

## Country File MALAWI



Last updated: **June 2009**

<b>Region</b>	Africa
<b>Legal system</b>	Common law
<b>UNCAT Ratification/ Accession(a)/ Succession (d)</b>	11 June 1996 (a)
<b>Relevant Laws</b>	<ul style="list-style-type: none"> <li>• Constitution of 18 May 1994</li> </ul>
<b>Relevant Articles</b>	<ul style="list-style-type: none"> <li>• <b>Prohibition of torture:</b> Article 19 of the Constitution</li> <li>• <b>Definition of torture:</b></li> <li>• <b>Penalties:</b> Article 46 of the Constitution</li> <li>• <b>Others:</b> <ol style="list-style-type: none"> <li>1. <b>Defences:</b> Articles 44 - 45 of the Constitution</li> <li>2. <b>Compensation and Reparation:</b> Article 46 of the Constitution</li> </ol> </li> </ul>
<b>Languages Available</b>	<ul style="list-style-type: none"> <li>• English (official language)</li> </ul>
<b>Other Relevant Information</b>	

## Relevant Articles – MALAWI

### ENGLISH

#### Constitution of 18 May 1994

##### **Article 19 Human dignity and personal freedom**

1. The dignity of all persons shall be inviolable.
2. In any judicial proceedings or in any other proceedings before any organ of the State, and during the enforcement of a penalty, respect for human dignity shall be guaranteed.
3. No person shall be subject to torture of any kind or to cruel, inhuman or degrading treatment or punishment.
4. No person shall be subjected to corporal punishment in connection with any judicial proceedings or in any other proceedings before any organ of the State.
5. No person shall be subjected to medical or scientific experimentation without his or her consent.
6. Subject to this Constitution, every person shall have the right to freedom and security of person, which shall include the right not to be:
  - a. detained without trial;
  - b. detained solely by reason of his or her political or other opinions; or
  - c. imprisoned for inability to fulfil contractual obligations.

##### **Article 44 Limitations on rights**

1. There shall be no derogation, restrictions or limitation with regard to:
  - a. the right to life;
  - b. the prohibition of torture and cruel, inhuman or degrading treatment or punishment;
  - c. the prohibition of slavery;
  - d. the prohibition of imprisonment for failure to meet contractual obligations;
  - e. the prohibition on retrospective criminalization and the retrospective imposition of greater penalties for criminal acts;
  - f. the right to the equality and recognition before the law;
  - g. the right to freedom of conscience, belief, thought and religion and to academic freedom; or
  - h. the right to *habeas corpus*.
2. Without prejudice to subsection (1), no restrictions or limitations may be placed on the exercise of any rights and freedoms provided for in this Constitution other than those prescribed by law, which are reasonable, recognized by international human rights standards and necessary in an open and democratic society.

3. Laws prescribing restrictions or limitations shall not negate the essential content of the right or freedom in question, shall be of general application.
4. ...

#### **Article 45 Derogation and public emergency**

1. No derogation from rights contained in this Chapter shall be permissible save to the extent provided for by this section and no such derogation shall be made unless there has been a declaration of a state of emergency within the meaning of this section.
2. The President may declare a state of emergency-
  - a. only to the extent that it is provided for in this section;
  - b. only with the approval of the defence and Security Committee of the national Assembly;
  - c. only in times of war, threat of war, civil war, or widespread natural disaster;
  - d. only with regard to specific location where that emergency exists and that any declaration of a state of emergency shall be publicly announced; and
  - e. only after the state of emergency has been publicly announced.
3. Derogation shall only be permissible during a state of emergency-
  - a. with respect to freedom of expression, freedom of information, freedom of movement, freedom of assembly, and rights under section 19 (6) (a) and section 42 (2) (b);
  - b. to the extent that such derogation is not inconsistent with the obligations of Malawi under international law; and
  - c. to the extent that-
    - i. in the case of war or threat of war, it is strictly required to prevent the lives of defensive combatants and legitimate military objectives from being placed in direct jeopardy; or
    - ii. in the case of a widespread natural disaster, it is strictly required for the protection and relief of those people in the disaster area.
4. ...

#### **Article 46 Enforcement**

1. ...
2. Any person who claims that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled-
  - a. to make application to a competent court to enforce or protect such a right or freedom; andto make application to the Ombudsman or the Human Rights Commission in order to secure such assistance or advice as he or she may reasonably require.
3. ...
4. A court referred to in subsection (2) (a) shall have the power to award compensation to any person whose rights or freedom have been

- unlawfully denied or violated where it considers it to be appropriate in the circumstances of a particular case.
5. The law shall prescribe criminal penalties for violations of those non-derogable rights listed in subsection 44 (1).