



MALAWI

CAPITAL: Lilongwe
POPULATION: 14.2 million
GNI PER CAPITA (PPP): \$830

SCORES	2006	2010
ACCOUNTABILITY AND PUBLIC VOICE:	4.75	4.47
CIVIL LIBERTIES:	4.50	4.30
RULE OF LAW:	4.34	4.13
ANTICORRUPTION AND TRANSPARENCY:	3.52	3.44

(scores are based on a scale of 0 to 7, with 0 representing weakest and 7 representing strongest performance)

Peter VonDoepp

INTRODUCTION

For the first three decades after Malawi gained independence in 1964, “President for Life” Kamuzu Banda and his Malawi Congress Party (MCP) governed the country under a repressive one-party dictatorship. In late 1992, however, a full-fledged democracy movement emerged. Strengthened by pressure from foreign donors on the government, the movement forced Banda to hold a referendum on the one-party system in June 1993. A majority of Malawians voted in favor of opening up the political arena, leading to multiparty elections in May 1994 that formalized the country’s democratic transition.

Bakili Muluzi and the United Democratic Front (UDF) defeated Banda and the MCP in the 1994 balloting. Muluzi and the UDF drew most of their support from the southern part of the country, while the MCP dominated the central region. A third party, the Alliance for Democracy (AFORD), headed by Chakufwa Chihana, garnered its backing from the least populous northern areas. AFORD’s Chihana and the MCP’s Gwanda Chakuamba formed an alliance prior to the 1999 elections hoping to unseat Muluzi, but the effort ultimately failed, and Muluzi and the UDF maintained power.

Toward the middle of his second term, Muluzi embarked on an effort to amend the constitution so that he might stand for a third presidential period. The campaign to amend the constitution consumed Malawian politics in 2001 and 2002. A protracted struggle over the issue came to a close in January 2003,

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when it became clear to Muluzi that he did not have sufficient votes in the parliament to pass the desired amendment. Unable to run again, Muluzi chose Bingu wa Mutharika as candidate for the UDF ticket. Muluzi retained leadership of the UDF and provided substantial backing for Mutharika during the 2004 presidential campaign. Mutharika's primary challengers were John Tembo of the MCP and Gwanda Chakuamba, who headed an opposition alliance of seven parties. In hotly contested polls marred by a number of irregularities, Mutharika won the presidency.

Although many observers suspected Mutharika would remain subservient to Muluzi, relations between the two soured within weeks of the elections. The split was largely over Mutharika's desire to chart a new course in governing the country, including a highly visible anticorruption campaign that seemed to target Muluzi and his aides. Within a year, Mutharika left the UDF, forming a new party, the Democratic People's Party (DPP). In the political machinations that followed, the UDF became the dominant partner of an opposition bloc that held a majority in parliament and also included the MCP.

The falling out between Mutharika, the UDF, and Muluzi set the stage for the contentious dynamics that characterized Malawian politics during Mutharika's first term. Paralyzing conflict between the legislature and the executive, for example, essentially reflected a struggle between Muluzi and Mutharika supporters. Within the executive branch, Mutharika came into conflict with his vice president, Cassim Chilumpha, who refused to leave the UDF when Mutharika did. Chilumpha was later accused of plotting to assassinate Mutharika, leading to a prolonged trial that was ongoing as of mid-2009.

Tensions heightened further when Muluzi decided to run against Mutharika in the 2009 presidential contest. As he prepared his campaign, Muluzi was arrested, first on treason charges in May 2008 and then on corruption charges in February 2009. Muluzi had previously been arrested in 2006 on corruption charges, but the case was discontinued. Mutharika also allegedly ordered a police officer to "shake up" the former president in 2007.

The possibility of a showdown between Muluzi and Mutharika in the May 2009 poll ended in March, when the Malawi Electoral Commission (MEC) rejected Muluzi's candidacy on the grounds that the two-term constitutional limit proscribed him from standing again. A subsequent court ruling upheld the MEC decision. In response, Muluzi and the UDF formed an alliance with MCP head John Tembo, backing his presidential candidacy and creating a formidable bloc to compete with Mutharika. Benefiting considerably from control over state resources and government-run media, Mutharika ran a highly effective cross-regional campaign focused on his administration's record of providing public goods and economic growth. Mutharika ultimately emerged victorious, bucking long-standing regional voting patterns; the MCP's Tembo came in second. In concurrent legislative elections, Mutharika's DPP won a total of 113 seats out of 193, while the MCP took 26 and the UDF just 17. Independent

candidates and smaller parties gained the remaining seats. The elections, while characterized by an uneven playing field in favor of the incumbent, were arguably the freest and fairest since multiparty polls were first held in 1994.

Economically, Malawi remains one of the poorest countries on the globe. According to the World Bank, per capita income stands at approximately US\$160,¹ while in 2009 Malawi ranked 160th out of 179 countries on the United Nations Human Development Index.² Growth rates, economic management, and relations with donors improved considerably during Mutharika's first term, however. From 2006 to 2008 Malawi achieved growth rates between 5.8 and 9.7 percent,³ while in 2007 inflation declined to its lowest level in a decade. In 2006, Malawi was approved for relief under the Heavily Indebted Poor Countries (HIPC) program, allowing it to receive over US\$3 billion in debt relief. In December 2007, the U.S. Millennium Challenge Corporation (MCC) initiative granted Malawi eligibility status to receive financial support. In late 2008, the International Monetary Fund (IMF) approved a US\$77.2 million Exogenous Shocks Facility for Malawi, making it the first country to receive funds under the program.

ACCOUNTABILITY AND PUBLIC VOICE

4.47

FREE AND FAIR ELECTORAL LAWS AND ELECTIONS	4.25
EFFECTIVE AND ACCOUNTABLE GOVERNMENT	4.50
CIVIC ENGAGEMENT AND CIVIC MONITORING	5.00
MEDIA INDEPENDENCE AND FREEDOM OF EXPRESSION	4.14

Elections in Malawi typically produce periods of heightened political tension. Violence between party operatives and by police has accompanied campaigning. Government institutions such as publicly owned media outlets and the MEC have been repeatedly accused of progovernment bias. Polling has often been marred by irregularities, frequently generating legal challenges in the aftermath of the contests. The 2009 elections represented a positive gain for Malawi as such problems were less acute compared to previous polls.

The MEC is the body primarily responsible for administering elections, including being the first instance authority to adjudicate election petitions and disputes between parties. The Judicial Service Commission (JSC) nominates a judge to chair the MEC, whose appointment the president then confirms. The president subsequently appoints other MEC members, numbering no fewer than six, in consultation with the leaders of political parties represented in the parliament.⁴ The MEC's impartiality and legitimacy was questioned in advance of the 2009 contests, largely due to alleged flaws in the appointment process in 2007, when the opposition claimed that the president failed to engage in legally required consultations prior to appointing additional commissioners to the body. A subsequent legal challenge was decided in favor of the government.

Despite the MEC's negative image among key stakeholders in the wake of these developments, as well as its limited capacity, international observers concluded that it succeeded in meeting the "operational needs" of the election with sufficient transparency.⁵

Election laws require public media to provide equal news coverage to all parties. In past elections, this condition has been violated and become the subject of legal challenges. Ahead of the 2009 contests, government-controlled media outlets were manifestly and egregiously biased in favor of the incumbent. At the same time, the private outlet controlled by the opposition openly favored Mutharika's challengers. Other broadcasting entities offered more balanced coverage.⁶

Under election laws, political parties that received at least 10 percent of the vote in previous parliamentary polls are entitled to public funding. In terms of private funding, no limits are placed on the amount a candidate may raise or spend or on the sources from which funds may be received. Neither do provisions exist requiring disclosure of donations or spending amounts.⁷ During the 2009 campaign, some observers raised concerns over the sources of campaign funds and pattern of lavish spending by the incumbent.

Despite such concerns, international and domestic observers generally applauded the fairness of the 2009 contests. Prior to the elections, a voter registration drive produced a new voters' roll. Inspection of the registry revealed a number of anomalies, however, only some of which were corrected prior to the polls. High levels of freedom of movement and assembly generally characterized campaigning. Although isolated instances of violence erupted between party supporters during the campaigning period,⁸ polling day was peaceful. Additional irregularities occurred in parliamentary races, including mistakes and accusations of manipulation during the vote tally. This led several candidates to file legal challenges after results were announced.

In 2005, the government dissolved local assemblies, and most observers expected new elections to be held later in the year.⁹ The government has failed to conduct these elections, however, claiming in 2006 that it could not afford to finance them.¹⁰ Civil society groups and international donors have since raised concerns that the absence of these assemblies and councils has weakened local governance and accountability.¹¹

Malawi's constitution provides for the separation of powers, and in practice the system of interbranch checks and balances has operated effectively in the country. The courts have served as an important curb on elected authorities. The executive and legislative branches have also checked one another's power, especially between 2005 and 2009, when the National Assembly came under the control of President Mutharika's opponents.

The opposition's control over the parliament, however, has also undermined effective governance and political stability. For most of the time between 2006 and 2008, the president's DPP party controlled between 75 and 85 seats in the 193-seat legislature. The opposition UDF and MCP together held

approximately 90 seats, with independent candidates and smaller parties holding the remainder. Throughout the period, the parliamentary opposition consistently attempted to invoke Section 65 of the constitution, which requires the speaker of the house to declare vacant the seats of parliamentarians who switch parties subsequent to being elected. Given that Mutharika formed the DPP only after winning the election as a UDF candidate, the entire DPP caucus in parliament ostensibly fit those conditions. Enforcement of the provision would thus have undermined Mutharika's support in parliament and strengthened the opposition, facilitating their plans to impeach the president. The matter was tied up in the courts until 2007, when a Supreme Court ruling upheld Section 65. Subsequently, Mutharika used a variety of techniques to forestall the speaker's enactment of the provision. For a time during 2008, the president avoided calling the legislature into session altogether for fear the opposition would invoke Section 65. This generated concerns among civil society groups, who condemned the move as dictatorial and bad for democratic governance.¹² When parliament was eventually called into session, the opposition first boycotted the proceedings and then derailed any legislative business that did not pertain to Section 65.

These machinations undermined the functioning of the legislature and caused severe delays in appointments to key posts and the passage of important legislation. For example, in 2006, 2007, and 2008, passage of the budget was delayed because of the opposition's desire to devote all parliamentary time to the Section 65 issue, while the president sought opposing priorities. In addition to legislative paralysis, the stalemate led to circumstances in which the judiciary was asked to adjudicate politically divisive cases, placing it in the political crossfire and causing delays in its handling of other important cases.¹³ The dominance of the DPP in the legislature following the 2009 contests, however, has for now obviated this problem, raising hopes of smoother policy making in coming years.

The 1995 constitution established several oversight institutions designed to enhance government transparency and accountability. The most prominent such bodies are the Anti-Corruption Bureau, the Human Rights Commission, the Law Commission, and the Ombudsman. Several of these institutions played visible roles before and during Mutharika's first term by issuing reports, conducting audits, and investigating alleged abuses by officials. They have also faced serious challenges, however. Under Mutharika's presidency, a lack of funding and staff has remained a significant problem.¹⁴ Government interference in personnel and other decisions has also hindered their ability to operate with full independence and effectiveness. For example, in 2007, the president removed the head of the Law Commission, and the position then remained vacant for almost a year.

Malawi's constitution vests authority over civil service personnel decisions with a semiautonomous Civil Service Commission in an effort to insulate

those in the state bureaucracy from political influence. In practice, however, the commission has historically been relatively weak and the civil service has been the target of interference.¹⁵ Under the Mutharika administration, concerns about the integrity and quality of the civil service have continued. For much of Mutharika's first term, only 8 of the 12 spots on the Civil Service Commission were filled; among the positions left vacant were an acting chair and deputy chair.¹⁶ In addition, Mutharika asked for the retirement or dismissal of a considerable number of high-ranking civil servants.¹⁷ In 2006, the parliamentary Public Accounts Committee criticized the administration for frequently transferring secretaries and senior officers within the civil service.¹⁸ The opposition press has also accused Mutharika of favoring allies and individuals from his home region in appointments.¹⁹

Malawi's civil society has played an important role in political life since the transition to democratic rule. The number and vibrancy of key civic organizations has further grown in recent years, and a variety of groups have actively commented on legislation, policy, and broader political developments. These include many churches, additional faith-based groups such as the Public Affairs Committee (an interdenominational organization), the law society, women's organizations, and a number of human rights and advocacy groups. These organizations employ a wide range of strategies in an effort to influence policy making, including consulting with politicians, disseminating research on policy issues, organizing public awareness campaigns, and litigating public interest cases. Several groups have played a leading role in directing public attention to issues such as corruption, judicial independence, development priorities, and gender inequality. Nongovernmental organizations (NGOs) collectively pressed President Mutharika in 2008 to call parliament into session and contributed to monitoring the 2009 elections.

NGOs are required to register with the government. The 2002 Non-Governmental Organization Act established a 10-member NGO board to register and regulate NGO activities. The board is appointed by the government in consultation with the autonomous Council for Non-Governmental Organizations in Malawi. To register as an NGO, an organization must have at least two Malawian citizens serving as directors or trustees, provide a plan of activities and sources of funding, and pledge not to engage in partisan politics. NGOs must provide audited accounts and a description of activities to the board on an annual basis. Thus far, this body has not been used to control or restrict NGO activities.²⁰ However, the registration fee, at approximately US\$300 in 2007, can be potentially prohibitive,²¹ as can the cost of complying with government reporting regulations. Donors and funders of NGOs and other civic organizations have remained free from state interference.

Malawi's Bill of Rights guarantees freedom of expression, freedom of the press, and freedom of opinion. In practice, Malawi enjoys a relatively free print media, including a variety of outlets offering diverse opinions. Independent

newspapers and radio stations have played an increasingly important role in recent years. As of 2008, 11 independent newspapers were available, the majority privately owned, including two dailies, one tri-weekly, seven weeklies, and one monthly.²² Approximately 20 radio stations and 2 television stations operate in the country, one of them a religious station with limited broadcast reach. The status of the government-controlled MBC and TV Malawi, the country's dominant outlets, has been particularly contentious. Charging that the entities were biased in favor of the government, the opposition-controlled parliament cut off their funding in 2007 and 2008, forcing them to rely on other sources. Broadcasts from these outlets subsequently took on a strongly progovernment stance ahead of the 2009 elections.

Broadcast media are regulated by MACRA (Malawi Communications Regulatory Authority), which has the authority to issue licenses and ensure compliance with broadcast regulations.²³ The executive branch appoints the board of MACRA, and the agency has been accused of political bias and inappropriate interference with the media.²⁴ In 2007, for example, MACRA used its authority to prevent a private television station owned by Muluzi from broadcasting and confiscated its equipment.

While most media outlets operate without substantial interference, those associated with the political opposition—in particular Joy Radio—have been the target of government harassment and censorship efforts. In January 2007, for example, MACRA threatened Joy Radio with punitive action after it aired an unfavorable recording of the president. Shortly afterward, the information minister directed the agency to bar all private radio stations from airing live broadcasts without government permission. The targets of the action were stations that had been covering the rallies of former president Muluzi.²⁵ In 2008, immigration authorities raided Joy Radio's facilities and threatened to deport its manager. Later, MACRA revoked the outlet's broadcast license, although a court order shortly thereafter enabled it to return to the airwaves. During the May 2009 elections, the station was once again briefly shut down for allegedly broadcasting a political message in violation of laws forbidding such programming immediately prior to polling.

Libel and defamation remain criminal offenses, punishable by two years imprisonment, posing a threat to freedom of expression. Several newspapers have been confronted with defamation and libel lawsuits after publishing accusations of corruption by government figures. In May 2006, for example, three journalists from the *Chronicle* newspaper were arrested on criminal libel charges for publishing a story that implicated a former government official in a theft case. That same month, two newsmen were charged with criminal libel for reporting that the minister of health was involved in improper activities. Such legal harassment has hurt independent news outlets financially and, according to some observers, hampered investigative journalism.²⁶ Reporters have also faced other forms of harassment. In February 2008, police arrested a journalist who

reported allegations that the government had planned to rig the 2009 elections. Occasionally, media workers have faced physical intimidation at the hands of state and opposition actors.²⁷ There are no restrictions on internet use, although it was accessed by less than 1 percent of the population as of mid-2009.²⁸

CIVIL LIBERTIES

4.30

PROTECTION FROM STATE TERROR, UNJUSTIFIED IMPRISONMENT, AND TORTURE	3.25
GENDER EQUITY	3.67
RIGHTS OF ETHNIC, RELIGIOUS, AND OTHER DISTINCT GROUPS	4.75
FREEDOM OF CONSCIENCE AND BELIEF	5.33
FREEDOM OF ASSOCIATION AND ASSEMBLY	4.50

Malawi's constitution protects against torture and other forms of physical violence. Nonetheless, police are known to use excessive force against prisoners and suspects in custody, as international and local human rights monitors have documented in multiple cases. In 2006, the governmental Malawi Human Rights Commission (MHRC) issued a report indicating that police frequently subjected suspects to torture and other forms of abuse in the course of investigations.²⁹ While some police officers accused of torture have been investigated and arrested, few have ultimately been convicted.³⁰ Several officers have also been held responsible for the deaths of individuals who died either in custody or due to other police actions.³¹

By all accounts, prison conditions in Malawi remain deplorable. Characterized by overcrowding, poor sanitation, inadequate diet, and disease, the state of prison facilities has garnered condemnation from local and international actors.³² Acknowledging these problems, the Malawi prison service has claimed that the primary cause is inadequate funding.³³ In 2007, the Southern Africa Litigation Centre (SALC) requested that the African Commission for Human and Peoples' Rights send the Special Rapporteur for Prisons and Conditions of Detention in Africa to investigate the appalling conditions in the country.³⁴

The government has been accused of using politically motivated arrests to intimidate its opponents. In 2006, for instance, police arrested and charged Mutharika's vice president and political opponent, Cassim Chilumpha, with treason. Two years later, several other opposition politicians, including former president Muluzi and former security officials, were arrested for allegedly plotting to overthrow the government. All the security officials were cleared of wrongdoing, while Muluzi was never formally charged. Two other opposition politicians were charged (and later convicted) with inciting violence for comments made at an opposition party rally in March 2009.³⁵

The constitution protects against arbitrary arrest and unlawful detention. However, due to a backlog of cases, extreme delays in bringing suspects to trial

remain common. Pretrial detainees are estimated to comprise 17 percent of the prison population. A recent study revealed that 321 homicide suspects have been awaiting trial for two years or longer.³⁶

Research conducted in 2002 indicated that over 40 percent of Malawians had been the victim of a crime during the previous year, though most of these involved theft of crops or livestock.³⁷ While crime remains a problem in Malawi, over the past five years, public security has generally improved, partly due to increased law enforcement efforts.³⁸

Section 41 of the constitution maintains that citizens have the right to effective remedy by a court of law or tribunal for acts violating their rights and freedoms. Several institutions, most notably the ombudsman and the MHRC, are tasked with facilitating citizens' access to justice and ability to seek redress for rights violations committed by state authorities. At a time of political stalemate, the ombudsman has remained one of the strongest and best functioning accountability institutions in Malawi,³⁹ especially with respect to addressing the rights of civil servants. According to a 2007 report, the Office of the Ombudsman opens on average 500–600 cases a year, though limited resources have contributed to a substantial backlog of cases.⁴⁰ The MHRC has been the most active institution in examining abuses by police. In recent years, it has undertaken investigations of alleged abuses of power by the administration and state institutions, issuing reports and statements condemnatory of both. However, its impact has been limited because its mandate only includes investigatory powers, without the authority to punish officials. Moreover, it lacks a widespread presence throughout the country. Therefore, access to redress generally remains a serious problem in Malawi.⁴¹

Despite constitutional and other legal protections, women remain unequal citizens in Malawi and are subject to discrimination and violence. In particular, Malawian society is plagued by severe inequalities in the distribution of educational and economic resources, high levels of domestic abuse, sexual assault and harassment in schools and professional settings, customary practices and laws that allow the dispossession of property when husbands die, and underrepresentation in positions of power at the state.⁴² Abusive practices against girls, including forced marriages, the selling of girls to pay off debts, and the secret initiation of girls into their future adult roles through forced sex with older men remain widespread.

The government has taken several steps to address these problems. Notably, under the Mutharika administration, the government has more actively documented progress toward implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women, to which Malawi is a signatory.⁴³ In addition, in April 2006, the parliament enacted legislation providing a maximum penalty of life imprisonment for perpetrators of domestic violence. Women's rights advocates have since criticized the weak implementation of the law.⁴⁴ An official commission on gender-related laws has put

forward several other legislative proposals dealing with gender inequities,⁴⁵ but actual legislation on these matters has stalled. Among the commission's proposals were a deceased estates bill seeking to repeal discriminatory laws regarding inheritance and a marriage, as well as a divorce and family relations bill seeking to provide equal rights to marriage partners.⁴⁶ Women also suffer from limited access to legal resources, a situation exacerbated by the weakness of the Legal Aid Department.⁴⁷

A 2008 study found that 500–1,500 women and children were trafficked within the country each year. Some observers attributed this to penalties being too lenient to significantly deter traffickers. Despite a government program to protect vulnerable children, the U.S. State Department reported in 2009 that there had been no reportable progress on the development of a nationwide, interministerial plan to identify the extent of trafficking and possible policies to effectively address the phenomenon.⁴⁸

Malawi is a multiethnic, diverse society in which nine different ethnic groups comprise most of the population. In terms of religion, Protestants represent approximately 55 percent of the population, with Catholics and Muslims each constituting an estimated 20 percent. The rights of religious and ethnic minorities are generally respected and relations between different groups remain largely amicable. Nonetheless, Muslims have complained about discrimination in state employment. Moreover, during the 2009 election campaign, several government and ruling party figures directed hostile rhetoric toward Muslim organizations and politicians, making derogatory comments about Islam.⁴⁹

Section 13 of the constitution requires the government to provide the disabled with access to public spaces, fair employment opportunities, and full participation in all spheres of society. The Ministry of Social Development and Persons with Disabilities was established in 1998 to take charge of all government matters pertaining to persons with disabilities. The Employment Act of 2000 prohibits discrimination against the disabled in matters of employment. However, Malawi lacks a comprehensive law governing discrimination against persons with disabilities in other spheres. Furthermore, a lack of resources has prevented government from effectively implementing the legal rights granted to the disabled, including access to educational opportunities.⁵⁰ Societal attitudes toward the disabled remain problematic.⁵¹

The government has also undertaken efforts to address the problem of discrimination against people living with HIV/AIDS. The disease is reportedly the leading cause of death among adults in Malawi; almost 1 million people out of a population of 14 million were living with HIV as of the end of 2007.⁵² Malawi's state-run broadcaster has been applauded in the region for effectively challenging deeply-held stereotypes about persons with HIV and AIDS.⁵³ Legislation drafted by the Law Commission specifically prohibits and criminalizes discrimination against persons with HIV. However, other provisions of the law, such as the criminalization of "deliberate or negligent transmission" of the disease, have generated concerns from local and international human rights groups.⁵⁴

Malawi's constitution protects freedom of assembly and association. While the government has generally respected associational rights, it has restricted freedom of assembly. On several occasions in recent years, the government has prevented opposition parties from holding rallies, using military and police personnel to forcibly disband them. In May 2008, police used tear gas and live ammunition to disperse crowds that gathered to support Muluzi when he was arrested on treason charges. Police also halted pro-Muluzi rallies in June and August of that year. In both cases, police eventually relented and allowed the gatherings to take place in the wake of court rulings and threats of legal action by the opposition.⁵⁵ Police also blocked civil society marches in 2006 and August 2008.⁵⁶

Workers' rights to organize labor unions are legally protected, with the exception of army personnel and police. Unions are required to register with the Registrar of Trade Unions and registration is normally granted.⁵⁷ Although union membership has traditionally been low in Malawi, a 2008 report indicated that both the number of unions and overall union membership have been increasing.⁵⁸ While the right to strike is legally enshrined, workers may strike only after settlement procedures have been established and mediation or conciliation efforts have failed; the right of workers in "essential services" to strike is more circumscribed. Some workers who have been involved in strikes have faced government harassment.

RULE OF LAW

4.13

INDEPENDENT JUDICIARY	3.80
PRIMACY OF RULE OF LAW IN CIVIL AND CRIMINAL MATTERS	3.80
ACCOUNTABILITY OF SECURITY FORCES AND MILITARY TO CIVILIAN AUTHORITIES	4.25
PROTECTION OF PROPERTY RIGHTS	4.67

The Supreme Court of Appeal represents the apex of Malawi's court system. Beneath it is the High Court, which stands above lower courts dispersed throughout the country. The president appoints the chief justice on the approval of two-thirds of the National Assembly and other High and Supreme Court justices on the recommendation of the Judicial Service Commission. The latter body includes the chief justice and four other members.

In recent years, the judiciary has played an important role in the political system, distinguishing itself for relative competence and independent decision making. During Mutharika's time in office, the courts have displayed a willingness to render decisions against the executive, at times generating substantial setbacks for the president. For example, in 2006 the High Court, sitting as a Constitutional Court, declared Section 65 constitutional and ruled that the speaker of parliament could declare vacant the seats of legislators who had switched to President Mutharika's party. The Supreme Court later upheld the decision as well.

As the judiciary has undertaken such bold decisions, it has faced increasing harassment and interference from the government, mostly in the form of verbal badgering and threats to individual judges. In 2007, the president and government officials repeatedly criticized the judiciary and accused it of improprieties. The following year, a government minister publicly expressed disapproval of two Supreme Court justices. In August 2007, police raided the home of a High Court judge—allegedly as part of a corruption probe—only hours after he had ruled in favor of the opposition in a key court case. The government also apparently ignored a court injunction when it dispersed an opposition party rally in April 2007.

By law, those accused of crimes have the right to a public trial and are assumed innocent until proven guilty. The law further specifies that defendants have the right to present and challenge evidence and witnesses, the right to appeal, and the right to be represented by an attorney of their choice. If indigent, they are entitled to counsel at the state's expense. The court system, however, faces severe capacity problems that lead to effective denial of timely trials for the accused.⁵⁹ The Department of Public Prosecutions in 2008 had 13 prosecuting attorneys, three fewer than in 2007. Retention of government attorneys remains a problem.⁶⁰

The Office of the Director of Public Prosecutions (DPP) holds the power to prosecute all criminal cases in the country. However, the office is severely limited by lack of resources and qualified staff.⁶¹ Moreover, the executive has been accused of interfering with the agency, most notably in 2006 when the then DPP was unconstitutionally removed from office.⁶² The position subsequently remained vacant for four months. Concerns have also emerged about the potential for interference from the attorney general, who possesses the authority to direct activities within the DPP.⁶³

Constitutionally, the police force is established as an organ independent of the executive and is required to exercise its powers and duties impartially. Moreover, the constitution specifies that the government may not direct the police to serve partisan purposes.⁶⁴ Despite these provisions, the press and opposition have accused the Mutharika administration of using the police for political and partisan purposes, such as disrupting opposition rallies and targeting the president's political opponents with harassment and arrests.⁶⁵ Critics have also accused Mutharika of dismissing high-ranking officers for political reasons, including the inspector general of police in early 2009.⁶⁶

Although the army has historically restrained itself from the political arena in Malawi, it has become more visibly involved in recent years. In 2008, several high-ranking army officers were among those accused of plotting to overthrow the president. Observers have also raised concerns about the army being used to serve the partisan interests of President Mutharika following a joint army-police operation to break up an opposition rally in 2007.

The government maintains respect for private property. The World Bank reports that Malawi compares favorably with its neighbors in terms of the ease or difficulty of registering property, although it performs relatively poorly on protecting investors and enforcing contracts.⁶⁷ In 2002, the government developed a new land policy aimed at providing secure land tenure to citizens, but it had not yet passed legislation to implement such a program as of mid-2009.⁶⁸ Some concerns have emerged about land grabs in the wake of increasing external investment, but the problem does not appear that acute to date.

ANTICORRUPTION AND TRANSPARENCY 3.44

ENVIRONMENT TO PROTECT AGAINST CORRUPTION	3.25
PROCEDURES AND SYSTEMS TO ENFORCE ANTICORRUPTION LAWS	3.50
EXISTENCE OF ANTICORRUPTION NORMS, STANDARDS, AND PROTECTIONS	3.50
GOVERNMENTAL TRANSPARENCY	3.50

Corruption has been and remains a serious problem in Malawi. According to one estimate, corruption and related inefficiencies drained an annual 30 percent of government revenue during Muluzi's administration from 1994 to 2004.⁶⁹ Social norms are generally accepting of petty corruption, while weak oversight of the bureaucracy and executive branch enable some officials to engage in larger-scale graft. President Mutharika has acknowledged that corruption is widespread in all three branches of government. Despite improvements relative to the previous administration, mechanisms to combat corruption remain weak.

The state remains substantially involved in the economy, with parastatal corporations engaged in sectors such as energy, agriculture, finance, media, and transportation. Several such enterprises have been implicated in corruption-related allegations in recent years. By law, government officials and appointees to senior positions in the public sector are required to declare their assets and disclose financial interests. However, enabling legislation to effectively enforce these rules has yet to be enacted.⁷⁰

The government appeared to make strides in combating corruption during the initial phase of Mutharika's first term. Several senior members of former president Muluzi's administration (including Muluzi himself) have been investigated on corruption-related charges and some were later convicted. In addition, several sitting government and parastatal officials have been arrested and convicted on corruption charges. From 2006 on, the government has worked with donors to improve the capacity of the National Audit Office, leading to improvements in the number and quality of audits conducted.⁷¹ The government reasserted its commitment to anticorruption efforts in 2009 by launching

a new National Anti-Corruption Strategy. The program includes a plan to establish “integrity committees” in public institutions.⁷²

The primary body charged with a mandate to combat graft is the Anti-Corruption Bureau (ACB), though its authority and capacity are limited and it has faced some political interference. Legislation enacted in 2004 requires the body to obtain the DDP’s consent before initiating a prosecution, thereby constraining its power. In terms of personnel, the ACB suffers from high rates of turnover and limited staff. One report indicated that in 2007, the organization had only four lawyers who were tasked with prosecuting hundreds of cases.⁷³ Personnel decisions made by the government have also undermined the agency’s effectiveness and independence. Since Mutharika came into office in 2004, the ACB has had four different directors or acting directors. In August 2006, the president summarily removed the director at the time, rendering the ACB unable to investigate or prosecute existing cases during the second half of the year and ultimately causing a backlog of over 200 new cases and the discontinuation of others.⁷⁴ Due to the president’s stalemate with parliament, the replacement director was in turn never approved, leaving the office toothless for over a year.

The opposition has charged that corruption-related investigations and prosecution efforts have been selective and used to intimidate and harass Mutharika’s opponents. Despite these concerns, progress in indicting former high-level government officials has remained slow. Many cases, including that of former president Muluzi, have been tied up in the courts due to legal challenges of investigation procedures.⁷⁵ The opposition has also accused the government of shielding its own officials from corruption investigations.⁷⁶

Both the incidence of corruption in society and allegations against officials are widely discussed in the media. The print media, in particular, has helped promote awareness of the problem and exposed corruption scandals, in several cases leading to investigations and prosecutions.⁷⁷ Surveys conducted in 2005 found that 9 out of 10 Malawians view corruption as a serious problem. However, fewer than 20 percent of respondents knew how to report it.⁷⁸ Similarly, some observers have criticized whistleblower protection as being inadequate.⁷⁹

Corruption has also affected educational institutions. At a public forum in 2007, teachers and education observers indicated that instructors and administrators took material rewards from students and parents in return for placement and passing grades.⁸⁰ In 2007, it was also revealed that the exam for obtaining a secondary school certificate had been leaked and was available for purchase on the black market.

Section 37 of the constitution provides that “subject to any act of Parliament, every person shall have the right to access all information held by the state or any of its organs.”⁸¹ Additional legislation to enable full implementation of this provision has not been enacted, however. A bill on access to information has been drafted, specifying these rights and creating mechanisms to enforce them. However, the bill has yet to be tabled before the parliament.⁸² Despite the

lack of legislation, the U.S. State Department reports that the government has granted both citizens and noncitizens, including foreign media, access to official information on request.⁸³

A report from the Open Budget Initiative indicates that Malawi performs poorly with respect to the openness of its budget-making process, providing only minimal information to the public.⁸⁴ Part of this likely reflects the tensions between the executive and legislature in recent years over passage of the budget, leading to limited debate on the actual contents of the proposal each year. Nevertheless, under the auspices of a World Bank project designed to improve financial management, transparency, and accountability, improvements in government disclosure and accounting practices have been recorded. According to the report, “personnel audits of all ministries have been completed and an associated review of the payroll system has commenced.... 12 ministries now have effective internal audit committees overseeing about 60 percent of public expenditures.”⁸⁵ A local NGO focused on monitoring the budget process has also reported that deviations between the approved budget and actual expenditure were less than 10 percent in 2008.⁸⁶

It is widely believed that the Muluzi administration awarded contracts to companies controlled by himself or his allies. Under the Mutharika presidency, concerns about unfair bidding and awarding of contracts remain, albeit to a lesser degree. Officials linked to the executive have been accused of steering contracts to businesses under their control or that of their relatives.⁸⁷ In 2007, the government was accused by civil society organizations of hiding information about an agreement with an Australian company seeking to undertake a uranium mining project.⁸⁸ Under the Muluzi government, the administration of foreign assistance was often characterized by mismanagement and a lack of transparency.⁸⁹ In recent times, conversely, donor agencies have applauded financial management and the implementation of donor-sponsored policies.⁹⁰

RECOMMENDATIONS

- The executive branch should cease interference with the judicial and prosecutorial arms of government and more effectively support the operation of rule of law and accountability institutions through timely and appropriate appointments to key positions.
- The government should more systematically monitor prison conditions and should undertake efforts to improve conditions for prisoners—particularly in terms of nutrition, sanitation, and medical care. If needed, the government should seek international funds toward this end.
- The government should move more forcefully to pass legislation to improve the conditions of women and ensure greater equity in gender relations. Priority should be given to the passage of the Wills and Inheritance Bill.
- Efforts should be undertaken to decrease the influence of the president and minister of information over MACRA, MBC, and TV Malawi. Special

consideration should go to revising the structure of appointments to these bodies and decreasing political bias in programming.

- The government should respect citizens' right to assemble and refrain from using force to disperse peaceful demonstrations and rallies, including those challenging the government's agenda.

NOTES

For URLs and endnote hyperlinks, please visit the *Countries at the Crossroads* homepage at <http://freedomhouse.org/template.cfm?page=139&edition=8>.

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