response to advance questions raised by Denmark, the Czech Republic, the United Kingdom, Norway and the Netherlands regarding homophobia, Malawi stated that it had no plans to legalize homosexuality. The wishes of the people of Malawi in this regard should be respected.' [21e] (para 39, page 6)

- 20.12 A Guardian (UK) newspaper report, 'Malawi President Vows to Legalise Homosexuality', dated 18 May 2012, stated:

'Malawi's new president has pledged to lift the country's ban on homosexuality, breaking ranks from much of Africa where such activity remains a crime.

'Joyce Banda, who came to power in April [2012] on the death of her predecessor, said in her first state of the nation address on Friday [18 May]:

"Indecency and unnatural acts laws shall be repealed." She described the measure as a matter of urgency...But repealing a law requires a parliamentary vote and, although Banda's party commands a majority, it is unclear how much support the move would have in this socially conservative nation.

'Malawi was widely condemned for the conviction and 14-year prison sentences given in 2010 to two men who were arrested after celebrating their engagement and were charged with unnatural acts and gross indecency.' [22b]

- 20.13 The Human Rights Watch report 'Repealing Malawi's LGBT Laws: An Example for Africa?', dated 14 June 2012, stated that:

'At a news conference shortly after she was sworn in as Malawi's president, Joyce Banda announced her government's intention to decriminalise homosexuality. It is unclear how she will achieve this, but the move is in stark contrast to the approach of her predecessor, Bingu wa Mutharika, who openly condemned it.

'In a region in which lesbian, gay, bisexual and transgender (LGBT) rights have often been rejected in the name of traditional values, Banda's stance is bound to attract attention. Hopefully, it will bring about some rethinking of policies that discriminate against LGBT people and often even criminalise homosexual practices...Soon after taking office, she announced that she intended to repeal repressive laws and policies, some of them passed under Mutharika's rule, including the laws criminalising same-sex acts.

'The repeal of these repressive laws would be good news for Malawi and for Africa. It would not only spare members of the LGBT community the fear of prosecution, but would also negate the legitimisation of violence, abuse, and discrimination based on sexual orientation.

'It would also be the first time since 1994 that an African country has repealed anti-LGBT legislation, and would add renewed impetus to global efforts toward decriminalisation of same-sex conduct.' [20d]

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SOCIETAL TREATMENT AND ATTITUDES

- 20.14 An article published on the ILGA website, 'Malawi NGOs dispel govt's gay propaganda', dated 26 April 2011, stated:

'Three NGO's (sic) have criticised the approach by the Malawi Government to respond to concerns about the current state of human rights, good governance and also reacted to government's 'propaganda' on homosexuality. The NGOs - Centre for Human Rights and Rehabilitation (CHRR), Centre for Development of People (CEDEP) and Malawi Religious Leaders Living and Affected by HIV and Aids (MANERELA+) - said they were concerned with [the] government's "derogatory language, threatening

remarks, deliberate propaganda to mislead the general public, and twisting of facts about concerns being presented by civil society and other stakeholders.” [19c]

- 20.15 The Human Rights Watch report ‘Repealing Malawi’s LGBT Laws: An Example for Africa?’, dated 14 June 2012, stated that:

‘Although sanctions [relating to aid from donor countries] may be useful in seeking to secure and protect human rights, any attempts to single out LGBT rights in this process has backfired as politicians have used this to divert the people’s attention from their own corrupt practices. The government sought to blame the LGBT community for the cuts in donor aid, provoking increased homophobia and threats against known supporters of LGBT rights.

‘In part for this reason, the public perception of Banda’s motives in saying she intends to decriminalise homosexuality may be more contentious. Some in Malawi and in the region will see her move as bowing to international pressure...But Malawi, South Africa, and others should stand firm against any effort to reject LGBT rights as human rights.

‘As Banda acts to rebuild the country’s economy and roll back the recent human rights repression, decriminalisation is an important first step. However, it needs to be accompanied by a real commitment to address public homophobia, and support civil society efforts to promote human rights more broadly - efforts that donors should support.

‘It will take more than the repeal of the laws to change public perceptions and attitudes. Banda’s efforts will need a holistic focus on rights and civil liberties for all Malawians, including LGBT individuals. Forming strategic partnerships with civil society organisations to prevent all form of discrimination - including on the basis of sexual orientation - will not only circumvent homophobic sentiments but also promote greater public participation and ownership of the reform process.’ [20d]

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21. WOMEN

LEGAL RIGHTS

- 21.01 The Shadow Report to the Malawi Government, produced by the Women and Law in Southern Africa Research and Education Trust (WLSA), submitted to the CEDAW (Convention on the Elimination of all Forms of Discrimination against Women) Committee’s 35th Session, 15 May - 2 June 2006, stated:

‘With regards to international human rights and development instruments, Malawi has maintained a commendable ratification record. This record can be traced back to the pre democracy era, when Malawi ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the International

Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the African Charter on Human and People's Rights (ACHPR) (UNDP, 2002). However, since the government made no efforts to implement or abide by its various commitments under the instruments, both in principle and practice, the instruments were of no relevance to Malawians. In fact, CEDAW was initially ratified with a strong reservation against the principle of equality between men and women in matters of culture. However, this was later withdrawn after condemnation from other States as well after the government felt that mechanisms had been put in place which effectively dealt with the reservation in place... These instruments, which were speedily acceded to in the post democracy era include: the Convention Against Torture and Other Cruel or Degrading Treatment or Punishment, the Convention on Political Rights of Women, the Convention on the Nationality of Married Women, the Optional Protocol to the UN International Covenant on Civil and Political Rights; and the UN International Covenant Against all forms of Discrimination (CARD)... However, there has still been no effort by the Government of Malawi to domesticate these international and regional instruments, which has led to very negligible application of the instruments by the Courts. However, some progress in the implementation of the various human rights instruments can be measured through the adoption of the new Constitution, the establishment of human rights institutions, and efforts to review/enact laws relevant to the current democratic framework and respect for human rights.' [63]

- 21.02 The 'Concluding Observations of the Committee on the Elimination of Discrimination against Women for Malawi', dated 5 February 2010, stated:

'The Committee remains concerned that, despite the ratification of the Convention [CEDAW – Convention on the Elimination of Discrimination against Women] by the State party in 1987, it has yet to be incorporated into Malawian domestic law. The Committee underlines that, irrespective of the system through which international Conventions are incorporated into the domestic legal order (monism or dualism), the State party is under a legal obligation to comply with an international Convention which it has ratified or acceded to and to give it full effect in its domestic legal order.'

[21b] (p2, paragraph 10)

- 21.03 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated that:

'Women often had less access to legal and financial assistance, and widows often were victims of discriminatory and illegal inheritance practices in which most of an estate was taken by the deceased husband's family. Women usually were at a disadvantage in marriage, family, and property rights; however, awareness of women's legal rights continued to increase, and women began to protest abuse and discrimination. Households headed by women were represented disproportionately in the lowest quarter of income distribution... The law provides for a minimum level of child support, widows' rights, and maternity leave; however, only individuals who could use the formal legal system benefited from these legal protections.'

‘The government addressed women’s concerns through the Ministry of Gender, Child, and Community Development. The Organization for Economic Cooperation and Development’s Gender, Institutions, and Development data reflected the elevated discrimination in social institutions and the high inequality to which women were subjected on a daily basis.’

[1a] (section 6)

- 21.04 The Social Institutions and Gender Index ‘Country Profile for Malawi’ (2012 update), accessed on 31 July 2012, stated:

‘In Malawi, under the constitution, husbands and wives share parental authority and have joint child custody rights. The government reports that equal parental responsibility for husbands and wives is also reinforced in a proposed bill on marriage and divorce. In the event of divorce, the custody of children is determined based on the age of the child and in the best interests of the child.

‘In 2011, the parliament passed the Deceased Estates (Wills, Inheritance and Protection Act) Act No. 14 of 2011 to provide widows and daughters equal inheritance rights and address problems with widows being denied their inheritance upon the death of a spouse. The treatment of widows has been noted as a particularly serious problem in Malawi. The Women and Law in Southern Africa group report that the practice of dispossession and ‘property-grabbing’ from widows is common. The government notes that the previous law had not been effectively enforced as there have been no prosecutors appointed.

‘The new law represents positive developments on a number of fronts. Firstly, it sets out principles of fairness that should be applied where there is no will. If the spouse and children are left out of a will, which has been a problem for widows in Malawi in the past, the new law makes a provision for the spouse and children to make a claim for inheritance. The law stipulates that customary laws do not apply for inheritance and also makes property grabbing a specific offence. Finally, the law provides for the Minister to engage in public awareness activities to educate the judiciary, traditional authorities and the public about the new provisions.’ [24]

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POLITICAL RIGHTS

- 21.05 An article in the Inter Press Service News Agency, ‘Malawi’s Women Pushing for a Place at the Table’, dated 17 November 2010, stated:

‘The percentage of women in Malawi’s parliament rose from 15 to 22 percent in the May 2009 elections, but Pan African Civic Education Network Executive Director Steve Duwa says there’s more work to be done. “It’s an attitude problem, regarding women as inferior to men,” Duwa said. “On paper, the political situation is friendly, but in practice very few women are given the potential to pursue their dreams.” Duwa said this may have an impact on the government’s effort to achieve 50:50 representation of women

in political and decision-making bodies in line with the Southern African Development Community's Gender Protocol.' [8b]

- 21.06 The Social Institutions and Gender Index 'Country Profile for Malawi' (2012 update), accessed on 31 July 2012, stated: 'With respect to women's participation in political life, the World Economic Forum reports that women make up only 21 per cent of Malawi's parliamentarians and 27 per cent of Ministerial positions. The most recent elections were held in 2009.' [24]. (For comparison, the UK Parliament website noted that, as at 26 September 2012, 22 per cent of members of parliament in the United Kingdom's House of Commons are women [44], and a Guardian (UK) report, dated 7 March 2012, noted that: 'The world average for women in parliament stood at 19.5% in 2011'. [22c])

- 21.07 A BBC News report, 'Joyce Banda: Malawi's first female president', dated 10 April 2012, stated that:

'Joyce Banda, who has made history becoming Malawi's first female president and only the second woman to lead a country in Africa, has a track record of fighting for women's rights...Mr Mutharika's decision to appoint her as his running mate for the 2009 elections surprised many in Malawi's mainly conservative, male-dominated society - which had never before had a female vice-president.

'Equally surprising was her decision to publicly stand up to her boss - by refusing to endorse his plans for his brother, Foreign Affairs Minister Peter Mutharika, to succeed him as president in 2014 when he was due to retire.

'She was promptly thrown out of the ruling Democratic Progressive Party - and subjected to daily doses of derision at public rallies and on Malawi's state airwaves.

'A senior ruling party official openly said Malawi was "not ready for a female president", while First Lady Callista Mutharika said Mrs Banda was fooling herself that she was a serious politician - saying she was a mere market woman selling fritters.

"She will never be president, how can a mandasi [fritter] seller be president?" Mrs Mutharika said.

'Mrs Banda took all this in her stride, saying she was glad to be identified with market women since more than 80% of Malawian women belong to that category: "Yes, she's right, I'm indeed a mandasi seller and I'm proud of it because the majority of women in Malawi are like us, mandasi sellers." [7g]

See also [Political system](#) and [Political affiliation](#).

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SOCIAL AND ECONOMIC RIGHTS

- 21.08 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated:

'Under the law, women have the right to full and equal protection and may not be discriminated against on the basis of gender or marital status, including in the workplace; however, discrimination against women was pervasive, and women did not have opportunities equal to those available to men. Women had significantly lower levels of literacy, education, and formal and nontraditional employment opportunities, as well as lower rates of access to resources to increase agricultural productivity...More than half, 52 percent, of full-time farmers were women; however, they had limited access to agricultural extension services, training, and credit. Gender training for agricultural extension workers and the gradual introduction of rural credit programs for women increased. However, few women participated in the limited formal labor market and those that did constituted less than 5 percent of managerial and administrative staff.' [1a] (section 6)

- 21.09 The Social Institutions and Gender Index 'Country Profile for Malawi' (2012 update), accessed on 31 July 2012, stated:

'The unequal status of women in Malawi is shaped by the inter-locking factors of general poverty, discriminatory treatment in the family and public life and a vulnerability to HIV/AIDS. Both matrilineal and patrilineal systems operate in Malawi's ethnic groups and it is reported that both systems perpetuate discrimination against women in the family with respect to control over resources. Women in Malawi generally fare worse than their male counter-parts on most social and economic indicators including wage equality, political participation, secondary and tertiary education enrolment and literacy. However, Malawi has achieved gender parity with respect to primary school enrolments which indicates an improvement in attitudes towards girls' education.' [24]

- 21.10 The Social Institutions and Gender Index 'Country Profile for Malawi' also stated:

'The constitution provides for basic workers rights, prohibits discrimination and enshrines the principle of fair wages and equal remuneration for work of equal value without distinction or discrimination of any kind, in particular, on the basis of gender. Despite these protections the government reports that discrimination in the workplace on the grounds of pregnancy is common, as well as sexual harassment towards women. The Employment Act 1999 provides pregnant workers with maternity leave of 8 weeks paid at 100 percent of wages. Maternity leave can only be accessed once every three years.' [24]

- 21.11 The Social Institutions and Gender Index 'Country Profile for Malawi' further stated:

'The National Land Policy of 2002 highlighted the need to increase women's access to land. However, the policy allows for the name of the head of a family to be registered as the proprietor of family land, resulting in men's

names being recorded with a likely loss to women and young men. Despite these barriers, a 2010 report from the Government of Malawi found that there is only a very small gender gap in land ownership in Malawi.

‘Women in Malawi encounter discrimination in relation to access to property other than land because of discriminatory customary practices. Section 24 of the Constitution recognises equal ownership rights for men and women, regardless of marital status. However, in customary law, these rights are closely linked to gender stereotypes and roles and thus women are generally owners of less valuable property. For example, kitchen utensils belong to women whereas other property, such as land or cars, generally belongs to men.

‘While there are no legal restrictions on women’s access to credit, the government reported in 2008 that discriminatory practices continue to create barriers for women’s access to bank loans. For example, some commercial banks will request a male guarantor when a woman seeks a loan. Further, the requirement to provide security poses barriers for women who are less likely to own valuable property as noted above. As a result women tend to access credit through micro-finance institutions. In 2010 the government reported a gender gap in access to credit, with only 11 percent of women having access to credit, compared to 14 percent of men.’ [24]

- 21.12 Africa Economic Outlook, in its ‘Country Profile 2011’, last updated 22 June 2011, noted:

‘Malawi has achieved some progress in the MDG [Millennium Development Goal] of promoting gender equality and empowering women, but is below the MDG target and is seemingly moving backwards according to other international indices. For example, the HDR-Gender Inequality Index increased between 2009 and 2010 from 0.490 to 0.708 (with a measure of zero indicating full equality between men and women). Although more women were appointed into the public service sector, including a female vice president for the first time in Malawi’s history, and the number of women in parliament has moved up from 13% in 2008 to 22% in 2010, these successes do not mirror Malawian society as a whole. Malawi is 28 percentage points short of the 50% MDG target goal of proportion of seats held by women in the parliament and 35 percentage points short of reaching the 50% goal of the share of women in wage employment in the non-agriculture sector.’ [15] (page 16)

- 21.13 The Malawi statistics section of the United Nations Children’s Fund (UNICEF) website, undated, accessed on 28 August 2012, provided the following statistical information on life expectancy, education and health:

Women - Statistics (UNICEF)	
Life expectancy: females as a percentage of males, 2010	100
Life expectancy: The number of years newborn children	

would live if subject to the mortality risks prevailing for the cross-section of population at the time of their birth.	
Adult literacy rate: females as a percentage of males, 2005-2010*	83
Enrolment ratios: females as a percentage of males, Primary gross enrolment ratios school 2007-2010* The gross enrolment ratio is the number of children enrolled in a schooling level (primary or secondary), regardless of age, divided by the population of the age group that officially corresponds to that level.	103
Enrolment ratios: females as a percentage of males, Secondary gross enrolment ratios school 2007-2010* The gross enrolment ratio is the number of children enrolled in a schooling level (primary or secondary), regardless of age, divided by the population of the age group that officially corresponds to that level.	88
Survival rate to last grade of primary: females as percentage of males 2006-2009*	88
Contraceptive prevalence (%), 2006-2010*	41
Antenatal care coverage (%), At least once, 2006 -2010*	92
Antenatal care coverage (%), At least four times, 2006 - 2010*	57
Delivery care coverage (%), Skilled attendant at birth, 2006 -2010*	54
Delivery care coverage (%), Institutional delivery, 2006 - 2010*	54

* Data refers to the most recent year available during the period specified in the column heading. **[25c]**

21.14 The Social Institutions and Gender Index 'Country Profile for Malawi' (2012 update), accessed on 31 July 2012, stated:

‘Having control over the timing and spacing of children is an important aspect of women’s physical integrity. In Malawi, abortion is permitted for therapeutic reasons to save the woman’s life. It is not permitted in the event of rape or incest, due to foetal impairment, on request or on social or economic grounds. A 2004 Demographic Health Survey found that 32 percent of married women use contraception and 28 percent of married women use modern forms of contraception. The data suggests that there remains reluctance amongst couples to discuss family planning with 27 percent of married women reporting never having discussed family planning with their spouse. Further, access to family planning appears to be a problem with 28 percent of married women reporting an unmet need for family planning. Malawi also has an exceptionally high maternal mortality rate of 1100 per 100,000 births.’ [24]

- 21.15 The Social Institutions and Gender Index ‘Country Profile for Malawi’ (2012 update), accessed on 31 July 2012, stated:

‘Marriage in Malawi can be entered into under common and customary laws. The government reports that most marriages are contracted under customary law using the patrilineal system, predominant in the northern region and Nsanje district in the south. The matrilineal system is predominant in the central and southern regions.

‘With respect to the minimum age for marriage, there is an ambiguity in the legal system. Under the constitution, a person of 18 years of age may enter into marriage without parental consent. Persons between 15 and 18 must obtain parental consent before entering into marriage. The constitution also provides that the state is obliged to ‘discourage’ marriages where either party is under the age of 15. The Constitution is in conflict with the common law Marriage Act which provides that 21 years of age is the minimum age of marriage. The Law Commission has recommended that the government increase the minimum legal age of marriage to 18 years with parental consent and 21 years without parental consent.

‘With respect to forced marriage, the constitution provides that any person above the age of 18 years may not be forced to enter into marriage.

‘The United Nations reports, based on 2004 data, that 36 per cent of girls between 15 and 19 years of age were married, divorced or widowed in Malawi, compared to 3 percent of boys in the same age range. In 1977, 51 percent of girls aged between 15 and 19 were married, divorced or widowed which indicates that societal acceptance of early marriage is slowly declining.

‘Several factors contribute to this relatively high prevalence of early marriage. Under custom, attainment of puberty is seen as readiness for marriage, particularly for young girls. Further, many poor families in rural areas choose to marry their daughters off very young to improve their financial status. A practice known as kupimbira practiced in the northern part of Malawi is a form of debt repayment where a young daughter may be transferred to the creditor for marriage for failure to pay the debt back.

‘A key challenge for eliminating early marriage in Malawi is the persistence of attitudes that accept the practice. For example, a recent community-based study of 500 males and females by the Women and Law in Southern Africa and The National Women’s Lobby Group found that 12 percent of respondents deemed early marriage as normal.

‘There is a discrepancy between common law and customary with respect to polygamy. Polygamy is prohibited by the Malawian Penal Code for common law marriages. However, customary laws allow polygamous marriages. As noted above, most marriages in Malawi are entered into under customary law. Other forms of union exist in Malawi, based on Asian and African marriage laws that also permit polygamy. A 2010 survey conducted by Demographic Health Surveys found that 20 percent of married women are in a polygamous marriage. Following a review of marriage laws, the Law Commission has recommended a prohibition of polygamy on account of its negative impact on women. This negative impact includes the wilful neglect of women and children during marriage as well as after divorce or separation.’ [24]

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VIOLENCE AGAINST WOMEN

- 21.16 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated:

‘The law criminalizes rape with a maximum penalty of death. Spousal rape is not explicitly mentioned but could be prosecuted under the same rape laws. The government generally enforced the law effectively, and convicted rapists routinely received prison sentences. Data on the prevalence of rape or spousal rape and conviction figures were unavailable; however, press reports of rape arrests and convictions were an almost daily occurrence. The judiciary continued to impose penalties on persons convicted of rape. Although the maximum penalty for rape is death, the courts generally imposed the maximum assault penalty of 14 years in prison for child rape and assault.

‘Domestic violence, especially wife beating, was common, although women seldom discussed the problem openly, and victims rarely sought legal recourse. Legal experts and human rights workers attributed victims’ reluctance to report their abusers to economic dependence on the abuser, lack of awareness of their legal rights, and fear of retribution and ostracism. The law provides a maximum penalty of life imprisonment for domestic violence and recognizes that both men and women can be perpetrators as well as victims. Police regularly investigated cases of rape and sexual assault but did not normally intervene in domestic disputes. Police support units provided shelter to some abuse survivors and dealt with human rights and gender-based violence, but officers’ capacity to assist and document cases was limited.’ [1a] (section 6)

- 21.17 The 'Concluding Observations of the Committee on the Elimination of Discrimination against Women for Malawi', dated 5 February 2010, stated that:

'The Committee reiterates its deep concern at the high prevalence of violence against women in the State party. Notwithstanding the adoption of the Prevention of Domestic Violence Act, the Committee remains concerned about the lack of adequate services and protection for victims of violence, including the lack of reporting mechanisms available to victims as well as the absence of awareness campaigns to educate women about their rights.'

[21b] (p4, paragraph 22)

- 21.18 An article in ThinkAfricaPress, 'Peace in Africa Begins at Home', dated 28 January 2011, observed:

'Malawian men have long been accused of ignoring women's rights and enforcing a male dominated gender-power balance, largely due to traditional patriarchal beliefs, which place men as superior to women. A new study, currently unpublished, by Men for Gender Equality Now, demonstrates the scale of gender-based violence that women suffer in this southern African country...studies conducted by Men for Gender Equality Now show that men are responsible for 90 percent of cases of gender-based violence... men take advantage of their superiority in the society by victimizing women. The norms of Malawian society perpetuate this behavior...traditional Malawian cultural practices also aggravate violence against women...a traditional practice in the southern district of Nsanje known as Kulowa Kufa (widow cleansing). To cleanse bad spirits from the village, a widow is forced to sleep with another man soon after the death of her husband. The situation makes women more vulnerable to HIV/AIDS because, by tradition, condoms should not be used.' **[59]**

- 21.19 The Social Institutions and Gender Index 'Country Profile for Malawi' (2012 update), accessed on 31 July 2012, stated:

'The law in Malawi prohibits rape with a maximum penalty of life imprisonment. Marital rape is not specifically prohibited. In 2006, the government passed the Prevention of Domestic Violence Act in April, 2006. The law provides a maximum penalty of life imprisonment for domestic violence. Sexual harassment is not specifically prohibited by law, but it can be prosecuted under existing sections of the penal code, such as indecent assault on a female, which carries up to a 14-year prison sentence, or insulting the modesty of a woman, which is a misdemeanour punishable by one year in jail.

'Despite these legal protections, the Women and Law in Southern Africa group reports that laws have not been effectively implemented. In 2009, they pointed out that there had not been an adequate budgetary allocation to implement the law and that many magistrates, police officers and judges remain ignorant of the law. Further, women themselves have limited knowledge of the law and how it can be used for protection. However, the US Department of State reports that courts are increasingly convicting

perpetrators of rape, including up to 14-year prison sentences for child rape and assault...violence against women and women's inequality in general is acknowledged as a key factor contributing to women's vulnerability to HIV/AIDS in Malawi. As such, the government has introduced a Comprehensive HIV and AIDS Programme for Women and Girls aimed at increasing knowledge of rights in relation to sexual consent and violence amongst young women.' [24]

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22. CHILDREN

OVERVIEW

In considering the position of girls, this section should read in conjunction with the previous section on women.

- 22.01 The United Nations Children's Fund (UNICEF), in an undated section on 'The Situation of Women and Children' in Malawi, accessed on 4 September 2012, stated:

'Malawi, home to 6.8 million children (51 percent of the total population), presents a number of opportunities and challenges for its youngest citizens and their families. The prospects for child survival have improved over the past few years: prudent economic management, stable macroeconomic conditions and increasing agricultural production are helping to reduce poverty and hunger, and Malawi's HIV prevalence rate seems to have stabilised at 12 percent.

'On the down side, poverty continues to be chronic and widespread and the country's development is thwarted by a fast growing population, limited arable land, cyclical natural disasters, food insecurity, malnutrition, HIV and AIDS, and a high incidence of malaria, one of the leading killers of children under the age of five. Children and women are becoming more vulnerable as their ability to recover from these unrelenting risks and shocks weakens.' [25a]

- 22.02 The 'National Report' submitted to the United Nations Working Group on the Universal Periodic Review (UPR) of Malawi', dated 21 October 2010, stated that: 'Malawi is a party to the Convention on the Rights of the Child and has also ratified the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and child Pornography.' [21c] (p8, paragraph 57)
- 22.03 The Malawi statistics section, undated, of the United Nations Children's Fund (UNICEF) website, accessed on 28 August 2012, provided the following statistical information about children in Malawi:

UNICEF statistical information	
Children in Malawi	
Crude birth rate 2010 (number of births per 1,000 of the population)	44
Crude death rate 2010 (number of deaths per 1,000 of the population)	13
Under-5 mortality rate, 2010 (number of deaths per 1,000 of live births)	92
life expectancy at birth, 2010	54
Annual number of under-5 deaths (thousands)	56
Adolescent population (aged 10-19) (thousands), 2010	3583

[25c]

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Basic legal information

22.04 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, noted that: ‘The minimum age for marriage is 15, with marriage under age 18 requiring parental consent.’ [1a] (section 6). The same report also stated that: ‘The law sets the minimum age for employment at 14, and children between the ages of 14 to 18 may not work in jobs that are considered hazardous or that interfere with their education.’ [1a] (section 7). The Child Soldiers 2008 Global Report stated that the legal voting age in Malawi is 18 years of age and 18 is also the minimum age for voluntary recruitment into the armed forces. [12]

22.05 The Right to Education Project report ‘At What Age...?’, published in 2004, accessed on 27 September 2012, noted that:

‘Section 25 of the Constitution grants every person the right to education and stipulates that primary education shall consist of at least five years. This provision which establishes education as a right, falls short of the requirement in section 13 (f) of the Constitution which requires primary education to be both compulsory and free. There is therefore no maximum age stipulated for compulsory education... The minimum age of employment for children is specified in the Employment of Women, Young Persons and Children Act. This Act distinguishes between a child and a young person. It describes a child as a person under the age of 12 years and prohibits employment of such child at night or in any public or private industrial

undertaking. By implication the law permits employment of children below 12 years in other areas, like domestic work...The Constitution, under section 22, provides that the minimum legal age for marriage is 18 years for all persons. The Constitution further requires that persons between the age of 15 and 18 years should only marry with the consent of parents or guardians. The constitutional provision differs from the provisions of the 1903 Marriage Act, which governs statutory marriages. Section 19 of the Marriage Act stipulates that a person under 21 years is a minor and can only enter into marriage with the written consent of his parents or guardians. In practice, it is common in the rural areas of Southern and Central Regions for girls of age 15 years and below to enter into marriage. This is mainly due to the cultural practices prevailing in these two regions. For example, during initiation rites girls as young as 10 years are prepared for possible marriages. It is difficult to stop this practice, partly because the law does not expressly prohibit marriages of children below 15 years old. The Constitution merely states that the State should discourage such marriages...The age of criminal responsibility for the child in Malawi is seven years. The Penal Code stipulates that any person under this age cannot be criminally liable for any act or omission. Although this is the legal age of criminal responsibility, it is felt that it is too low and that there is need to put the age up to between 10 and 12 years. In practice, however, there is no record of a child of such a young age being taken to court.' [26] (p95)

LEGAL RIGHTS

- 22.06 The Office of the United Nations High Commissioner for Human Rights (OHCHR) report on the 'Concluding Observations of the Committee on the Rights of the Child, Malawi', dated 27 March 2009, noted:

'The Committee notes with appreciation the adoption of legislation, national policies and plans aimed at promoting and protecting the rights of the child, including:

- (a) Prevention of Domestic Violence Act (2006);
- (b) National Plan of Action for Orphans and Other Vulnerable Children (2005-2009);
- (c) National Early Childhood Development Policy (2004).

The Committee also welcomes the ratification or accession to the following:

- (a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 17 March 2005;
- (b) Rome Statute of the International Criminal Court, on 19 September 2002;
- (c) Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, on 20 May 2005.' [21a]

- 22.07 An EveryChild report, 'EveryChild is supporting law changes in Malawi that will protect children from abuse and exploitation', dated 20 August 2010, stated:

'The new Child Care, Protection and Justice Law covers a wide range of issues that affect children. The law outlines parents' responsibilities to protect and nurture their children as well as the responsibility of local authorities to protect children growing up without a mum or dad. One in five children in Malawi live without the care and protection of a parent so it is essential that the new Law outlines local authorities' responsibilities to care for children growing up with extended families, in foster care and in children's homes. The law also outlines the duties and responsibilities of local authorities to protect children from harmful, exploitative or undesirable practices...the new Law will encourage local authorities to support children and families before they are employed in hazardous labour, and to prosecute employers who exploit children.

'In addition, the Child Care, Protection and Justice Law provides principles and procedures for dealing with children suspected of having committed criminal offences. Provisions include child-friendly court cases and legal representation for children suspected of committing an offence. The Law aims to modernise the child justice system in Malawi by putting emphasis on the rehabilitation of the child offenders and their reintegration into society.'

[27]

- 22.08 An article in the South African publication, 'Gender Links', of 10 September 2010, 'Malawi: African Children Stuck in Legislation Limbo', stated that: 'The Malawi government ratified the UN conventions on the rights of the child in 1991, and recently enacted the Child Care, Protection and Justice Bill, which increases the minimum working age to 18. Previously, Malawi legislation only protected children between the ages of 14 and 18 from hazardous work.' [28]

Birth registration and citizenship

- 22.09 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated that:

'Citizenship can be derived from birth within the country or from one's parents. In 2007 the government launched the pilot phase of the national registration and identification system, the first step in the creation of a national identification system to provide for mandatory registration of births; however, the system had not been fully implemented by year's end. There were no reports of discrimination or denial of services due to lack of birth registration.' [1a] (section 6)

- 22.10 A UNICEF report, 'In Malawi, the launch of universal birth registration guarantees protections for children', dated 31 March 2012, stated that:

'This week, Malawi celebrates the start of a universal and compulsory birth registration process...At a ceremony marking the event, Nicholas Dausi,

Deputy Minister in the Office of the President and Cabinet, said the issuance of birth registration documents will guarantee Malawi's children full protection against trafficking, child labour, child prostitution, early marriage and other abuses.

'Birth registration will ensure that there is an official system for verifying the ages of children and will, therefore, help enforce existing laws. "Above all, for us to develop, we must know where we are. For us to grow, we must plan. For us to plan, we must know how many we are," he said... The National Registration Act was passed in 2009, completing five years of efforts to review its legal framework. The Act makes birth registration compulsory and universal. UNICEF had encouraged the government to devise a modern and cost-effective system in which children are registered within six weeks of birth.

'The system formalizes an institutional arrangement between the National Registration Bureau and the Ministry of Health. It also integrates birth registration into immunization and antenatal care programs, with the aim of reaching up to 95 per cent of children who make it to their first immunization.

'With UNICEF's support, priority will be given to the registration of the most vulnerable groups of children. These include girls at risk of sexual violence and trafficking, children in institutional care, those with disabilities, and those at risk of child labour.' [25d]

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VIOLENCE AGAINST CHILDREN

- 22.11 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated:

'Child abuse remained a serious problem. The press regularly reported cases of sexual abuse of children, including arrests for rape, incest, sodomy, and defilement. A 2008 study by the safe schools program in Machinga found that 90 percent of girls and 47 percent of boys in primary schools experienced some form of violence, including sexual touching by other students, sexual abuse by teachers, corporal punishment, and verbal and psychological abuse.' [1a] (section 6)

- 22.12 UNICEF, in an undated section on 'The situation of women and children in the country', accessed on 4 September 2012, stated:

'Poverty, hunger, HIV and AIDS and inadequate social services combine to create circumstances where child abuse, exploitation and violence are tragically common, especially for the growing numbers of orphaned and vulnerable children...the child labour market is dominated by domestic workers who toil from morning till late at night and that many children under the age of ten work with their parents as full time workers in tobacco cultivation. Sexual exploitation, abuse and child trafficking are thought to be

increasing...certain traditional practices such as early marriage or 'fisi' - a type of formalised rape - are harmful to the wellbeing and health of children.' [25a]

- 22.13 The Office of the United Nations High Commissioner for Human Rights (OHCHR) report on the 'Concluding Observations of the Committee on the Rights of the Child, Malawi', dated 27 March 2009, noted that: 'The Committee welcomes the adoption of the Prevention of Domestic Violence Act in May 2006. The Committee also notes with appreciation the adoption of the National Strategy to Combat Gender Based Violence and the successful implementation of the 'Stop Child Abuse Campaign'. Nevertheless, the Committee notes with regret that violence against children continues to take place in the home, in schools, in children's shelters and in the streets.' [21a] (p10, paragraph 47)

Female genital mutilation (FGM)

- 22.14 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated that: 'The law does not specifically prohibit female genital mutilation (FGM). A few small ethnic groups practiced FGM. In most cases, FGM was performed on girls between 10 and 15 years of age.' [1a] (section 6)

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Early or forced marriage

- 22.15 A Plan UK report of July 2011, 'Breaking Vows: Early and Forced Marriage and Girls' Education', observed: 'In countries such as Malawi...most girls will be married before the age at which they can legally do so, and yet prosecutions are seldom brought, contributing to a belief that such marriages are acceptable and penalties are unlikely. Equally, marriage brokers and others who actively perpetuate the problem are seldom prosecuted, meaning that the financial rewards from brokering a marriage continue to outweigh the legal risks.' The report also noted that Malawi was one of the countries with the highest prevalence of early marriage, noting that 50 per cent of women between 20 to 24 were married by the age of 18. [57]
- 22.16 The same Plan UK report, in a Malawi case study, noted:
- 'Brenda, from Kasungu in central Malawi, was kidnapped on her way to school and was held against her will for three months. She was just 15 years old. Brenda was a victim of a form of bride kidnapping called Mpenjele Kuno. Across the region, when families cannot attract the wives and daughters-in-law they want, either because they lack sufficient social standing or are unable to afford the bride-price, they resort to abducting them. Once a girl has been kidnapped, even if returned to her family she will be less desirable to other potential husbands and will often have no choice but to marry the man who has kidnapped, abused and often raped her. Often, in areas where

kidnapping is prevalent, families will marry off their daughters early because they fear that if they wait, their daughters are more likely to be kidnapped.

‘In regions where bride kidnapping is accepted as customary, families often fail to report it, further adding to the problem. Plan Malawi was instrumental in the fight to bring Brenda home and she is now back with her family and has returned to school. Plan Malawi partnered with local Government and the communications company Celtel Malawi to introduce a toll-free community helpline for youngsters in need of help and advice. The helpline gives young people at risk of abduction or other violence access to professional child counsellors and paralegals able to give anonymous support and advice. Referrals can also be made to police Victim Support Unit officers.’ [57]

See sections on [Trafficking](#).

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Child labour

- 22.17 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

‘Child labor remained a serious and widespread problem. A June 2008 report from the Ministry of Labor stated that more than 1.4 million children, or one of every three children, were engaged in some form of child labor.

‘Child labor was common on tobacco farms, subsistence farms, and in domestic service. Many boys worked as vendors, and young girls in urban areas often worked outside of their families as domestic servants, receiving low or no wages.’ [1a] (section 7)

- 22.18 The United States Department of Labour ‘2011 Findings on the Worst Forms of Child Labor’ report, published on 26 September 2012, stated that:

‘Children in Malawi are engaged in the worst forms of child labor, primarily in dangerous activities in agriculture and fishing. Many work on farms, including in the commercial tea and tobacco sectors. These children may be denied food and experience verbal and physical abuse, sustain injuries from carrying heavy loads, contract respiratory illnesses, and risk exposure to toxic fertilizers and pesticides. Children who sort and handle tobacco risk illness from nicotine absorption, including Green Tobacco Sickness. Children are involved (sometimes working alongside family members who are tenants on farms) in the tenancy system; farm owners loan tenants agricultural inputs and deduct the debt from future profits. Families who cannot meet production quotas and are unable to repay these debts may face debt bondage.

‘Boys catch, process, and sell fish, reportedly including the local varieties of chambo (tilapia) and mlamba (catfish). Some work as bila boys responsible for pulling and detangling nets. They spend prolonged periods in the water

and dive at unsafe depths. Children known as chimgubidi empty water from small fishing boats. They work long hours, experience seasickness and may receive low pay.

‘Children, especially boys, herd livestock. They have long workdays and often live alone and away from their families in order to care for animals. Boys are also involved in the worst forms of child labor in quarrying, mining and construction. Children in construction may carry heavy loads and be susceptible to dangerous conditions. In urban areas, including in markets, children work as vendors. Anecdotal evidence suggests the number of street children in Malawi has increased. Children working on the streets are vulnerable to severe weather, traffic accidents and crime. Children, primarily girls, are involved in domestic service and may be subject to abuse and long hours.

‘Children, often from rural areas, are exploited in prostitution, begging and sex tourism in urban areas and resorts near the country’s lakes. In some cases, such children are victims of trafficking. Within Malawi, boys are trafficked for animal herding and girls are trafficked for work as domestics or in restaurants and bars. Malawian boys may be trafficked to Tanzania for fishing, and girls to South Africa for commercial sexual exploitation. Malawian, Zambian and Mozambican children are trafficked within Malawi for forced labor on farms.’ **[42] (Malawi section)**

- 22.19 As regards legal protections and the enforcement of laws that relate to child labour, the same report stated that:

‘The Employment Act No. 6, adopted in 2000, sets the minimum age for employment at 14 in agricultural, industrial or non-industrial work. However, this minimum age does not extend to work performed in private homes. The Child Care, Protection and Justice Bill (Child Protection Act), prohibiting child labor, passed in June 2010 and became effective in January 2012. The Act defines a child as a person below 18 and prohibits children under the age of 10 from any work, including within the home. However, the Act does not protect children over age 10 from work performed in private homes... The Ministry of Labor (MOL), through its Child Labor Unit, is the primary agency coordinating efforts to combat child labor. The Unit provides technical assistance to other government agencies implementing child labor laws at the district and national levels. It provides policy guidance on child labor issues, including to the Child Labor Network, of which it is a member. The Network’s membership includes government, trade unions, employers and civil society, and it is responsible for drafting policies, identifying resources and harmonizing programs and activities for the elimination of the worst forms of child labor. The Child Labor Unit has limited staff and resources to effectively address the problem of child labor in Malawi. No information on the Child Labor Unit budget was available.

‘In 2011, district level child labor committees comprised of government, NGO, union, and industry representatives regularly met to discuss incidents of child labor. They also monitored and implemented child labor projects in their area. The committees are guided by their district plans.

'The Ministry of Gender, Children and Community Development has trained 800 Child Protection Volunteers to monitor child protection issues, including child labor. Other community members also provided child labor monitoring in their localities. Malawi has a number of committees and working groups focused on issues relating to child labor, including: the National Steering Committee on Child Labor, the OVC and Child Protection Committee, the National Technical Working Group on Child Labor and Protection, the District Child Labor and Protection Technical Committee, the Area Child Labor and Protection Committee, and a Community Child Labor and Protection Committee. The effectiveness of these committees and working groups has not been assessed. The same government representatives may sit on more than one committee, as in the case of the National Steering Committee and the OVC and Child Protection Committee. Anecdotal evidence also suggests that there may be some duplication of efforts. No information is available on the level of coordination between these committees.

'The MOL's General Inspectorate is charged with performing inspections and investigating all labor complaints, including those related to child labor. While there is no formal mechanism for reporting child labor complaints, they are typically received by district child labor protection committees. Workers and district child labor protection committees notify district labor offices to report hazardous child labor. Labor officers in 29 decentralized district offices administer and coordinate labor inspection services. District labor offices receive funding directly from the Treasury; however, there are still insufficient funds to purchase office space and vehicle fuel in order to conduct inspections.

'By law, labor inspectors are required to visit workplaces biannually. They are to use standard forms to guide and report the results of their inspections for child labor. However, according to the ILO, these standard forms are not yet widely used, and mandatory inspections do not regularly take place due to a lack of resources.

'During the reporting period, economic, governance, and human rights concerns in Malawi led to violent strikes and resulted in the suspension of direct budget support and aid from many foreign donors. Foreign assistance contributes 40 percent of Malawi's total budget. As a result of the decrease in foreign exchange, Malawi did not have foreign currency to buy fuel, and therefore experienced a serious fuel shortage that disrupted business, public services and development activities, including monitoring and enforcement efforts against the worst forms of child labor. Despite these constraints, in 2011, 1,340 labor inspections were carried out; however, the Government did not disaggregate which of these were related to child labor. Reports indicate that child labor cases during the reporting period were resolved through prosecution, resulting in fines. Fines ranged from \$53 to \$132 and all were paid. Reports suggest that in general, fines were not sufficient to dissuade offenders from continuing to use child labor.' **[42] (Malawi section)**

- 22.20 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated that:

'The law sets the minimum age for employment at 14, and children between the ages of 14 to 18 may not work in jobs that are considered hazardous or that interfere with their education. The law specifies legal work hour limits, but in practice, the Ministry of Labor lacks the capacity to monitor and enforce the law. The law specifies a maximum fine of 20,000 MWK (\$119) or five years' imprisonment for violations. However, the law was not effectively enforced due to lack of resources, manpower and insufficient penalties to deter offenders.

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

'The Ministry of Labor continued to conduct child labor law enforcement courses for district labor officers, district social welfare officers, police, and district magistrate court officers. During the year the ministry continued inspections, particularly on agricultural estates. There were 29 district labor officers and an estimated 160 labor inspectors at year's end. Approximately 1,340 inspections were carried out from January to September. The Labor Ministry's youth committees in rural areas continued to monitor and report on child labor. Despite these efforts, enforcement by police and ministry inspectors of child labor laws was hindered by lack of funding.' **[1a] (section 7)**

Sexual abuse

22.21 The United States State Department '2011 Human Rights Report: Malawi', published on 24 May 2012, stated that:

'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.

'Reports of European tourists paying for sex with teenage boys and girls continued.

'The trafficking of children for sexual purposes was a problem, and child prostitution for survival without third-party involvement also occurred. For example, at local bars and rest houses, owners coerced girls who worked at the establishments to have sex with customers in exchange for room and board. The Child Care, Protection, and Justice Act stipulates punishment up to and including life imprisonment for child traffickers, but the law had not officially taken effect by year's end.

'The penal code outlaws carnal knowledge of females under the age of 16 and stipulates penalties up to and including the death penalty for offenders.' **[1a] (section 6)**

Protection

- 22.22 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

‘In 2010 parliament passed the Child Care, Protection, and Justice Act, which prohibits subjecting a child to any social or customary practice that is harmful to the health or general development of a child. Targeted practices included child trafficking, forced labor, forced marriage or betrothal, and use of children as security for debts or loans. The law was passed in July 2010 but had not been fully enacted as it was awaiting final publication in the official legal records at year’s end.

‘The Ministry of Gender, Child, and Community Development undertook activities to enhance protection and support of child victims. The ministry trained and paid small stipends to more than 800 community child protection personnel, who worked nationally to identify victims of child abuse, underage labor, and trafficking, and referred cases to district social welfare offices or the police.’ **[1a] (section 6)**

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EDUCATION

- 22.23 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

‘The government provided tuition-free primary education for all children, although education was not compulsory. Families were responsible for paying book fees and purchasing uniforms. However, students from poor families had access to a public book fund. Many girls, especially in rural areas, were unable to complete even a primary education due to poverty, lack of schools, and cultural factors, and were at a serious disadvantage in finding employment.’ **[1a] (section 6)**

- 22.24 Europa World Plus, undated, accessed on 30 August 2012, stated that:

‘Primary education, which is provided free of charge but is not compulsory, begins at six years of age and lasts for eight years. Secondary education, which begins at 14 years of age, lasts for four years, comprising two cycles of two years. According to UNESCO, in 2008/09 primary enrolment included 97% of children in the relevant age-group (males 94%; females 99%), while secondary enrolment in 2009/10 included 28% of children in the relevant age-group (males 28%; females 27%). A programme to expand education at all levels has been undertaken; however, the introduction of free primary education in September 1994 led to the influx of more than 1m. additional pupils, resulting in severe overcrowding in schools. In January 1996 the International Development Association granted US \$22.5m. for the training of 20,000 new teachers, appointed in response to the influx. In 2008 there were some 46,333 primary school teachers, of whom 18,026 were female.’ **[5] (Society and Media)**

HEALTH AND WELFARE

- 22.25 The Office of the United Nations High Commissioner for Human Rights (OHCHR) report on the 'Concluding Observations of the Committee on the Rights of the Child, Malawi', dated 27 March 2009, noted that:

'While welcoming the progress made by the State party in reducing infant and child mortality rates and the significant progress in increasing access to safe water and sanitation, the Committee remains concerned at the state of health of children in Malawi, including the very high level of malnutrition. The Committee is also deeply concerned at the limited access, poor quality of health care facilities and critical shortage of health care personnel.' **[21a] (p11, paragraph 51)**

- 22.26 UNICEF, in an undated section on 'The situation of women and children in the country', accessed on 26 July 2011, stated:

'Despite progress in child mortality reduction, one in eight children are still dying, mostly of preventable causes such as neonatal conditions, pneumonia, diarrhoea, malaria and HIV-related diseases. Malnutrition levels remain high and account for about half of all child deaths. Malawi faces many challenges in order to achieve the MDGs, including widespread poverty, weak institutional and human capacity, limited resources because of competing needs and deep-rooted harmful traditional practices...around four million children [are] living in poverty. Moreover, one in every five Malawians lives in ultra poverty or on less than USD \$0.20 US cents a day and cannot afford to feed themselves. Poverty hits children the hardest and threatens their most basic rights to survival, health and nutrition, education, participation and protection from harm and exploitation.' **[25a]**

- 22.27 The same UNICEF document stated:

'Malnutrition is devastating and the single biggest contributor to child death. In Malawi, there has unfortunately been no change in children's nutritional status since 1992 and malnutrition rates remain unacceptably high. Around 46 percent of children under five are stunted, 21 percent are underweight, and four percent are wasted. Micronutrient deficiencies are common. The Ministry of Health's Micronutrient Survey (2001) revealed that 60 percent of children under five and 57 percent of non-pregnant women had sub-clinical Vitamin A deficiency. Vitamin A deficiency lowers children's immunity and reduces their chances of surviving a serious illness. The causes of malnutrition in children include poor childcare practices, diets lacking in calories and nutrients, frequent bouts of disease and chronically under-nourished pregnant and breastfeeding women... Young children are not spared from HIV infection. An estimated 89,000 children under the age of 15 are living with the disease. Most were infected through mother-to-child transmission, which accounts for close to 30,000 of infections among newborns every year. Only 24 percent of HIV positive pregnant women attending antenatal clinics are receiving anti-retroviral prophylaxis to prevent transmission of the virus to their baby.' **[25a]**

See section on [Women](#).

- 22.28 The UNICEF (United Nations Children's Fund) 'State of the World's Children 2012' report, published in February 2012, provided the following statistical information about the health of children in Malawi:

UNICEF statistical information - health of children in Malawi	
percentage of one-year-old children immunised against tuberculosis (2010)	97
percentage of one-year-old children who have received their first dose of diphtheria, pertussis and tetanus vaccine (2010)	97
percentage of one-year-old children who have received three doses of diphtheria, pertussis and tetanus vaccine (2010)	93
percentage of one-year-old children who have received three doses of polio vaccine (2010)	86
percentage of one-year-old children immunised against measles (2010)	93
percentage of one-year-old children who have received three doses of hepatitis B vaccine (2010)	93
percentage of one-year-old children who have received three doses of haemophilus type b vaccine (2010)	93
percentage of new-borns protected against tetanus (2010)	87
percentage of children under five years old with diarrhoea receiving oral rehydration and continued feeding 2006-2010*	27
percentage of children under five years old with fever receiving anti-malarial drugs 2006-2010*	31

* Data refers to the most recent year available during the period specified
 x Data refers to years or periods other than those specified; differ from the standard definition, or refer to only part of a country. [25b]

See also [Human Rights - Introduction](#); [Trafficking - Overview](#); [Medical Issues](#).

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23. TRAFFICKING

OVERVIEW

23.01 The United States State Department 'Trafficking in Persons Report 2012', published on 19 June 2012, stated that:

'Malawi is a source country for men, women, and children subjected to forced labor and sex trafficking. To a lesser extent, Malawi is also a destination country for men, women, and children from Zambia, Mozambique, Tanzania, and Zimbabwe and a transit point for people from these same countries who are subjected to sex and labor trafficking in South Africa. Most Malawian trafficking victims are exploited within the country, though Malawian victims of sex and labor trafficking have also been identified in South Africa, Zambia, Mozambique, Tanzania, and Europe. Within the country, children are subjected to forced labor in domestic service, cattle herding, agriculture (tobacco, tea, coffee, and sugar plantations), begging, small businesses, and coerced into the commission of crimes, including home robberies.

'One-third of Malawian children are involved in labor activities, with sources reporting that the majority of cases of child labor outside of the family involve fraudulent recruitment and physical or sexual abuse, conditions indicative of forced labor. Adult tenant farmers are vulnerable to exploitation as they incur debts to landowners and may not receive payment in times of poor harvest. Brothel owners or other facilitators lure girls – including primary school children – from rural areas with promises of clothing and lodging, for which they are later charged high fees, resulting in debt-bonded prostitution. Girls are recruited for domestic service, but instead are forced to marry and later forced into prostitution by their husbands. In lakeshore districts, tourists – including Europeans – purchase commercial sex from women, girls, and boys in forced prostitution. Nigerian and Tanzanian women force Malawian women and girls into prostitution in Malawi, and Nigerian syndicates are also involved in the sex trafficking of Malawians to South Africa, Germany, the Netherlands, the United Kingdom, Thailand, and Brazil. Italian and Mexican organized crime entities reportedly also are involved in sex trafficking between Malawi and South Africa. Traffickers target Malawian girls in secondary school for recruitment for work in neighboring countries, offering to pay their rent, but subjecting them to forced prostitution upon arrival. South African and Tanzanian long-distance truck drivers and minibuses operators, transport these victims across porous borders by avoiding immigration checkpoints. Malawians are taken to Mozambique and Zambia for forced labor on tobacco and tea farms, to Zambia for brick-making, and to Tanzania for forced labor in the fishing industry. Anecdotal reports indicate South Asian adults and children are forced to work in hotels, shops, bakeries, and in the construction sector in Malawi.' **[1d] (Malawi section)**

GOVERNMENT EFFORTS TO TACKLE TRAFFICKING

23.02 The United States State Department 'Trafficking in Persons Report 2012' stated:

'The Government of Malawi decreased its anti-trafficking law enforcement efforts during the year, convicting fewer offenders than in 2010 and failing to enact anti-trafficking legislation drafted in 2009. Malawi prohibits all forms of trafficking through various laws, including the Employment Act and articles 135 through 147 and 257 through 269 of the penal code. The penalties prescribed under these various statutes range from small fines to 14 years' imprisonment; these penalties are sufficiently stringent and commensurate with punishments prescribed for other serious crimes, such as rape. Despite the existence of these laws, their enforcement is weak. The Child Care, Protection and Justice Act of 2010 prohibits child trafficking, prescribing penalties of life imprisonment for convicted traffickers. In January 2012, the act was published in the government's gazette and printed; however, some courts have rejected cases charged under the act since they are still without a copy of the act. Reports indicated that labor trafficking offenders were not prosecuted for a first offense; only repeat offenders were prosecuted.

'Although governments in 12 of 28 districts reported investigating a total of 241 trafficking cases in 2011, specifics regarding these cases or their status were not provided. Local sources reported the convictions of one labor trafficker and three sex traffickers in 2011. Only one offender, however, received a prison sentence, while the remainder paid minimal fines. In Machinga District, the Liwonde magistrate court sentenced a convicted offender to five years' imprisonment with hard labor in 2011 for the sex trafficking of two girls from Mangochi. In October 2011 in Blantyre, authorities used the Employment Act to convict a man for the forced labor of 11 children; he received a fine equivalent to \$17 and was required to pay return transport costs for the victims. The government's continued failure to seek criminal prosecution and sentencing of forced labor offenses meant there was no effective deterrent to the commission of trafficking crimes...The government made minimal efforts to prevent human trafficking during the year. The majority of public awareness campaigns were coordinated at the district level with NGOs partners; national level coordinating bodies played a negligible role, failing to organize awareness activities or finalize the national plan of action drafted in the previous year. The newly reorganized Child Protection Technical Working Group included trafficking within its broad work to coordinate efforts on child protection. The Malawi Network Against Child Trafficking, which is comprised of government representatives, NGOs, and religious leaders, met quarterly and, with funding from a foreign government, organized an October 2011 workshop on best practices to combat human trafficking. In 2011 in Mangochi District, social welfare and labor officers forged partnerships with police and NGOs to train 25 peer educators in Traditional Area Chowe; this event publicized the IOM trafficking hotline in South Africa and resulted in the repatriation of one victim.' [1d] (Malawi section)

PROTECTION FOR VICTIMS

- 23.03 The United States State Department 'Trafficking in Persons Report 2012' stated:

'The Government of Malawi sustained minimal efforts to provide protection to trafficking victims during the year. The government relied largely on NGOs to identify victims and provide long-term care. In addition, the government failed to establish or employ systematic procedures for the proactive identification of victims and their referral to care. The government funded one drop-in center that provided counseling and services for victims of trafficking and genderbased violence; it is unknown whether the center assisted trafficking victims during the year. Over 100 police stations across the country housed victim support units (VSUs) to respond to gender-based violence and trafficking crimes; however, the VSUs lacked capacity to respond adequately, providing only limited counseling and, in some districts, temporary shelter to victims. Government-run hospitals provided trafficking victims with limited access to medical and psychological services; for shelter, district social welfare and child protection officers referred victims to NGO-run facilities that catered to vulnerable children and youth. The government did not provide material or financial support for these NGO services.' [1d] (Malawi section)

See also [Human Rights - Introduction; Children; Women.](#)

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24. MEDICAL ISSUES

OVERVIEW OF MEDICAL TREATMENT AND DRUGS

- 24.01 An undated report of Friends of Malawi (FoM) on 'Healthcare' in the country, accessed on 27 September 2012, stated:

'Malawi uses a socialized system of health care, with the goal of providing access and basic health services to all Malawians. This is a daunting task, considering that 80% of Malawians live in rural areas and that the poverty of Malawi limits social infrastructure. However, the Ministry of Health and Population has set up specific systems that attempt to reach even the most remote areas. In some areas of health care, Malawi has model programs and successes that are enviable in other parts of Africa. Because treatment at district health centers is free, and because most families cannot afford even basic health care items, even the most basic needs are obtained at health centers and hospitals. Ailments like headaches and small burns, which Americans are accustomed to self treating with aspirin and bandages, are usually treated at health centers in Malawi. A large patient base, limited staffing, and limited availability of medicine means that a visit to the health centre can take all day. Compounding this is the limited treatment that is available in Malawi - everything from diagnostic procedures to treatment regimens are unavailable to most people.

'In their efforts to provide health services to all Malawians, the Ministry of Health and Population has set up a three-tiered system. At the local level are rural health centers and rural hospitals. They usually serve an area of about

50 villages and 30,000 people. These facilities do not have doctors, but they do have clinicians and nurses. They provide the basic services, including pre-natal and post-natal care, birthing, early childhood care, malaria and parasitic treatments, and treatment for minor abrasions and simple fractures. Health centers also promote prevention and civic education through the use of Health Surveillance Assistants. These people are responsible for teaching better hygiene and health practices in the villages, as well as outreach clinics which provide pre-natal and early childhood care away from the health centers.’ [30]

24.02 The same FoM report continued:

‘For illnesses or injuries that cannot be treated at the rural health centers, patients are referred to district hospitals. There is one hospital in each district in Malawi. These hospitals have more advanced diagnostic equipment, including x-ray machines and blood laboratories. They also have a doctor, and they can provide surgical treatment if necessary. The staff at a district hospital usually has better training, more qualification, and more experience. However, some illnesses are not treatable even at district hospitals. These patients are referred to one of three central hospitals. The central hospitals have the most advanced diagnostic equipment and the best trained health care workers. This is where the highest level of care is provided.

‘In addition to the social medicine facilities, there are some fee-for-service health clinics in Malawi. The most expensive of these clinics, found almost exclusively in larger towns and cities, are unobtainable to the average Malawian, but many missions offer fee-for-service clinics in medically underserved areas at more affordable rates.’ [30]

24.03 A United Nations IRIN article, ‘Malawi: UK aid cuts hit health care’, dated 6 June 2011, noted a recent development:

‘After several years of fragile gains, Malawi’s healthcare sector is running into trouble, with the latest challenge an aid freeze by its largest international donor, the UK’s Department for International Development (DFID).

‘The UK provided about US\$122 million annually to Malawi, of which \$49 million went to funding Malawi’s public health sector, but DFID made its final aid disbursement in March and has decided not to renew a six-year funding commitment which ends in June.

“‘We have already started feeling the pinch,” said Martha Kwataine, a policy analyst with the Malawi Health Equity Network. “There is going to be a regression in the progress we have made with DFID in improving health services in the country.”

‘The UK’s decision not to renew its aid to Malawi followed the expulsion of its top envoy Fergus Cochrane-Dyet by the Malawian government for allegedly writing in a leaked memo that Malawian President Bingu wa Mutharika was “ever more autocratic and intolerant of criticism”.

‘Malawi's health sector is nearly entirely donor-funded with foreign aid covering about 90 percent of the costs of all medicines. ‘[The cuts] will really make a difference because we don't have the means to buy most drugs ourselves,’ Kwataine told IRIN. However, drug shortages and stock-outs were a problem even before DFID's funding freeze... The problem of low morale has contributed to a critical shortage of health workers in Malawi, with many migrating to South Africa and elsewhere in search of better pay and working conditions. A DFID-sponsored programme was making huge strides in improving working conditions for doctors and had helped increase the doctor to patient ratio from 1 to 60,000 in 2004, to the current ratio of 1 to 46,000. These gains are now at risk as health workers become increasingly frustrated by a lack of resources.’ **[58b]**

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HIV/AIDS – ANTI-RETROVIRAL TREATMENT

- 24.04 The charity Avert, in its report, ‘HIV and AIDS in Malawi’, undated, accessed on 27 September 2012, noted:

‘Antiretroviral drugs (ARVs), which delay the onset of AIDS in people living with HIV, were first made available through the public sector at three sites in Malawi in 2003. In 2004, following a grant from the Global Fund to Fight AIDS, TB and Malaria, the government announced a five-year plan to make ARVs widely available in the public sector and began to distribute them to hospitals and clinics around the country. The government has maintained a strong commitment to providing HIV treatment, and substantial progress has been made in recent years. In 2004 only 13,000 Malawians infected with HIV were receiving antiretroviral therapy. This rose dramatically to 198,846 in 2009. However the government estimates that around 300,000 are eligible so there are still many people in need of treatment who are not receiving it.’ **[31] (HIV and AIDS treatment in Malawi)**

- 24.05 The same AVERT report added:

‘Reaching the targets for universal access is high on the government agenda due to a concerted effort by civil society organisations. However, there are practical concerns. Malawi has begun to implement a new treatment regimen based upon the latest WHO guidance. This involves switching from a regime comprising d4t, 3tc and nevirapine, which costs US\$33 per month, to a new regime costing US\$100 per month. Whilst the new regime reduces the side effects associated with ARVs and enables people to live longer, less people will be able to access these essential medicines due to the increased costs. Malawi has also moved to adopt the earlier initiation of treatment recommended by WHO which advises starting treatment at a CD4 count of <350 instead of <200. This is estimated to have doubled the number of people in need of treatment. Alongside financial constraints, the distribution of ARVs in Malawi is hindered by the low number of health care workers available to administer the drugs.

‘Access to treatment is particularly limited in rural areas, as problems such as a lack of transportation prevent many people from reaching health services. Even in areas where treatment is available, severe food shortages have meant that the issue of HIV and nutrition is of particular concern. Another challenge is the common shortages of medicines to treat the opportunistic infections that arise at later stages of HIV infection.’ **[31] (HIV and AIDS treatment in Malawi)**

- 24.06 An Inter Press Service News Agency article, ‘Malawi: Fears of Sustainability of New ART Regime’, dated 9 June 2011, noted:

‘As government prepares to roll out the expensive new antiretroviral treatment regime recommended by the World Health Organisation (WHO) this month, there are fears about the programme’s sustainability after two recent proposals for funding were rejected by the Global Fund. In November 2009, the WHO recommended new antiretroviral treatment (ART) guidelines aimed at reducing HIV-related deaths. The global health body directed the replacement of the ARV stavudine because of established negative side effects. But the new regime costs almost five times as much as the current one...government currently spends about 34 million dollars annually on ARVs. The new regime will cost up to 105 million dollars a year...despite the fact that the Global Fund has rejected two proposals from Malawi worth a total of 564 million dollars, government will go ahead using its own resources to meet the cost of the new treatment regime...but the Global Fund, United Nations and Department for International Development (Dfid) support 80 percent of Malawi’s health budget...the last time Malawi reviewed its AIDS treatment protocol was in 2008 when it adopted the current first-line combination of stavudine, lamivudine and nevirapine.’ **[8a]**

- 24.07 A United Nations IRIN report, ‘Malawi: The rush to rationalize’, dated 1 December 2011, stated that:

‘Malawi seems to have read the writing on the wall and is in the early phases of costing its HIV programming to see what it will take to make the national response sustainable.

‘It is also receiving UN agency support to evaluate national HIV programme in light of the investment framework recently released by UNAIDS, which is guiding the choices as national programmes bend to the pressures to rationalise expenditure...Dr Mary Shawa, Principle Secretary for HIV/AIDS in the Office of the Presidency, said Malawi will look to non-traditional donors like China to shore up HIV programming, and may also explore innovative financing measures. However, the UNAIDS Country Coordinator in Malawi, Patrick Brenny, says there’s no denying the impact that reduced funding will have on HIV programmes.

“More countries are going through these formal exercises because the fat days are over, the funds aren’t enough to go around or go as far,” Brenny told IRIN/PlusNews. “In the past, when there was a lot of money to go around, you could afford to do all kinds of things. As resources become scarcer, we have to ask, ‘What are the smartest investments?’”

‘With an 11 percent HIV prevalence rate, Malawi has already made painful choices in its programming. The country still relies heavily on the Global Fund, which provides as much as 70 percent of the HIV and TB response. Yet UNAIDS notes that in 2011 the government is funding only 1 percent of the HIV/AIDS response.

‘According to international humanitarian medical agency Médecins Sans Frontières (MSF), Malawi’s Round 10 funding application to the Global Fund was denied largely because it was deemed too ambitious. The country had to forgo increasing HIV viral load monitoring, improving early infant HIV diagnosis, and scaling up medical male circumcision, MSF said in a recent statement.’ [58e]

- 24.08 Information obtained from the director of Lighthouse in March 2009, an HIV/AIDS clinic in Lilongwe, noted the main drug regimens available in the national programme for the country:

‘Malawi has a standardised approach to ART.

1. First Line Regimen: Lamivudine + Stavudine + Nevirapine
2. Alternative first line: Zidovudine + Lamivudine + Nevirapine
3. Alternative first line: Stavudine + Lamivudine + Efavirenz
4. Second line regimen: Zidovudine + Lamivudine + Tenofovir + Lopinavir/Ritonavir (adults)
5. Second line regimen: Abacavir + Didanosine+ Lopinavir/Ritonavir (children).’ [56]

- 24.09 The Médecins Sans Frontières report, ‘Progress under threat - perspectives on the HIV treatment gap’, dated 19 September 2012, stated:

‘With an ambitious national programme, and thanks to the country’s public health approach to the epidemic, which includes simplified treatment protocols and task-shifting amongst healthcare workers, significant progress has been made in the fight against HIV over recent years. As a result, people’s access to treatment has increased substantially, and HIV prevalence appears to be decreasing.

‘Yet the country is almost entirely dependent on external funding for its HIV response. While Malawi supports at least five percent of its HIV programme through staffing, infrastructure and other expenses, 100 percent of its antiretroviral (ARV) drugs come from the Global Fund to Fight AIDS, Malaria and Tuberculosis (GF). This almost exclusive reliance on a single donor makes Malawi extremely vulnerable to funding cuts or delays.

‘Malawi’s existing GF grant, which pays for ARVs plus the majority of the country’s HIV response including lifesaving ARVs, expires in early 2014. The resources will need to be raised for an estimated 450,000 to 500,000 people anticipated to be on treatment by then, as well as to ensure new initiations are not halted, with an estimated bill of S\$500 million for five years for ARVs alone only. Funding will also be needed to ensure the switch from the old

regimen d4T (stavudine) to the better tolerated and more easily administered tenofovir (TDF) for all people patients on d4T today...Realistically, this almost exclusive dependence on a single donor is unlikely to change without some effort. Other major actors in the HIV response are hesitant to enter into ARV treatment provision. Even though involved in other areas in the HIV response, PEPFAR in Malawi does not support regular ARV procurement, nor does the pooled Sector Wide Approach (SWAp) fund. Meanwhile CHAI/UNITAID is planning to phase out its provision of paediatric ARVs by the end of 2012.' [62]

- 24.10 The Médecins Sans Frontières report also summarised the HIV situation in Malawi:

'An estimated 960,000 people (or 10.6% of the adult population) are living with HIV.

'By the end of March 2012, 347,983 people were receiving ARV treatment.

'While Malawi offers ARVs to all children under the age of two, only 19 to 24% of eligible children are receiving them.

'The country suffers from major shortages of health staff, with vacancy rates of 65 percent, on average, amongst key cadres of healthcare workers.

'Retaining current healthcare workers in the public health sector will soon become a major challenge, as the GF grant that supported them with a 52 percent salary top-up allowance has run out, and the economic situation in the country is highly unstable. There is no clear plan, nor any commitment by the government or any donor, to support phasing in regular salary structures.' [62]

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CANCER TREATMENT

- 24.11 An ASCO News and Forum article of January 2009, 'Palliative care in Malawi', noted:

'... the most common cancers in Malawi include Kaposi's sarcoma (KS), esophageal cancer, hepatoma, cervical cancer, and HIV-related lymphoma...a very active pediatric oncology unit provides treatment to many young patients with cancer. However, the situation in adult oncology is different, and there is very little oncology service available to adults with cancer in the public sector. Treatment for KS focuses on anti-retroviral therapy, which has become available to many Malawians since the anti-retroviral rollout began in 2004. Patients often require chemotherapy in addition to antiviral to control disease. Major centers in have access to single-agent vincristine for patients with progressive or non-resolving disease. Although it clearly has some activity in KS, vincristine is not likely to produce response rates anything like those of liposomal doxorubicin and paclitaxel used in high-income countries. Currently, there is no second-line

option available for KS in Malawi...With limited access to radiotherapy (the closest centers are in Tanzania and South Africa), adequate palliative care is often difficult.' [33]

- 24.12 A more recent Nyasa Times article, 'Cancer victim support lacking in Malawi', dated 25 January 2011, noted the current generic situation in the country:

'Chances of surviving cancer in Malawi are almost nonexistent following shocking revelations that the 16 million plus nation has no radiotherapy machine and has only one trained cancer specialist...According to the specialist also known as an oncologist, Dr Leo Masamba, globally cancer is responsible for more deaths than those caused by TB, HIV/AIDS and Malaria combined. He said in Malawi "most cancer patients die without having any formal cancer treatment due to lack of radiotherapy, lack of enough drugs for cancer treatment, or properly supported chemotherapy unit and human resources trained to treat cancer."' [16d]

- 24.13 A Malawi Nation report, 'The cancer threat to Malawi', dated 30 August 2012, stated that:

'It is lunch hour and the corridors of Ward 2A at Queen Elizabeth Central Hospital (QECH), currently hosting the Oncology Department, are full of people. None of the patients wants to go for lunch, thinking that they may miss their chance to consult the doctor. Nurses are busy putting drips on patients, administering medication and flipping through patient files.

'Dr Leo Masamba, the country's only oncologist and his assistant, Dr Ntabeni Jemu is equally busy..."On average, we attend to 50 patients a day. These are just a few of the many patients that are in need of cancer treatment in the country," says Masamba...At the moment, the Oncology Department has four nurses and two doctors. The nurses have never been on cancer management training, but have only had on-the-job training ...It is clear that cancer treatment at QECH is a challenge both to the doctors and the patients, considering that this is the only hospital in the country that has an Oncology Department.

'The shortage of drugs makes it worse. Patients would come from other districts when they are due for a check-up, only to find that the type of drug they need is not available. If they are lucky enough to afford it, they will procure the expensive medication from a private pharmacy, but most cannot afford it and they simply return home.

'Dr Jemu notes that some patients do not come for scheduled treatment for lack of transport money to reach Blantyre for treatment...After noting these problems, the Cancer Association of Malawi raised funds for the renovation of Ward 4A at QECH to make it a full cancer ward.

'Chairperson for the association Chifundo Chogawana is quoted in the media as having said the demand for cancer treatment has increased since the onset of a temporally [sic] oncology department at Ward 2A...Dr Masamba

says Ward 4A has 22 beds and four isolation wards, but that it will need appropriate furniture, floor, ventilation and other equipment... At the moment, the country does not have a cancer policy which activists say could address cancer issues at different levels such as early detection, prevention, screening treatment and palliative care.

'Again, resource allocation in the national budget to cancer is minimal compared to other diseases such as malaria, tuberculosis and HIV and Aids.' **[61b]**

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KIDNEY DIALYSIS

- 24.14 An article in the 'Nyasa Times', 'Malawi source 10 dialysis machines', dated 11 June 2011, noted:

'Malawi government has announced that it has sourced 10 dialysis machines from Japan to help treat people with kidney complications. Malawi had only one dialysis machine at the Kamuzu Central Hospital (KCH) in Lilongwe and mostly it lacked resources. The other one at Queen Elizabeth Central Hospital (QECH) in Blantyre which was secured by United States based Malawi Biomedical Resources was taken to KCH after its machine had broken down...recently, a multi-million Kwacha Haemo-Dialysis Centre opened at Mwaiwathu Private Hospital in Blantyre.' **[16e]**

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MENTAL HEALTH

- 24.15 The World Health Organisation (WHO) '2005 Mental Health Atlas' stated: 'The following therapeutic drugs are generally available at the primary health care level of the country: carbamazepine, phenobarbital, phenytoin sodium, amitriptyline, chlorpromazine, diazepam, fluphenazine, haloperidol, lithium. Procyclidine is available.' **[34]**
- 24.16 The Scotland Malawi Mental Health Education Project website, dated 2010, noted that:
- '... international epidemiological studies would suggest that the rates of mental illness in Malawi are at least as high as those in western and other developing countries. Mental Health Service provision is extremely sparse and there is only one state psychiatrist, Dr Felix Kauye...the project provides support to Dr Kauye in delivering the undergraduate medical student teaching course at the College of Medicine (CoM) in Blantyre...Dr Kauye guides the projects interface with contributions from Dutch and Norwegian projects, and Mental Health nursing training support from the Harrogate-Zomba Link and Voluntary Service Overseas.' **[46]**
- 24.17 The source continued:

‘The Scotland Malawi Mental Health Education Project (SMMHEP) aims to provide sustainable support for psychiatric teaching and training for health care professionals in Malawi. The project has enjoyed close links with individuals and institutions in Malawi since 2006 and became a registered Scottish Charity in 2008. Currently the principal activities of the project are delivery of undergraduate medical student teaching, and ECT equipment and training.

‘The project has received support from the Royal College of Psychiatrists (London and Scotland), the Scottish Government, National Health Service Education Scotland (NES), the Tropical Health Education Trust (THET) and local postgraduate Deaneries and tutors.’ [46]

24.18 The source further noted that there were psychiatric hospitals in Blantyre and Zomba. [46]

24.19 A Journalists for Human Rights article, ‘Growing mental health awareness in Malawi calls for more trained medical professionals’, by M Silvestri, dated 15 February 2012, stated:

‘About half of the world’s population resides in a country where there is one psychiatrist or less to serve 200,000 people on average, according to the World Health Organization (WHO).

‘However, in Malawi, there are only two psychiatrists and two psychologists who are registered with the Medical Council of Malawi and serving a country of over 13 million people.

‘Without access to trained mental health care professionals, the mental health issues facing Malawians remain largely untreated and access to mental health facilities with trained professionals is arduous.

“The situation for mental health in Malawi is something that really requires a lot of attention,” says Dr. Chiwoza Bandawe, one of the registered clinical psychologists in Malawi, on the topic of the 1 to 6 million psychologist to patient ratio.

‘Until the field of mental health started growing, Bandawe speaks of his experience being the only clinical psychologist in Malawi for about 10 years upon his return to Malawi in 1995 from studying at the University of Cape Town. He attributes the lack of psychologists in the country to the lack of attention mental health previously received.

‘The current state of mental health is expected to change as Bandawe adds that the Malawian government has recognized mental illness in the Essential Health Package which “will help tremendously towards putting mental health right in its necessary spotlight.”

‘Henry Chimballi, Spokesman for the Ministry of Health in Malawi, told The Daily Times that government is adapting to the growing needs for mental health treatment.

“Mental health is one of the priority areas that have been included in the new health sector strategic plan and requires more attention than before,” he said.

‘Chimbali, however, suggests mental health still requires adequate budget allocation by government. He claims an assessment made in 2008 on funding to the sector found that only 0.9 percent of the total health budget was assigned to mental health.

‘Faced with scarce resources and a growing need for treatment, two of the country’s main forces behind mental health, Dr. Felix Kauye and Dr. Chiwoze Bandawe both agree that tremendous challenges remain which must be overcome in the field, beginning with addressing the need for more mental health professionals.

“There are a lot of challenges which I face in my career. The main challenge which I am currently facing is the workload,” says Kauye, who is one of the country’s two registered psychiatrists and also holds the title of Director of Mental Health Services at Malawi Government.

‘His skills are so highly relied on that his role within Malawi is increasingly more multifaceted. Kauye undertakes clinical work at Zomba Mental hospital, where he has four business ward rounds and one academic ward round in a week. He is also a clinical lecturer for the College of Medicine and involved in the training of post graduate students who are training to be psychiatrists. Additionally, Kauye is the head of the management team of Zomba Mental Hospital and is involved in the administration of the hospital.

‘But his role still does not end there, “Lastly but not least, I am involved in the drafting and implementation of national mental health programs like integration of mental health in primary care in Malawi and supervision of district mental health services,” says Kauye.

‘Bandawe’s responsibilities are just as demanding. At the present time, Bandawe is employed by the College of Medicine as the Dean of Students. He says his challenge, like other mental health care professionals, is not being available to as many people as he would like...“I hardly see clients or patients at Queen Elizabeth Hospital and the need for psychologists is growing. People are coming to realize and appreciate the need for speaking with a psychologist,” he says.

‘Bandawe sums up the current problem of lack of qualified staff by saying that “there is a growing recognition and appreciation, so the challenge is as that recognition and appreciation grows, so do the demands on me grow. It becomes quite taxing at times.”

‘He attributes this, in part, to the fact that “the government has been so caught up with infectious diseases, which are important, but mental health has never been considered a priority,” he says.

‘Even without the resources to conduct community based data, Kauye is aware of the causes of psychological distress, as “the proportion of people who suffer from mental illness does not differ across cultures.” These causes include genetic factors, physical illnesses like HIV, daily life events like loss of employment, giving birth and substance abuse.

‘Kauye explains that there is currently a severe shortage of mental health professionals in Malawi and Bwaila unit in Lilongwe is currently run by nurses with no clinician working there. This affirms the WHO research finding that nurses represent the most prevalent professional group working in the mental health sector.

‘The nurses at Zomba Mental Hospital were unavailable for comment, but Kauye says, “With the shortage of staff and poor district mental health services, the team works under a lot of pressure because if we do not treat and discharge our patients quickly, the hospital becomes overcrowded and difficult to manage.”

‘This is particularly important in the cases where there is an over reliance on the tertiary hospitals since district hospitals are in poor condition, increasing the strain on the professionals in these settings.

‘Bandawe suggests that there are posts in the government for psychologists, but training and filling those posts have not been a priority. He attributes that lack of response to the stigma associated with mental health, a stigma that means those who suffer from mental illness are often ostracized from society and fail to receive the care they require, according to WHO.’ [35]

See also [Overview of availability of medical treatment and drugs.](#)

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25. FREEDOM OF MOVEMENT

- 25.01 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that: ‘The constitution and laws provide for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. However, delays in obtaining passports delayed travel for some citizens.’ [1a] (section 2d)

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26. CITIZENSHIP AND NATIONALITY

- 26.01 The United States Office of Personnel Management Investigations Service Citizenship Laws of the World report, published in March 2001, stated the following about Malawian citizenship:

‘Citizenship: Citizenship is based upon the Malawi Citizenship Act, dated July 6, 1966. Every person who was a citizen of Malawi before July 6, 1966, continues to be a citizen of Malawi. (UK Commonwealth Nation)

‘By birth: Birth within the territory of Malawi does not automatically confer citizenship. The exception is a child born of unknown parents.

‘By descent: Child born in Malawi, on or after July 6, 1966, whose father or mother is a citizen of Malawi and is of African race.

‘Child born abroad, on or after July 6, 1966, one of whose parents is a native-born citizen of Malawi of African race.

‘By naturalization: Malawian citizenship may be acquired upon fulfillment of the following conditions:

‘Person is of an African race or has Commonwealth or Malawian ties, has resided five years in the country, has adequate knowledge of the English language, intends to reside permanently in Malawi, and will renounce previous citizenship. (Aliens without the national ties must have resided for seven years.)

‘Dual citizenship: not recognized.

‘Exception: Child born abroad, who obtains citizenship of country of birth, may maintain dual citizenship until age 21, when the person must renounce the other citizenship within one year or Malawian citizenship will be revoked.

‘A citizen of Malawi, age 22 or older, who obtains new citizenship through other than voluntary means (for example, marriage) has one year to declare a desire to retain Malawian citizenship or it will be revoked.

‘Loss of citizenship:

‘Voluntary: Voluntary renunciation of Malawian citizenship is permitted by law.

‘Involuntary: The following are grounds for involuntary loss of naturalized or registered Malawian citizenship:

‘Person exercises rights or privileges of another country.

‘Citizenship was obtained through fraud or false statements.

‘Person has been arrested and imprisoned within seven years of citizenship.

‘Person has shown disloyalty or treason against Malawian government.

‘Person has been resident outside Malawi for seven years or more without proper “registration with Consulate.” [36]

26.02 The main provisions of the Citizenship Act are contained in the UNHCR website, accessed on 22 August 2012:

‘An Act to repeal and replace the Malawi Citizenship Act, 1964, so as to make provision, consequent upon the enactment of a Republican form of

Constitution in Malawi, for the acquisition of citizenship of Malawi by birth or descent, or by registration in certain cases; to regulate the manner and circumstances in which aliens may be naturalized as citizens of Malawi and in which citizens of Malawi may renounce or be deprived of their citizenship; and to make provision for certain other matters relating to citizenship of Malawi and for matters incidental thereto and connected therewith.’ [53]

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27. FOREIGN REFUGEES

- 27.01 The United States State Department ‘2011 Human Rights Report: Malawi’, published on 24 May 2012, stated that:

‘Access to Asylum: The law provides for the granting of asylum or refugee status, and the government has established a system for providing protection to some 13,000 refugees, primarily from Central Africa.

‘Nonrefoulement: The government generally provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular group, or political opinion. There were no reports of deportations of recognized refugees during the year.

‘Refugee Abuse: Security forces sometimes intimidated refugees and asylum seekers. Police routinely detained refugees found illegally outside of camps and returned them to camps. Local citizens often accused refugees of theft and demanded their deportation.

‘Employment: While no legal framework existed, the government allowed refugees to seek both employment and educational opportunities, although it restricted these activities outside the refugee camps. Refugees with professional degrees, especially those with medical training, were in previous years given work permits to pursue employment outside the camps. There remain some individuals, notably nurses and teachers, who have been issued such permits in the past and remain in employment based on them. UNHCR, NGOs, and the government collaborated to provide basic assistance, including education to children, in refugee camps.

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

‘Access to Basic Services: Refugees have access to health services through a clinic in the camp, which serves both refugee and local community populations. Malawian laws and the justice system are applicable and accessible to refugees. In practice, access was limited by lack of knowledge on the part of refugees as to services available.

‘Durable Solutions: By law the government does not accept refugees for permanent settlement.

‘Temporary Protection: The government also provided temporary protection to individuals who may not qualify as refugees under the 1951 Convention relating to the Status of Refugees or the 1967 Protocol; however, no reliable statistics were available.’ [1a] (section 2d)

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Annex A

CHRONOLOGY OF MAJOR EVENTS

- 1958** Dr Hastings Kamuzu Banda returns from the United States and the United Kingdom, where he has been studying, to lead the Nyasaland African Congress. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1959** Violent clashes between the Congress supporters and the colonial authorities lead to the banning of the organisation. Many leaders, including Banda, are arrested and a state of emergency is declared. (BBC Timeline, last updated 20 May 2012) **[7b]**
- Malawi Congress Party is founded as a successor to the Nyasaland African Congress. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1960** Banda is released from Gwelo prison and attends talks in London with the British government on constitutional reform. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1961** Elections held for a new Legislative Assembly. Banda's Malawi Congress Party wins 94% of the vote. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1963** Territory is granted self-government as Nyasaland and Banda is appointed prime minister. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1964**
- July Nyasaland declares independence as Malawi. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1966**
- July Banda becomes president of the Republic of Malawi. The constitution establishes a one-party state. Opposition movements are suppressed and their leaders are detained. Foreign governments and organisations raise concerns about human rights. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1971** Banda is voted president-for-1978. First elections since independence. All potential candidates must belong to the Malawi Congress Party and be approved by Banda. He excludes many of them by submitting them to an English test. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1980s** Several ministers and politicians are killed or charged with treason. Banda reshuffles his ministers regularly, preventing the emergence of a political rival. (BBC Timeline, last updated 20 May 2012) **[7b]**

- 1992** Catholic bishops publicly condemn Banda, sparking demonstrations. Many donor countries suspend aid over Malawi's human rights record. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1993** President Banda becomes seriously ill. Voters in a referendum reject the one-party state, paving the way for members of parties other than the Malawi Congress Party to hold office. Muluzi elected. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1994** Presidential and municipal elections: Bakili Muluzi, leader of the United Democratic Front, is elected president. He immediately frees political prisoners and re-establishes freedom of speech. (BBC Timeline, last updated 20 May 2012) **[7b]**
- Banda announces his retirement from politics. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1997** Banda dies in hospital in South Africa where he is being treated for pneumonia. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 1999** President Muluzi is re-elected for a second and final five-year term. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 2000** World Bank says it will cancel 50% of Malawi's foreign debt. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 2002** Drought causes crops to fail across southern Africa. Government is accused of worsening crisis through mismanagement and corruption, including selling off national grain reserves before drought struck. (BBC Timeline, last updated 20 May 2012) **[7b]**
- September Railway line linking central Malawi and Mozambican port of Nacala reopens after almost 20 years, giving access to Indian Ocean. (BBC Timeline, last updated 20 May 2011) **[7b]**
- 2004**
- May Bingu wa Mutharika wins presidency. Government says it will provide free anti-viral drugs to Aids sufferers. (BBC Timeline, last updated 20 May 2012) **[7b]**
- 2005**
- January Three UDF officials are charged with treason after carrying guns to a meeting with President Mutharika. The president later pardons the trio. (BBC Timeline, last updated 20 May 2012) **[7b]**
- February President Mutharika resigns from the UDF over what he says is its hostility to his anti-corruption campaign. He forms the Democratic

- Progressive Party (DPP). (BBC Timeline, last updated 20 May 2012) **[7b]**
- June President Mutharika survives an impeachment motion backed by the UDF. The speaker of parliament dies after collapsing during angry exchanges over the motion. (BBC Timeline, last updated 20 May 2012) **[7b]**
- November Agriculture minister says five million people need food aid as Malawi bears the brunt of failed crops and a regional drought. (BBC Timeline, last updated 20 May 2012) **[7b]**

2006

- April Vice-President Cassim Chilumpha is arrested and charged with treason.
- July Ex-president Bakili Muluzi is arrested on corruption charges. (BBC Timeline, last updated 20 May 2012) **[7b]**

2007

- May Malawi begins exporting 400,000 tonnes of maize to Zimbabwe, after producing a surplus in 2006. (BBC Timeline, last updated 20 May 2012) **[7b]**

2008

- January Malawi ends diplomatic relations with Taiwan, switching allegiance to China. (BBC Timeline, last updated 20 May 2012) **[7b]**
- May Several opposition figures and ex-security chiefs are arrested after President Mutharika accuses his predecessor, Bakili Muluzi, of plotting to depose him. (BBC Timeline, last updated 20 May 2012) **[7b]**

2009

- May President Mutharika wins second term in election. (BBC Timeline, last updated 20 May 2012) **[7b]**

2010

- May A gay couple is convicted and jailed for breaching anti-homosexuality laws, sparking international condemnation. The two men are given a presidential pardon and released. (BBC Timeline, last updated 20 May 2012) **[7b]**

2010

- August New national flag introduced amid controversy.
First local elections in a decade postponed again. (BBC Timeline, last updated 20 May 2012) **[7b]**

October	Diplomatic row with Mozambique over a new waterway connecting Malawi with the Mozambique coast. Mozambique impounds first barge to use new route. (BBC Timeline, last updated 20 May 2012) [7b]
November	Protests against a bill setting the retirement age at between 55 and 60, higher than average life expectancy. (BBC Timeline, last updated 20 May 2012) [7b]
2011	
March	President Mutharika angers opposition parties by calling on members of his Democratic Progressive Party at a rally to beat up those who have insulted him. (BBC Timeline, last updated 20 May 2012) [7b]
May	Malawi expels British High Commissioner Fergus Cochrane-Dyet over a leaked diplomatic cable released in which Mr Cochrane-Dyet describes President Mutharika as increasingly autocratic. (BBC Timeline, last updated 20 May 2012) [7b]
July	Britain halts all aid to Malawi, accusing the government of mishandling the economy and failing to uphold human rights. (BBC Timeline, last updated 20 May 2012) [7b] Riots broke out in cities in Malawi as opposition groups protest against President Bingu wa Mutharika's government. (BBC News 'Malawi riots erupt in Lilongwe and Mzuzu', 20 July 2011) [7f]
2012	
April	President Mutharika dies after a heart attack. (Reuters, 'Malawi's President Mutharika dead', 6 April 2012) [23] President Mutharika is buried at his farm, next to his first wife. (BBC News 'Malawi's Bingu wa Mutharika buried on his farm', 23 April 2012) [7a] Joyce Banda is sworn in as Malawi's new president. (BBC News 'Joyce Banda sworn in as new Malawi president', 7 April 2012) [7c]
August	It was reported that prolonged dry spells followed by poor harvests in Malawi's maize-growing central and southern regions created widespread food shortages. (United Nations IRIN, 'Malawi: Need for food aid outpaces response', dated 30 August 2012) [58a]

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Annex B

POLITICAL ORGANISATIONS

Taken from Europa World Online, undated, accessed on 30 August 2012. [5]

Alliance for Democracy (AFORD)

Based in Lilongwe.

Founded 1992; in March 1993 absorbed membership of former Malawi Freedom Movement.

President: [Dindi Gowa Nyasulu](#).

Congress of Democrats (CODE)

Based in Mzuzu.

President: [Ralph Kasambara](#).

Congress for National Unity (CONU)

Based in Lilongwe.

Founded 1999.

President: Bishop Daniel Kamfosi Nkhumbwa.

Democratic Progressive Party (DPP)

Based in Lilongwe.

Founded 2005 following Bingu wa Mutharika's resignation from the UDF.

President: Professor Arthur Peter Mutharika.

Sec.-Gen. Wakuda Kamanga.

Malawi Congress Party (MCP)

Based in Lilongwe.

Founded 1959; sole legal party 1966–93.

President: John Tembo.

Malawi Democratic Party (MDP)

Based in Lilongwe.

President: Kamlepo Kalua.

Malawi Forum for Unity and Development (MAFUNDE)

Founded 2002; aims to combat corruption and food shortages.

President: George Mnesa.

Maravi People's Party (MPP)

Based in Lilongwe.

President: Uladi Mussa.

Sec.-Gen. Dr Yusuf Haudi [\(acting\)](#).

Movement for Genuine Democratic Change (MGODE)

Based in Mzuzu.

Founded 2003 by former members of AFORD;

Chairman: Sam Kandodo Banda.

Director: Greene Lulilo Mwamondwe.

Sec.-Gen. Rodger Nkwazi.

National Democratic Alliance (NDA)

Based in Blantyre.

Founded 2001 by former members of the UDF; officially merged with the UDF in June 2004 but maintained independent structure.

President: Brown James Mpinganjira.

National Chairman: James Makhumula Nkhoma.

National Rainbow Coalition (NARC)

Based in Lilongwe.

Founded 2008.

President: Loveness Gondwe.

National Solidarity Movement

Leader: Ngwazi Kazuni Kumwenda

National Unity Party (NUP)

Based in Blantyre.

President: Harry Chiume.

Sec.-Gen. Harry Muyenza.

New Dawn for Africa (NDA)

Based in Blantyre.

Founded 2003; associated with the UDF.

President: Thom Chiumia.

Sec.-Gen. Chikumbutso Mtumodzi.

New Republican Party (NRP)

Founded in 2005.

President: Gwandaguluwe Chakuamba.

Vice-President: Ken Zikhale Ng'oma.

People's Party

Based in Lilongwe.

Founded in 2011 by Joyce Banda following her expulsion from the DPP;

Leader: Joyce Banda.

Sec.-Gen. Henry Chibwana.

People's Progressive Movement (PPM)

Founded 2003 by former members of the UDF.

President: Mark Katsonga.

Sec.-Gen. Knox Varela.

People's Transformation Party (PETRA)

Based in Blantyre.

Founded 2002.

President: Kamuzu Chibambo.

Sec.-Gen. Derek Lakudzala.

Republican Party (RP)

Based in Lilongwe.

President: Stanley Masauli.

United Democratic Front (UDF)

Based in Limbe.

Founded 1992; officially merged with the NDA in June 2004 but maintained independent structure; rival faction led by Cassim Chilumpha and Friday Jumbe.

Chairman: Dr George Nga Ntafu.

Sec.-Gen. Kennedy Makwangwala.

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Annex C

PROMINENT PEOPLE

The source used in the following list is [11d] (Jane's 'Malawi - Political Leadership', updated on 30 April 2012, accessed on 3 September 2012).

President of Malawi	Joyce Banda. [11d]
Minister of Defence	Ken Kandodo. [11d]
Minister of Justice and Constitutional Affairs	Ralph Kasambara. [11d]
Minister of Foreign Affairs and International Cooperation	Ephraim Chiume. [11d]
Minister of Gender, Child and Social Welfare	Anita Kalinde. [11d]
Minister of Home Affairs	Uladi Mussa. [11d]
Minister of Industry and Trade	John Bande. [11d]
Minister of Information and Civic Education	Moses Kunkuyu. [11d]
Minister of Justice and Constitutional Affairs	Ralph Kasambara. [11d]
Minister of Labour	Eunice Makangala. [11d]
Minister of Lands and Housing	Henry Phoya. [11d]
Vice-President and Minister of Health	Khumbo Kachali. [11d]

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Annex D

LIST OF ABBREVIATIONS

AI	Amnesty International
BBC	British Broadcasting Corporation
CIA	Central Intelligence Agency
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
CPJ	Committee to Protect Journalists
EIU	Economist Intelligence Unit
FCO	Foreign and Commonwealth Office (UK)
FGM	Female Genital Mutilation
FH	Freedom House
GDP	Gross Domestic Product
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HRW	Human Rights Watch
ICG	International Crisis Group
ICRC	International Committee for Red Cross
IDP	Internally Displaced Person
NGO	Non Governmental Organisation
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
USAID	United States Agency for International Development
USSD	United States State Department
WHO	World Health Organization

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Annex E

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