**Country Policy and Information Note**

Malawi: Background information, including actors of protection, and internal relocation

Version 1.0

**December 2017**

Preface

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

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

Country Information

COI in this note has been researched in accordance with principles set out in the [Common EU [European Union] Guidelines for Processing Country of Origin Information (COI)](http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=48493f7f2&skip=0&query=eu%20common%20guidelines%20on%20COi) and the [European Asylum Support Office’s research guidelines, Country of Origin Information report methodology](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/european-asylum-support-office/coireportmethodologyfinallayout_en.pdf), namely taking into account its relevance, reliability, accuracy, objectivity, currency, transparency and traceability.

All information is carefully selected from generally reliable, publicly accessible sources or is information that can be made publicly available. Full publication details of supporting documentation are provided in footnotes. Multiple sourcing is normally used to ensure that the information is accurate, balanced and corroborated, and that a comprehensive and up-to-date picture at the time of publication is provided. Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source is not an endorsement of it or any views expressed.

Feedback

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

Independent Advisory Group on Country Information

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

Independent Chief Inspector of Borders and Immigration,

5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.

Email: chiefinspector@icinspector.gsi.gov.uk

Information about the IAGCI’s work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector’s website at <https://www.gov.uk/government/organisations/independent-chief-inspector-of-borders-and-immigration/about/research>.

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# Policy guidance

Updated: 21 December 2017

## Introduction

###  Basis of claim

* + 1. Whether in general those at risk of persecution or serious harm from non-state actors are able to seek effective state protection and/or internally relocate within Malawi.

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##  Consideration of issues

###   Credibility

* + 1. For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](https://www.gov.uk/government/publications/considering-asylum-claims-and-assessing-credibility-instruction).
		2. Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the [Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants](https://www.gov.uk/government/publications/visa-matches-handling-asylum-claims-from-uk-visa-applicants-instruction)).
		3. Decision makers should also consider the need to conduct language analysis testing (see the [Asylum Instruction on Language Analysis](https://www.gov.uk/government/publications/language-analysis-instruction)).

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### Protection

* + 1. The Malawi Police Service (MPS) has responsibility for internal security within Malawi and for enforcing the law throughout the country. The government exercises effective control over the MPS. The MPS is hampered by poor equipment, a lack of effective training, and insufficient resources. While the MPS’ capabilities are growing and its efforts have helped crime prevention in urban areas, according to the US State Department, its ability to deter and investigate crimes, assist victims, and apprehend criminals is extremely limited (see [Malawi Police Service)](#PoliceService).
		2. There are reports that individual police officers committed human rights abuses, such as unlawful killings and the use of excessive force, but these are isolated incidents. The MPS has set up formal procedures for the investigation of police misconduct, and there have been some prosecutions. The Malawi Human Rights Commission has the responsibility to investigate violations committed by the police and to litigate on behalf of victims of police abuse. In addition, the office of the Ombudsman is mandated to prosecute police officers who abuse their powers and compensate victims of police abuse, although it reportedly is not able to deal with the high number of cases it has (see [Abuses by the police](#_Abuses_by_the) and [Oversight bodies](#_Oversight_bodies)).
		3. The constitution and law provide for an independent judiciary and fair trial, and this is generally respected by the government. While courts continue to hear and decide cases their effectiveness is handicapped by a number of weaknesses including a shortage of judges and lawyers, poor record keeping, heavy caseloads, corruption and a lack of resources. The government, however, has in recent years sought to address some of these shortcomings, for example by increasing the numbers of judges (see [Judiciary - Independence](#_Independence) and effectiveness and [Judiciary - Fair trial](#_Fair_trial)).
		4. Malawi has a functioning criminal justice system - albeit its effectiveness is undermined by, amongst other things, a lack of resources and training, and corruption - which makes attacks by non-state actors punishable, and the government has shown a reasonable willingness and ability to enforce the law. In general, a person fearing non-state actors may be able to obtain state protection from the police service. However, each case must be determined on its own facts, with the onus on the person to demonstrate that the state is not willing and able to provide effective protection.
		5. For further guidance on considering protection and the factors to be taken into account, see the [Asylum Instruction on Assessing Credibility and Refugee Status](https://www.gov.uk/government/publications/considering-asylum-claims-and-assessing-credibility-instruction) and Gender Issues in the Asylum Claim.

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### Internal relocation

* + 1. Malawi has a total geographical area of 118,484 sq km and an estimated population of 19,196,246, with several large towns including Lilongwe and Blantyre. The constitution and law provides for freedom of movement within Malawi and the government generally respects this in practice (see [Geography](#_Geography), [Demography](#_Demography) and [Freedom of movement](#FreedomMovement)).
		2. In general, internal relocation to another area of Malawi is likely to be reasonable, but will depend on the nature and origin of the threat, and the individual circumstances of the person.
		3. For further guidance on considering internal relocation and the factors to be taken into account, see the [Asylum Instruction on Assessing Credibility and Refugee Status](https://www.gov.uk/government/publications/considering-asylum-claims-and-assessing-credibility-instruction) and Gender Issues in the Asylum Claim.
		4. See also the country policy and information note on [Malawi: Sexual orientation and gender identity](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/593606/Malawi_-_SOGI_-_CPIN_-_v3_0.pdf).

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## Policy summary

* + 1. In general, a person may be able to access state protection against persecution or serious harm from non-state actors. However, each case will need to be considered on its facts taking into account the nature of the threat as well as the individual circumstances of the person. The onus is on the person to demonstrate that the state is not willing and able to provide effective protection.
		2. Internal relocation to another area of Malawi is likely to be reasonable but will depend on the nature and origin of the threat as well as the individual circumstances of the person.

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# Country information

 Updated: 21 December 2017

## History

* + 1. Details about the country’s history can be found on ‘The Commonwealth’ website’s section on [Malawi](http://thecommonwealth.org/our-member-countries/malawi/history)[[1]](#footnote-1). See also the BBC News [‘Malawi profile’](http://www.bbc.co.uk/news/world-africa-13881367), updated on 10 October 2017.

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## Economy

* + 1. The World Bank ‘Overview’ on Malawi, updated on 10 October 2017, noted:

‘In 2017, Malawi’s GDP growth rate is expected to rebound to about 4.5% from 2.5% in 2016. Improved weather patterns with increased rainfall in 2017 are expected to result in higher levels of agricultural output than were recorded in 2015 and 2016. Agriculture contributes 30% of GDP. The country's headline inflation rate continues to decelerate faster than anticipated, falling to 9.3% in August 2017, compared to 22.8% in August 2016. This downward trend has largely been due to a sustained decline in food prices resulting from the increased availability of maize, and a stable exchange rate.’ [[2]](#footnote-2)

* + 1. For details of Malawi’s social security system, see the United States Social Security Administration publication, [Social Security Programs Throughout the World: Africa, 2015](https://www.ssa.gov/policy/docs/progdesc/ssptw/2014-2015/africa/malawi.html).

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## Geography

### Land area, main cities and administrative divisions

* + 1. Malawi is bordered by Mozambique, Tanzania and Zambia. It is a landlocked country with no coastline. Malawi has a total area of 118,484 sq km, about half the size of the UK[[3]](#footnote-3).
		2. Malawi has 28 administrative divisions, which are: Balaka, Blantyre, Chikwawa, Chiradzulu, Chitipa, Dedza, Dowa, Karonga, Kasungu, Likoma, Lilongwe, Machinga, Mangochi, Mchinji, Mulanje, Mwanza, Mzimba, Neno, tcheu, Nkhata Bay, Nkhotakota, Nsanje, Ntchisi, Phalombe, Rumphi, Salima, Thyolo, Zomba[[4]](#footnote-4).
		3. The United Nations ‘Malawi Country Profile’, undated, accessed on 14 September 2017, noted:

‘Three regions demarcate Malawi – Northern, Central and Southern. Lilongwe City in central Malawi is the national and administrative capital. Blantyre City is the provincial capital of the Southern province and the country’s commercial and manufacturing hub. Mzuzu is the main town in the Northern province. Zomba, the former political capital and a trading centre between Blantyre and Lilongwe was declared a city in 2008. Malawi has a vast range of geographical features, with high plateaus in the north and central areas and mountains to the south.’ [[5]](#footnote-5)

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### Map

* + 1. For a map showing the location of Malawi’s main cities and towns, main rivers, main roads, railways, and airport – see the United Nations [map of Malawi](http://www.un.org/Depts/Cartographic/map/profile/malawi.pdf)[[6]](#footnote-6).

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###  Transport infrastructure

* + 1. The Commonwealth website, accessed on 25 July 2017, provided the following undated information: ‘There are 15,450 km of roads (45 per cent paved) and 797 km of railway. Rehabilitation of the war-damaged railway line to the Mozambican port of Nacala was completed in 1997…Lilongwe International Airport handles the bulk of domestic and international traffic; the second international airport is Blantyre Chileka.’ [[7]](#footnote-7)

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##  Demography

###  Population

* + 1. Malawi has an estimated total population of 19,196,246 (July 2017 estimate). Its population growth rate is 3.3 per cent (2017 estimate).[[8]](#footnote-8)
		2. The Encyclopaedia Britannica observed: ‘Although Malawi is one of the most densely populated countries in southern Africa, it is also one of the least urbanized, with more than four-fifths of its people living in rural locations. It is urbanizing at a very rapid rate, however, with movement toward urban areas taking place at a pace far swifter than either the African or global averages.’ [[9]](#footnote-9)

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###  Ethnic groups

* + 1. The CIA ‘World Factbook’ stated that the names and proportion of the population (2015 estimate) of Malawi’s ethnic groups are: ‘Chewa (34.7%), Lomwe (19.1%), Yao (13.4%), Ngoni (11.8%), Tumbuka (9.4%), Sena (3.6%), Tonga (1.8%), Nyanja (1.1%), Nkhonde (0.8%), others 1.8%.’ [[10]](#footnote-10)

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###  Religious groups

* + 1. The United States State Department ‘International Religious Freedom Report for 2016’, published on 15 August 2017, stated:

‘According to the 2016 Demographic and Health Survey, 76.9 percent of the population is Christian and 12.5 percent Muslim. Christian denominations include Roman Catholics at 18.1 percent, Central Africa Presbyterians at 17.4 percent, Seventh-day Adventist/Seventh-day Baptists (the survey groups the two into one category) at 6.9 percent, and Anglicans at 2.6 percent. Another 41.9 percent fall under the “other Christians” category. Individuals claiming no religious affiliation are 0.5 percent and 0.1 percent declare other religions including Hindus, Bahais, Rastafarians, Jews, and Sikhs.

‘The vast majority of Muslims are Sunni. Most Sunnis of African descent follow the Shafi’i School of Islamic legal thought, while the smaller community of ethnic Asians mostly follows the Hanafi School. There is also a small number of Shia Muslims, mostly of Lebanese origin.’ [[11]](#footnote-11)

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###  Languages

* + 1. The languages spoken in Malawi are: ‘English (official), Chichewa (common), Chinyanja, Chiyao, Chitumbuka, Chilomwe, Chinkhonde, Chingoni, Chisena, Chitonga, Chinyakyusa, Chilambya.’ [[12]](#footnote-12)

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## Political system

###  Constitution

* + 1. On 16 May 1994, the Malawian parliament passed the Republic of Malawi (Constitution) Act, 1994 (Act No. 20 of 1994), which repealed the Constitution of 1966 and brought into force the 1994 Constitution.[[13]](#footnote-13)

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###  Organisation and structure

* + 1. The Britannica Encyclopedia noted:

‘Malawi is a multiparty republic. Malawi’s original constitution of 1966 was replaced with a provisional constitution in 1994, which was officially promulgated in 1995 and has since been amended. It provides for a president, who is limited to serving no more than two five-year terms, and up to two vice presidents, all of whom are elected by universal suffrage. The president serves as head of state and government. The cabinet is appointed by the president. The legislature, the National Assembly, is unicameral; its members also are elected by universal suffrage and serve five-year terms.’ [[14]](#footnote-14)

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###  Political freedom, political parties and elections

* + 1. The United States State Department (USSD) ‘Country Report on Human Rights Practices for 2016’, published on 3 March 2017, stated: ‘The constitution and law provide citizens the ability to choose their government through free and fair periodic elections held by secret ballot and based on universal and equal suffrage.’ [[15]](#footnote-15)
		2. The USSD ‘Country Report on Human Rights Practices for 2016’ also stated: ‘Malawi is a multiparty democracy…The 2014 elections for president, parliament, and local councils were characterized by international observers as free, transparent, and credible.’ [[16]](#footnote-16)
		3. The Freedom House report, ‘Freedom in the World 2017’, covering events that took place in 2016, stated:

‘The opposition Malawi Congress Party (MCP) won three out of five parliament seats at stake in November 2016 by-elections, with the ruling Democratic Progressive Party (DPP) securing the other two. The Malawi Electoral Commission (MEC) had attempted to improve its performance ahead of the voting, relieving several officials of their duties in August in response to an audit that found alleged malfeasance, and implementing procedural reforms in October. Nevertheless, opposition candidates accused the DPP of disrupting their rallies, offering food gifts to voters, and using state funds for campaigning.’ [[17]](#footnote-17)

* + 1. The ‘Freedom in the World 2017’ report also noted: ‘Malawi holds regular elections and has undergone multiple transfers of power between political parties, though the changes were frequently a result of rifts among ruling elites rather than competition between distinct parties. Political rights and civil liberties are for the most part respected by the state.’ [[18]](#footnote-18)

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## Security forces

###  Malawi Police Service

* + 1. The Interpol website, accessed on 15 August 2017, stated:

 ‘Headed by the President of the Republic of Malawi, the [Malawi Police Service (MPS)](http://www.malawi.gov.mw/index.php?option=com_content&view=article&id=60&Itemid=47) is part of the Ministry of Internal Affairs and Public Security…MPS is commanded by an Inspector General assisted by two Deputy Inspectors General in charge of Administration and Operations respectively. The Deputy Inspectors General are responsible for running the general administration and operations of the entire police service as well as the MPS Headquarters.

‘To enable MPS to serve and secure a population of more than 14 million people, the force divides its administrative and operational activities into four police regions.’ [[19]](#footnote-19)

* + 1. In its submission to the UN Human Rights Council, as part of the Universal Periodic Review, the Malawi Government stated:

‘The Malawi Police Service on its part conducts regular human rights lectures for police officers so that they refrain from acts of torture and to ensure that constitutional rights of suspects of crime are respected. The Internal Affairs Unit investigates all cases of human rights violations while the Service is still working on the establishment of the Police Complaints Commission as provided in the Police Act. The Lay Visitors Scheme which comprises paralegal officers and local leaders in the vicinity of all Police Stations is fully operational. Members of the Scheme visit cells and inspect conditions of detention and attend to complaints of detainees. All complaints into the allegations of torture or physical abuse are thoroughly investigated; officers involved are usually interdicted to pave way for investigations. Special inquiry teams are sometimes instituted depending on the gravity of the matter with a view to bring to justice everyone suspected to have committed acts of torture and other human rights violations amounting to criminal offence. The Internal Affairs has so far handled 407 cases out of which 349 cases have been investigated.’ [[20]](#footnote-20)

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###  Effectiveness

* + 1. The USSD Overseas Security Advisory Council ‘Malawi 2017 Crime & Safety Report’, published on 2 March 2017, noted:

‘Criminal activity is more common in urban areas than rural areas. Neighborhood policing efforts have aided in crime prevention and reporting but have not substantially decreased criminal activity. The Embassy is aware of several incidents of mob justice resulting in fatalities, even within major city limits. These incidents are often a result of public distrust and lack of confidence in the Malawi Police Services…

‘The capabilities of the Malawi Police Service are growing, but its abilities to deter and investigate crimes, assist victims, and apprehend criminals are extremely limited. The police lack basic equipment (particularly transportation), are poorly funded, and do not receive sufficient training. Public support for the police has continued to drop, due in part to alleged corruption and ineffectiveness in deterring criminal activity.' [[21]](#footnote-21)

* + 1. An Amnesty International press release, ‘Malawi: Failing criminal justice system fuels a new wave of attacks on people with albinism’, dated 13 June 2017, stated the following on the treatment of people with albinism:

‘In Malawi, police are empowered to prosecute and convict suspected perpetrators of crimes, however they are under resourced and receive little training. As a result, most cases are poorly handled and rarely result in a conviction. The vast majority of cases involving crimes against people with albinism, in particular murder, fail to go before a court due to a lack of funds and legal aid support for suspected perpetrators.

‘Even where cases have been brought to court, the perpetrators have often been released due to flawed investigations and a lack of relevant admissible evidence.’ [[22]](#footnote-22)

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ stated: ‘The government exercised effective control over the Malawi Defense Force (MDF) and Malawi Police Service (MPS)…Police were inefficient, poorly trained, and corrupt…Impunity was a problem.’ [[23]](#footnote-23)
		2. CPIT was unable to find information on the numbers of arrests and convictions secured by the police from the sources consulted in this note.

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###  Oversight bodies

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ stated: ‘The inspector general of police remained committed to the professionalization of the MPS. The Professional Responsibility Unit (previously known as the Internal Affairs Department) of the MPS investigates police misconduct, including whether killings or other misconduct that occurred in the line of duty were justifiable.’ [[24]](#footnote-24)
		2. The African Policing Civilian Oversight Forum (APCOF) website, accessed on 15 August 2017, published the following undated information:

‘There are internal police investigatory mechanisms involving disciplinary procedures according to the Police Act.

‘The Police Act also establishes an Independent Complaints Commission whose powers include: to investigate any misconduct or offence allegedly committed by the Police; to investigate any death or injury in police custody or as a result of police action; and to investigate any complaints against police officers or against the Police Service. However this Commission has not yet been operationalized. It is envisaged that such a body will have more impact due to a structured legal and independent system of handling cases dealing with the police. The Malawi Human Rights Commission (MHRC) is constitutionally mandated to investigate violations by the police and to litigate on behalf of victims of police abuse. The Constitution also establishes the office of the Ombudsman which is mandated to prosecute any police officers who abuse their powers and compensate victims of police abuse.

‘The effectiveness of the MHRC is limited given its wide mandate to investigate human rights violations therefore it does not specialise on police abuse and neither does it prioritize complaints against the police only. The Ombudsman’s office is not able to deal with a high number of cases and has a backlog…The Constitution also makes provision of a Police Service Commission, which is responsible for police appointment, discipline and dismissals. Other oversight mechanisms include the Parliament, Courts, the Law Commission and Civil Society.’ [[25]](#footnote-25)

* + 1. The USSD ‘Country Reports on Human Rights Practices for 2016’ also stated: ‘Officers suspected of misconduct generally were transferred rather than investigated, and disciplined if found guilty. Authorities, however, prosecuted officers accused of involvement in serious crimes such as robbery, murder, or rape…’ [[26]](#footnote-26)
		2. A Zodiak Malawi (news media organisation) online report, ‘Police Reform Internal Affairs Unit - CHRR Commends’, dated 11 May 2016, stated:

‘Stories of the Malawi Police Service officer’s misconduct have been awash in the social networks and mainstream media. These include police involvement in criminal activities and abuse of human rights.

‘Malawi Police National Spokesperson Nicholas Gondwa assured that all this will be a thing of the past as the service is moving towards re-establishing its image.

‘“The Internal Affairs Unit will now be called the Professional Standards Unit. Among its discharged duties PSU office will be checking the behavior of its officers.

‘“PSU will also provide a platform to the public to anonymously report officers involved in criminal offences and any sort of human rights violations,” explained Gondwa.

‘He further said such officers will then be demoted or fired and even face prosecution…

‘Currently the Professional Standards Unit is in area 30 police headquarters in Lilongwe and all the 4 regions in the country.’ [[27]](#footnote-27)

* + 1. See also [Government human rights bodies](#_Government_human_rights).

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### Abuses by the police

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ stated:

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

‘Police arbitrarily shot and sometimes killed suspected criminals. There were several reported cases similar to the following example. On March 30, police shot and killed a fleeing robbery suspect in Ndirande, Blantyre.

 ‘Perpetrators of past abuses were occasionally punished, but investigations often were delayed, abandoned, or remained inconclusive. On October 5, the High Court convicted Police Constable Stewart Lobo of the 2011 murder of a protes during antigovernment demonstrations. Eight other officers arrested in connection with the incident remained free on bail awaiting trial at year’s end.’ [[28]](#footnote-28)

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ also stated: ‘The constitution and law prohibit such practices; however, police sometimes used excessive force and other unlawful practices. For example, on July 10, community members in Mpemba, Blantyre, protested the severe beating of Piyasoni Magombo inflicted by police during his arrest. Magombo died from injuries sustained during the beating.’ [[29]](#footnote-29)

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###  Malawi Defence Force

* + 1. The Defence Web, which provides information about African armed forces, accessed on 27 July 2017, stated:

‘The President is ultimately responsible for the Malawi Defence Force [MDF], which is tasked with upholding and defending the sovereignty, territorial integrity and constitutional order of the country against external threats. The Defence Force is also tasked with assisting the police when necessary and conducting peace support operations…In September 2011, the Ministry of Defence was abolished and the Malawi Defence Force brought under direct control of the Presidency, with the Minister of Internal Affairs and Public Security taking over this entity…The military is generally loyal to the government and this contributes to stability within the country.

‘The MDF is generally considered to be a professional and effective service, but is hampered by poor equipment serviceability, with some estimates putting equipment serviceability at 20%.’ [[30]](#footnote-30)

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### Corruption

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ stated:

‘Like other elements of government, the MDF and MPS were subject to investigation for corruption. In July 2015 the Anti-Corruption Bureau (ACB) arrested former army chief General Henry Odillo and his former deputy, Lieutenant Colonel Clement Kafuwa, on corruption charges in connection with contracts for military equipment that was never delivered. The two were arraigned at the High Court and released on bail. The trial began in October but had yet to conclude by year’s end.

‘The MDF and MPS cooperated with corruption investigations by the ACB but did not carry out their own internal investigations. Government mechanisms to investigate and punish abuse and corruption were only marginally effective due in large part to funding and human resource constraints.’ [[31]](#footnote-31)

* + 1. See also [Corruption](#_Corruption_1).

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## Judiciary

### Structure

* + 1. The Encyclopedia Britannica, accessed on 31 July 2017, stated: ‘[The judiciary](http://www.judiciary.mw/) is based upon the system prevailing in the British colonial era and consists of a Supreme Court of Appeal, a High Court, and subordinate courts. The Supreme Court of Appeal, made up of a chief justice and a minimum of three justices of appeal, is the highest court in the land and hears appeals from the High Court. The High Court has judicial authority over all civil and criminal cases.’ [[32]](#footnote-32)
		2. The UN Human Rights Council ‘Report of the Independent Expert on the enjoyment of human rights by persons with albinism on her mission to Malawi’ stated:

‘40. The Malawian court structure consists of the Supreme Court of Appeal, high courts and magistrate courts. There is a high court located in each of Malawi’s main cities. The lower courts in Malawi are the magistrates courts, which have jurisdiction over both criminal and civil cases. There are four categories of magistrate court in Malawi, presided over either by professional magistrates or by lay magistrates. In addition, Malawi has a traditional court system, which operates in rural areas and was formalized in 2011 by the Local Courts Act.’ [[33]](#footnote-33)

* + 1. CPIT was not able to identify the number of cases heard by the Malawi courts, the length of legal process or conviction rates in the sources consulted for this note. The [Malawi Legal Information Institute](https://www.malawilii.org/), however, maintains a database of Malawi caselaw from the upper courts - High Court and Supreme Court - going back to 1994, which provides an indication of the number, nature and sentencing of the cases heard.

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### Independence and effectiveness

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ stated:

‘The constitution and law provide for an independent judiciary, and the government generally respected judicial independence. The judicial system, however, was inefficient and handicapped by serious weaknesses, including poor recordkeeping; a shortage of judges, attorneys, and other trained personnel; heavy caseloads; corruption; and lack of resources. The slow-moving judicial system, including extensive delays due to motion practice (a three-step court order request), a low bar for granting injunctions, judge shopping, prosecutorial delay tactics, frequent recusals, and lawyers and witnesses not being present on trial dates, undermined the government’s ability to dispense justice…

‘The judiciary’s budgetary and administrative problems led to backlogs that effectively denied expeditious trials for most defendants and kept some defendants in pretrial detention for long time periods. Recruitment and retention of government attorneys remained a problem. MPS prosecutors with limited legal training prosecuted the majority of criminal cases. The Directorate of Public Prosecutions in the Ministry of Justice customarily tried high-profile cases and those involving the most serious offenses.’ [[34]](#footnote-34)

* + 1. The Freedom House ‘Freedom in the World 2016’ report, covering events that took place in 2015, noted that:

‘Judicial independence is generally respected. However, the overburdened and inefficient court system lacks resources, personnel, and training. A backlog of cases and commonly exorbitant bail terms mean that most defendants spend months or even years in pretrial detention. Poverty and a lack of state resources result in the vast majority of defendants navigating their cases without legal representation.’ [[35]](#footnote-35)

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###  Fair trial

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

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

‘Defendants are presumed innocent. The constitution and law provide for an accused to be informed of charges by a court within 48 hours of arrest, with free interpretation if necessary. Defendants have the right to be present at their trial, to have an attorney, and, if indigent, an attorney provided at state expense, but such assistance was usually limited to homicide cases. Defendants have the right to challenge prosecution or plaintiff evidence and witnesses, present their own witnesses and evidence, and access government-held evidence relevant to their cases. By law they may not be compelled to testify or confess guilt…The law extends the above rights to all persons.’ [[36]](#footnote-36)

* + 1. In its submission of February 2015 to the UN Human Rights Council, as part of the Universal Periodic Review, the Malawi government stated:

‘The Judiciary, in its endeavor to protect the Constitution and increase access to justice has taken several major steps. A Commercial Division of the High Court building is being constructed in Blantyre, Malawi’s commercial hub. Magistrate Court buildings have been constructed or rehabilitated in six districts across the country. The Judiciary plans to have at least 40 High Court Judges. There are currently 10 Justices of Appeal and 24 Judges of the High Court. Two Justices of Appeal and 10 Judges of the High Court were appointed in the period between 2012 and 2014. In 2014, 57 third grade magistrates were appointed to serve in rural areas.

‘The Judiciary in conjunction with the Directorate of Public Prosecutions is in the process of installing a case management system in all its Registries with the aim of increasing efficiency in the way the Judiciary handles criminal case files and reducing the backlog of cases in the courts. A similar version of the case management system was installed in the Commercial Division’s Blantyre Registry in 2012 with support from the Business Environment Strengthening Technical Assistance Project (BESTAP).’ [[37]](#footnote-37)

* + 1. However, the UN compilation for the review of Malawi as part of the UPR process, referencing an earlier Human Rights (HR) Committee report, observed:

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

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###  Death penalty

* + 1. The Malawi Human Rights Commission ‘Presentation on the Work of the Malawi Human Rights Commission on the Death Penalty’, presented at the 6th World International Congress on the Death Penalty, held in June 2016[[39]](#footnote-39), stated:

‘The death penalty remains part of the penal laws of Malawi. Both the Constitution and the Penal Code recognise the applicability of death penalty in certain cases as a lawful and acceptable punishment. Despite this and despite the Courts meting out death sentences in some capital offence cases, no execution of the death penalty has been carried out since 1993. It is generally accepted that Malawi has placed a de facto moratorium on the implementation of the death penalty…

‘The Penal Code (cap. 7.01) of the Laws of Malawi is the primary source of criminal law. Section 25 provides a list of all lawful punishments and includes the death penalty. Some capital offences such as treason and murder carry death as the maximum penalty. Prior to the 2007 Constitutional Court judgment on the constitutionality of the mandatory death penalty, any person found guilty of treason or murder was punishable by death without judicial discretion.’ [[40]](#footnote-40)

* + 1. The Amnesty International (AI) report, ‘Death Sentences and Executions 2016’, published in April 2017, described Malawi as one of those: ‘Countries that 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 last 10 years and are believed to have a policy or established practice of not carrying out executions.’ [[41]](#footnote-41)

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##  Corruption

###  Public perceptions

* + 1. Transparency International (TI), in its Corruption Perceptions Index (CPI) 2016, gave Malawi a score of 31. The TI website explained that: ‘Over two-thirds of the 176 countries and territories in this year's [2016] [CPI] index fall below the midpoint of our scale of 0 (highly corrupt) to 100 (very clean). The global average score is a paltry 43, indicating endemic corruption in a country's public sector.’ [[42]](#footnote-42)
		2. A Malawi ‘Nation’ report, ‘Corruption worsens’, dated 26 January 2017, stated:

‘As the Transparency International (TI) Corruption Perceptions Index (CPI) released yesterday indicates that corruption has worsened in Malawi since 2012, business captains have expressed worry that the trend would further impoverish Malawi…

‘The global corruption institution states that Malawi was on position 88 in 2012, but has gone down to 120. The situation is largely attributed to the massive plunder of public resources known as Cashgate which happened between 2012 and 2013 and reports of corruption in government since then…

‘Meanwhile, the Malawi Confederation of Chambers of Congress and Industry (MCCCI) has expressed worry over corruption’s tendency to chase away investors, resulting in unemployment in the country, especially among the youth…

‘Launching the Transparency International report yesterday, National Integrity Platform (NIP), a civil society anti-corruption initiative in Malawi said demonstrating political will to deal with corruption at all level[s] of leadership without bias as well as concluding Cashgate cases would improve the perceptions that Malawi is very corrupt.

‘Commenting on the CPI at a panel discussion after the launch of the report, political scientist and researcher Boniface Dulani observed that efforts to strengthen anti-corruption institutions such as the Anti-Corruption Bureau (ACB) since Cashgate have not been successful and, instead, confidence in the governance institution continues to go down.

‘“Corruption has become so normal, at all levels of society, such that it is a waste of time reporting a suspected corrupt practice. ACB has a huge vacancy of investigators and when they investigate, prosecution is selective,” he said.

‘Dulani further noted that the perceptions that corruption is on the rise were correct, going by the reports that there was political interference in the completion of investigations on suspected corruption at public institutions such as the Electricity Supply Corporation of Malawi (Escom).’ [[43]](#footnote-43)

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### Criminal penalties and convictions

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘The law provides criminal penalties for conviction of corruption by officials, but the government did not implement the law effectively. Officials sometimes engaged in corrupt practices with impunity. There was little criminal or professional accountability for those involved.

‘The government, in cooperation with donors, continued implementation of an action plan to pursue cases of corruption, review how the “Cashgate” corruption scandal occurred, and introduce internal controls and improved systems to prevent further occurrences. Progress on investigations and promised reforms was slow. The vice president headed a public-sector reform effort to address the factors that allowed corruption to thrive.

‘Corruption: The investigation and prosecution of approximately 70 individuals, primarily mid-level civil servants arrested in 2013 for involvement in the theft of approximately 20 billion MWK ($55 million at the time) through fraudulent transactions--the Cashgate corruption scandal--proceeded slowly. As of September, 12 cases resulted in convictions with prison sentences ranging from three to 11 years. At year’s end no high-level officials had been arrested or charged and prosecuted for Cashgate-related offenses. On May 5, the Anti-Corruption Bureau deputy director recused himself from serving as lead prosecutor on the state’s corruption case against former president Bakili Muluzi, leaving only junior ACB lawyers available to prosecute the case. Muluzi had been on trial since 2006 for graft totaling eight billion MWK ($11 million).’ [[44]](#footnote-44)

* + 1. The Freedom House ‘Freedom in the World 2016’ report, covering events that took place in 2015, noted:

‘Corruption is endemic in Malawi. The Anti-Corruption Bureau (ACB) has estimated that 30 percent of the annual budget is lost to corruption each year, and the true percentage may be much higher. The ACB, which is in charge of investigating and prosecuting official malfeasance, is considered to be competent but underfunded…

‘In September, Oswald Lutepo, a former PP senior official, was convicted on charges of money laundering and theft of 4.1 billion kwacha ($8.5 million), and received an 11-year sentence. Lutepo insisted that the corruption was carried out on behalf of former president Banda, a claim she disputes.

‘Although no criminal charges were brought against Banda in connection with the scandal, she left Malawi for a United Nations summit in 2014 and had yet to return to Malawi at the end of 2015.’ [[45]](#footnote-45)

* + 1. [See also Security forces – corruption](#_Corruption).

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## Civil society groups

###  Human rights groups

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted: ‘A variety of domestic and international human rights groups generally operated without government restriction, training civic educators, advocating changes to existing laws and cultural practices, and investigating and publishing their findings on human rights cases. Government officials were somewhat cooperative and responsive to their views.’ [[46]](#footnote-46)
		2. The International Centre for Not-for-Profit Law website, updated on 3 August 2017, provided the following information:

‘Civil society in Malawi encompasses non-governmental organizations (NGOs), faith based organizations, trade unions and other groups that have existed since before Malawi attained independence in 1964. However, prior to and soon after independence, the work of these groups remained largely developmental. The NGOs that promote human rights and work in advocacy emerged only at the dawn of multiparty democracy in 1994.

‘Nonetheless, civil society has been central to Malawi’s progress. NGOs have played an important role in furthering democracy and human rights, social and economic development, and nation-building. In October 2005, Andrew Galea Debono of the Commonwealth Human Rights Initiative noted that while it is true that many NGOs, the media, academics and many other community groups focus primarily on providing services to the community, experience has shown that they have also often been key facilitators of government-citizen dialogue as well as having an important monitoring role of government activities.

‘NGOs have also earned a reputation for playing a vital role in being the voices of the voiceless in Malawi and have helped to consolidate a democratic culture in the country since the institution of multi-party democracy in 1994 by providing checks and balances against governmental corruption. Their contributions also have been seen in areas such as health, education, and environment. Those in arts and culture have also played a critical role in safeguarding and preserving Malawi’s identity, while those in human rights have made strides in raising community awareness against negative cultural traditions and beliefs such as child marriages and witchcraft. However, some advances in deepening human rights in Malawi have at times received resistance from the citizenry, particularly on Gay, Lesbian, Bisexual, Transgender (LGBT) issues.

‘Due to the watchdog roles they play, NGOs have on many occasions turned out to be among the government’s fiercest critics, and at times government officials have labeled them as an “opposition” force.’ [[47]](#footnote-47)

* + 1. The Freedom House ‘Freedom in the World 2016’ report, covering events that took place in 2015, noted that: ‘Nongovernmental organizations (NGOs) generally operate without interference from the government. However, certain legal provisions regarding registration and fees for NGOs are considered onerous, and the government has been accused of harassing groups doing politically sensitive work.’ [[48]](#footnote-48)

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### Government human rights bodies

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘The MHRC [[Malawi Human Rights Commission](https://www.facebook.com/pg/HumanRightsCommissionofMalawi/about/?ref=page_internal)], an independent government-chartered institution, is mandated by the constitution to promote and protect human rights and investigate violations of human rights. Despite its independent leadership, resource shortfalls resulted in a backlog of cases, delayed production of reports, and limited investigation of human rights violations. The MHRC received 324 complaints of human rights violations through August.

‘The [Office of the Ombudsman](http://www.ombudsmanmalawi.org/) is mandated to investigate government officials responsible for human rights violations and other abuses. The ombudsman does not take legal action against government officials but may order administrative action to redress grievances and may recommend prosecution to the director of public prosecution. The office had 15 investigators. During the year it launched a website with regular updates on its activities.’ [[49]](#footnote-49)

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## Media and the internet

###  Freedom of the media

* + 1. The Freedom House ‘Freedom in the World 2016’ report, covering events that took place in 2015, noted that:

‘Freedom of the press is legally guaranteed and generally respected in practice. The independent media is often critical of the government, and although journalists have faced threats and harassment in the past, no serious instances of this were reported in 2015. However, in October, after receiving harsh criticism from media outlets concerning the large size of his delegation to the UN General Assembly, President Mutharika claimed that the press was acting irresponsibly and on behalf of the opposition. The incident prompted a rebuke from the Malawi chapter of the Media Institute of Southern Africa.

‘Libel remains both a criminal and civil offense. Mutharika has not yet signed the Declaration of Table Mountain, which calls on African governments to abolish criminal defamation laws, despite telling journalists and press freedom activists that he would consider doing so after a meeting with them in 2014.’ [[50]](#footnote-50)

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted that: ‘The constitution and law provide for freedom of speech and press, and the government generally respected these rights.’ [[51]](#footnote-51)
		2. See also [BBC ‘Malawi profile - Media](http://www.bbc.co.uk/news/world-africa-13864370)’, dated 16 June 2015.

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### Internet freedom

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted: ‘The government did not restrict or disrupt access to the internet or censor online content, and there were no reports that the government monitored private online communications without appropriate legal authority. Lack of infrastructure and the high cost of internet connections limited internet access.’ [[52]](#footnote-52)
		2. The Freedom House ‘Freedom on the Net 2016’ report, published in November 2016, stated:

‘Malawi, a densely populated country that suffers from widespread poverty, has one of the lowest rates of internet access in the world. According to the International Telecommunication Union (ITU), internet penetration stood at 9 percent in 2015, up from 6 percent in in 2014. Fixed broadband subscriptions are extremely rare. Mobile phone penetration is also low at 35 percent, compared to an average of 76.2 percent across the continent. A survey of 12,000 citizens between November 2014 and January 2015 published by Malawi’s National Statistics Office in January 2016 reported more positive data, with 85 percent of households surveyed owning a mobile device, and 30 percent of households using one to access the internet.’ [[53]](#footnote-53)

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## Women

###  Legal status, equal rights and discrimination

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted: ‘By law women have the same legal status and rights as men and may not be discriminated against based on gender or marital status, including in the workplace…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.’ [[54]](#footnote-54)
		2. The Social Institutions and Gender Index, undated, accessed on 27 July 2017, noted:

‘Sections 20 and 41 of the Constitution of Malawi uphold the principle of equal rights for men and women and prohibit any discrimination based on gender or marital status. The Republic of Malawi ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1987. Malawi signed the Optional Protocol in 2000, but has yet to proceed with ratification. It ratified the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa in 2005.

‘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.’ [[55]](#footnote-55)

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘Discrimination in employment and occupation occurred with respect to gender and disability…Despite the law against discrimination based on gender or marital status, discrimination against women was pervasive, and women did not have opportunities equal to those available to men. Women had significantly lower levels of literacy, education, and formal and nontraditional employment opportunities. Few women participated in the limited formal labor market, and those that did represented only a very small portion of managerial and administrative staff. Households headed by women were overrepresented in the lowest quarter of income distribution.’ [[56]](#footnote-56)

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###  Marriage, family life and inheritance

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

 ‘Women usually were at a disadvantage in marriage, family, and property rights; however, awareness of women’s legal rights continued to increase. Households headed by women were predominately in the lowest quarter of income distribution. More than half--52 percent--of full-time farmers were women, but they had limited access to agricultural extension services, training, and credit.

‘The law provides for a minimum level of child support, widows’ rights, and maternity leave; however, only women employed in the formal sector knew their rights and had access to the legal system, and thus benefited from these legal protections.’ [[57]](#footnote-57)

* + 1. The Social Institutions and Gender Index, undated, accessed on 31 July 2017, noted:

 ‘Marriage in Malawi can be entered into under common and customary laws; the later may be either patrilineal or matrilineal in nature. Matrilineal descent systems are the customary norm for a majority of the population, although the formal legal system is modelled on patrilineal English legislation. The central areas of the country, where much of the population lives, as well as most of the southern areas, are dominated by matrilineal norms, while the patrilineal system of marriage is practised in the northern regions, some central areas, and the Nsanje and Chikwawa districts in the south.’ [[58]](#footnote-58)

* + 1. The Social Institutions and Gender Index, undated, accessed on 31 July 2017, also noted:

‘In Malawi, under the constitution, husbands and wives share parental authority and have joint child custody rights…In the event of divorce, the custody of children is determined based on the age and in the best interests of the child. Women are allowed to initiate divorce under both customary and common law and there are no restrictions on the latter.

‘In 2011, the parliament passed the Deceased Estates (Wills, Inheritance and Protection Act) Bill, which provides widows and daughters equal inheritance rights and addresses the issue of widows being denied their inheritance upon the death of a spouse. The Act has however, been difficult to enforce, due to differing practices under both patrilineal and matrilineal systems, whereby inheritance notably passes exclusively to male heirs under the patrilineal system. In addition, customary land accounts for approximately 75% of the country’s total and high illiteracy rates among women hinders awareness of rights. The treatment of widows has, however, been noted as a particularly serious problem in Malawi…

‘In response, the new law 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, the 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.’ [[59]](#footnote-59)

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###  Access to land, resources and credit

* + 1. The Social Institutions and Gender Index, undated, accessed on 27 July 2017, noted:

‘Under Malawi law, men and women in Malawi have equal ownership rights to property, however under customary law, practices may vary. With specific regard to land, women’s access to the latter is often through the family head, who are usually men. In patrilineal societies, access to land is through a male. In matrilineal societies, the family head is frequently the maternal uncle. In such societies, men access land through their marriages unless the woman is taken to live in the man’s village. In both matrilineal and patrilineal societies, the husband is regarded as the key controller in the use of any land allocated to his family...The Government has also proposed moving away from the current land tenure system and instead moving towards a system of title holding which, it is hoped, would also increase access to lands, in that the latter could be used as collateral.

‘While legally, women have equal rights to own and access non-land assets, discriminatory practices limit the latter. More specifically, section 24 of the Constitution recognizes equal ownership rights for men and women, regardless of marital status. However, under customary law, such rights are closely linked to gendered roles and expectations, thus women tend to own less valuable property. For example, kitchen utensils belong to women whereas other property, such as land or cars, generally belongs to men. Even under matrilineal systems, men are also frequently considered to be the main controllers of property, even if they can only formally access the later through their wives.

‘While there are no legal restrictions on women’s access to financial services including credit, the government reports that women face difficulties due to the need for collateral and the high interest rates charged by microfinance institutions.’ [[60]](#footnote-60)

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###  Violence, rape and sexual assault

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘The penal code criminalizes rape with a maximum penalty if convicted of death. The Marriage, Divorce, and Family Relations Act enacted in 2015 explicitly introduced the concept of spousal rape, but the act does not prescribe specific penalties and only applies to legally separated spouses.

‘Spousal rape may be prosecuted under the rape provisions of the penal code. The government generally enforced the law effectively, and convicted rapists routinely received prison sentences. Data on the prevalence of rape or spousal rape, prosecutions, and convictions were unavailable; however, press reporting of rape and defilement arrests and convictions were an almost daily occurrence. Although the maximum penalty for conviction of rape is death or life imprisonment, the courts generally imposed fixed prison sentences. For cases of conviction of indecent assault on women and girls, the maximum penalty is 14 years in prison.

‘The Ministry of Gender, Children, Disability, and Social Welfare conducted public education campaigns to combat domestic violence and rape.

‘The law provides a maximum penalty of life imprisonment for conviction of domestic violence and recognizes that both men and women may be perpetrators as well as victims…Domestic violence, especially wife beating, was common, although 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. 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 victims and dealt with human rights and gender-based violence, but officers’ capacity to assist and document cases was limited.’ [[61]](#footnote-61)

* + 1. A ‘Voice of America’ report, ‘Stiffer Penalties Fail to Deter Domestic Violence in Malawi’, dated 15 August 2014, noted:

‘Incidents of violence against women continue to dominate media headlines in Malawi, despite an eight-year-old law that has stiffened penalties. Police officials say they handle such cases on a daily basis. Advocates blame causes ranging from lenient court sentences to cultural practices.

‘Malawi passed a domestic violence law in 2006, in an attempt to curb rampant incidents of violence against women and children. It imposed a maximum 14-year sentence on offenders.

‘But eight years later, domestic violence continues to dominate caseloads of the Malawi Police Service's Victim Support Unit. The cases include disfigurement and mutilation.

‘“Such cases are reported almost on daily basis. The minor ones are sorted out right away at the VSU [Victim Support Unit], while those with criminal element are referred to the court,” says Mable Nsefula, deputy national spokesperson for the Malawi Police…

‘She says between January and June this year, police handled about 6,900 cases of gender-based violence, most of them brought by wives against their husbands…

 ‘“Many women would come today that they have been beaten by their husbands but tomorrow, maybe many of them are threatened by relatives who may say “you see your husband has now been arrested who will support you..” while others just do voluntarily and they just say, “I am withdrawing the case,” she said.

‘David Odali, executive member of the steering committee of Men for Gender Equality Now, an advocacy group that sensitizes men to stop violence against women, says, “We are concerned that the incidences of violence against women, which we call gender based violence, continues to rise in the country despite our efforts…

‘“You will find that the magistrate’s court which has a jurisdiction to slap perpetrators up to [a maximum sentence] of 14 years sentence, can only give the perpetrator three years. We are not happy with such lenient sentences because they don’t deter potential perpetrators of the violence against women and girls,” he said.

‘However, Emma Kaliya with Malawi's Gender Coordinating Network says the number of reported cases of domestic violence does not mean they are increasing.’ [[62]](#footnote-62)

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## Children

###  Education

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted:

‘The government provided tuition-free primary education for all children. Education for children under age 18 is compulsory. Families were responsible for paying book fees and purchasing uniforms. Students from poor families had access to a public book fund. Many girls, especially in rural areas, were unable to complete primary education or transition to secondary education due to poverty, inaccessibility of schools or lack of capacity in schools, early and forced marriage, adolescent pregnancy, and cultural factors such as girls having a greater burden than boys of household responsibilities and parental preference to educate boys…The 2015-16 Demographic and Health Survey (DHS) found that 5 percent of men and 12 percent of women had no formal education.’ [[63]](#footnote-63)

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###  Violence and sexual abuse

* + 1. The USSD ‘Country Reports on Human Rights Practices for 2016’ noted:

‘Child abuse remained a serious problem. The press regularly reported cases of sexual abuse of children, including arrests for rape, incest, sodomy, and defilement. The 2014 Violence Against Children Survey found that one in five women and one in seven men ages 18 to 24 experienced at least one incident of sexual abuse prior to age 18. Two in five women and two in three men ages 18 to 24 experienced physical violence prior to age 18. Less than a quarter of individuals ages 18 to 24 knew of a place to seek help.’ [[64]](#footnote-64)

* + 1. The USSD ‘Country Reports on Human Rights Practices for 2016’ also noted:

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

‘The law prohibits child pornography and using a child for public entertainment of an immoral or harmful nature. The maximum penalty for conviction of engaging in child pornography is 14 years in prison, while those found guilty of procuring a child for public entertainment are liable to a fine of 100,000 MWK ($138) and imprisonment of seven years. The law was not effectively enforced.’ [[65]](#footnote-65)

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### Early marriage

* + 1. The USSD ‘Country Reports on Human Rights Practices for 2016’ noted:

‘The Marriage, Divorce, and Family Relations Act sets the minimum age for marriage at 18, but the constitution allows marriage at age 15 with parental consent. According to the UN Children’s Fund State of the World’s Children 2016 report, 9 percent of girls and women ages 15 to 49 were first married or in a union before age 15, and 46 percent were married or in a union before age 18. The minimum marital age was not widely enforced, and civic education on early marriage was carried out mainly by NGOs.’ [[66]](#footnote-66)

* + 1. A ‘Plan International’ article, ‘Malawi Changes Law to End Child Marriage, dated 14 February 2017, noted:

‘The amendment to fully outlaw child marriage in Malawi was voted through by the country's parliament on Tuesday 14 February. It removes a legal loophole which has allowed children between 15 and 18 to marry with parental consent…A campaign to totally outlaw the practice, partially driven by Malawian young people supported by children’s rights organisation Plan International, has now helped to secure a better future for millions of Malawian girls.’ [[67]](#footnote-67)

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### Female genital mutilation (FGM)

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted: ‘The law does not specifically prohibit FGM/C. According to press reports from 2011, some cases of FGM/C were prosecuted as unlawful wounding…A few small ethnic groups practiced FGM/C. In most cases FGM/C was performed on girls between ages 10 and 15.’ [[68]](#footnote-68)
		2. A ‘Malawi 24’ report, ‘Malawi in Support of Female Genital Mutilation’, dated 24 September 2015, stated:

‘[The] Malawi Government rejected a recommendation by the United Nations Human Rights Council that would have forced it to criminalize Female Genital Mutilation (FGM).

‘The revelations, made during a 2015 Universal Periodic review (UPR) dissemination workshop in Lilongwe, will likely affect the country’s position on its commitment to women’s rights…UPR is an exercise undertaken with support from the United Nation Human Rights Council which keeps track of human rights performances and abuses among member states.’ [[69]](#footnote-69)

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###  Registration of births

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted: ‘According to the most recent population census (2008), 16.6 percent of children under age 18 had a birth certificate. Compulsory universal birth registration, enacted in 2012, became effective in August 2015, and four hospitals initiated electronic birth registration and issuance of legal birth certificates. There were no reports of discrimination or denial of services due to lack of birth registration.’ [[70]](#footnote-70)
		2. Further information about the situation of children is available in reports submitted by the state, stakeholders and UN agencies to the [UN Committee on the Rights of the Child](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Countries.aspx?CountryCode=MWI&Lang=EN) as part of its periodic review of Malawi in 2015-2017.

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##  Citizenship and nationality

* + 1. The United States Office of Personnel Management Investigations Service ‘Citizenship Laws of the World’ report, published in March 2001, stated that:

‘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.

‘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 recognised. 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.’ [[71]](#footnote-71)

* + 1. The Citizenship Rights in Africa Initiative website, accessed on 27 July 2017, noted:

‘Nationality in Malawi is determined by the 1966 Citizenship Act as amended most recently in 1992. The 1994 Constitution also provides for every child to have the right to a nationality, and that citizenship shall not be arbitrarily deprived or denied.

‘From 1971 until 1992, the Citizenship Act included a provision that citizenship from birth was restricted to those who have at least one parent who was not only a citizen of Malawi but was also “a person of African race”. This provision was deleted in 1992. Malawi has preferential systems for registration as a citizen for those with a particular connection to Malawi, including stateless persons, with some conditions. Dual citizenship is not permitted, but there are proposals that this should be changed.’ [[72]](#footnote-72)

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##  Documentation

### National identity documents

* + 1. A ‘Channel Africa’ report, ‘Malawians start national identity registration’, dated 7 June 2017, stated:

‘Malawi has begun a process of ensuring that its citizens are registered so they have national identity cards.

‘The project is carried out by the national registration bureau under the Ministry of Home Affairs since this June until December 2017.

‘National Identity Cards will be issued to all citizens aged 16 years and above. Malawian children under the age of 16 will also be registered once their parents and guardians take them to registration centres upon the start of the project...

 ‘The cards will allow Malawians have access to free primary education, social services like health care, and to meet financial requirements such as getting a bank loan.

‘To register for the National ID, Malawi citizens must provide proof of their citizenship by providing valid identification documents such as licences, birth certificates, voter IDs and if one does not have these chiefs have to certain his citizenship.

‘Government started the first ever mass registration process last year with 5 000 people. The project was dubbed a milestone for the government as Malawians were subjected to the use of driving licenses, passports and voter registration certificates as proof of their citizenship wherever needed.

‘Malawi is the only country in SADC [Southern Africa Development Community] without such IDs for its citizens. Malawi has a population of 16 million people. The [National Registration Bureau](http://www.nrb.gov.mw/index.php/services/national-registration) was established in 2007 to oversee the process of issuing national identity documents.’ [[73]](#footnote-73)

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### Birth and death certificates

* + 1. A ‘Face of Malawi’ article, ‘Govt Starts Issuing Universal, Compulsory Birth & Death Registration in Three Districs,’ dated 6 August 2015, stated:

‘The Malawi government through the Ministry of Home Affairs and Internal Security has disclosed that the [National Registration Bureau](http://www.nrb.gov.mw/index.php/services/national-registration) (NRB) has commenced the universal and compulsory registration and issuance of birth and death certificates in the country…The National Registration Act of 2010 mandates the NRB to implement, coordinate, manage and maintain the National Registration and Identification System (NRIS) in Malawi.’ [[74]](#footnote-74)

* + 1. See also United States State Department Bureau of Consular Affairs ‘[Malawi Reciprocity Schedule’](https://travel.state.gov/content/visas/en/fees/reciprocity-by-country/MI.html).
		2. See also [Security forces – corruption](#_Corruption) and [Corruption](#_Corruption_1).

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## Freedom of movement

* + 1. The USSD ‘Country Report on Human Rights Practices for 2016’ noted: ‘The constitution and law provide for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.’ [[75]](#footnote-75)
		2. The Freedom House ‘Freedom in the World 2016’ report, covering events that took place in 2015, stated: ‘The constitution establishes freedom of internal movement and foreign travel, which are generally respected in practice.’ [[76]](#footnote-76)

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## Healthcare services

* + 1. The Malawi Project website, accessed on 24 August 2017, provided the following undated information:

‘The government run hospital system in Malawi is designed in a three-tiered network of interlocking medical facilities. The third tier is a large network of rural hospitals woven throughout the country. They serve as the first line of defense in the war against disease. Their services are free and they are often the only medical facility that many village people will see in their lifetimes. Most medical cases enter the system through the rural hospital nearest their home. There are almost no doctors and few nurses at any of the rural hospitals. Although many facilities have antiquated surgical equipment, there are no surgeons on staff to carry out even minor surgery, so these units remain out of service. Supplies to the rural hospitals are often not available. The overall system is designed to fill the needs of the top tier first, then to the second tier and finally to the rural hospitals on the third tier. The problem comes when there are only enough supplies for the top tier, and few for the other levels. When this happens the third tier receives no supplies at all…When its supplies run out the word spreads quickly through the catchment area, and the village people stop coming to the hospitals…

‘According to the government plan when a medical case is too critical for the rural hospital to handle, the system calls for the patient to be transferred to the district hospital…This plan calls for the district hospitals to perform more involved surgery and handle the more difficult cases, but there are no surgeons, no doctors and few nurses even at the district level. Here, as with the situation at the rural level, the supplies run short. The system that is designed to feed from the top fails when there is not enough medicine or resources for even the top tier of the medical establishment.

‘The top tier is designed for patients to be referred to facilities that have more advanced technology, resources, medicine and medical personnel. Also when problems cannot be resolved at either of the two lower levels. These top tier hospitals are in the major urban areas. However, as with the other two tiers the shortage of supplies and medical personnel is overwhelming and fails to fill the needs…Even at the top tier, as with the other two, the equipment is broken and in need of repair or even non-existent, the medical staff personnel works long hours with little protection from exposure to disease, and the supplies and medicines that are required to save lives are often not available. For the entire nation and for all three tiers of medical care there are registered less than 100 doctors and 3,000 nurses. The problem is compounded with the fact that nearly half of the graduating doctors and nurses from the Malawi Medical School system leave the country to practice.’ [[77]](#footnote-77)

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# Version control and contacts

Contacts

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

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

Clearance

Below is information on when this note was cleared:

* version **1.0**
* valid from **21 December 2017**

Changes from last version of this note

First version of CPIN.

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