



# Malawi: Recent Developments and U.S. Relations

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## Summary

President Barack Obama's Administration and a number of Members of Congress welcomed Malawian President Joyce Banda's accession to power, largely because she reversed a number of contentious decisions taken by her predecessor, Bingu wa Mutharika. Banda succeeded him after he died in early April 2012 while serving a contentious second term. Banda's status as Africa's second female president, an internationally recognized women's rights advocate, and a leader with socioeconomic development expertise has also attracted U.S. and other international support for her. There are some indications that Banda may pursue a foreign policy aligned with selected U.S. regional policy goals, and in March 2013, President Obama invited Banda to the White House to discuss democratic strengthening, trade, and investment. In August 2012, then-Secretary of State Hillary Clinton traveled to Malawi to discuss economic and governance reforms and to highlight U.S.-funded development projects. In September 2012 Banda addressed a gathering of Members of Congress at a forum on U.S.-Malawian and broader U.S.-African relations.

Malawi, a former British colony, is a small, poor southeastern African country that underwent a democratic transition from one-party rule in the early 1990s and has long relied on donor aid. Under Mutharika, however, Malawi's ties with donors had been damaged over concerns related to economic management, undemocratic governance trends, and Mutharika's acrimonious stance toward donors. Upon taking office, Banda—who had served as Mutharika's vice president and therefore succeeded him upon his death—initiated a series of economic and governance reform efforts, seeking to reverse changes made under Mutharika. In response, most donors that had suspended aid under Mutharika reinstated it, a welcome prospect for Malawi's flagging economy. Such reinstated aid included a U.S. Millennium Challenge Corporation (MCC) compact.

Key donor-backed policy changes made by Banda have included a devaluation of the national currency, the *kwacha*, and efforts to repeal several controversial civil and political rights laws passed under Mutharika. She also set out a number of policies designed to spur socioeconomic development and growth, gender equality, and respect for human rights, and supported fiscal austerity measures, including budget cuts affecting the presidency. Banda faces interlinked economic and political challenges arising from her management of the faltering economy she inherited from Mutharika. Her decision to devalue the currency was intended to foster free-market processes in the long run in order to spur greater production for local and export markets and boost macroeconomic stability, among other ends. In the short run, however, it has sharply driven up inflation, including for fuel and food, sparking public protests and labor strikes. In addition, some donors have released aid funds more slowly than initially anticipated or have imposed new aid policy conditions. Banda also faces rifts within her own party and faltering parliamentary support. The recent arrest of several former Mutharika officials on treason charges related to a plot to prevent Banda's constitutional accession to the presidency has also caused controversy.

In addition to a \$350 million, five-year MCC compact, the United States provides significant bilateral aid focused on food security and agricultural growth; poverty reduction; health and education; economic growth; and democracy and good governance. State Department and U.S. Agency for International Development (USAID)-administered bilateral assistance to Malawi totaled over \$173 million in FY2011; an estimated \$167 million in FY2012; and \$146 million in requested funds for FY2013.

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## Recent Developments

Political challenges facing Malawian President Joyce Banda have mounted in recent months, following a brief political honeymoon after she succeeded Bingu wa Mutharika, her predecessor, after he died in April 2012. In March 2013, there were street clashes between supporters of Banda and the political opposition after the government arrested 11 former Mutharika government officials and former cabinet ministers, including former Foreign Minister Peter Mutharika, the late president's brother, on treason charges. The arrests came after a public inquiry identified the accused as parties to an alleged plot to prevent Banda's constitutional assumption of the presidency following Mutharika's death. These events followed socioeconomic protests and a civil service strike in early 2013. The strike was resolved in mid-February, when the government agreed to a 60% pay hike, after initially rejecting the strikers' demands. The protests were a reaction to cost-of-living inflation in the 30% range triggered by Banda's 2012 devaluation of the national currency, the *kwacha*, by 50%; a fuel price liberalization; and other policy decisions aimed at reversing various contentious policies pursued by Mutharika. Banda has also reportedly faced rifts within her People's Party (PP) and the cabinet and wavering PP support within parliament.

## Introduction

President Barack Obama's Administration and a number of Members of Congress welcomed President Banda's accession to power, primarily because she has sought to reverse a number of contentious decisions taken by her predecessor. The White House recently announced that President Obama would welcome Banda and three other African leaders to the White House on March 28.<sup>1</sup> Banda, Africa's second female president, has also won plaudits as an international advocate for women's rights; her tenure has been seen as a sign of increasing gender equality in a region where male leaders have predominated. She is also viewed as a leader with a personal commitment and the expertise necessary to advance national socioeconomic growth and development, and potentially to act as a model for other African leaders in this regard. Banda's development background has acted as a nexus for high-level bilateral engagement. Banda's anticipated White House meeting followed an August 2012 trip by then-Secretary of State Hillary Clinton to Malawi to discuss economic and political governance and reform and bilateral development cooperation projects. Banda also participated in two high-level USAID development conferences in 2012 in the United States, and in September 2012 addressed Members of Congress at a forum on U.S.-Malawian and broader U.S.-African ties.

## U.S. Relations and Congressional Role

U.S. bilateral engagement focuses primarily on the promotion of socioeconomic development and growth, democracy, and good governance. Prior to Banda's assumption of power, Malawi had garnered periodic congressional attention centered primarily on USAID and other U.S. health sector programs, particularly those to counter HIV/AIDS, a key challenge for Malawi, which had

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<sup>1</sup> The purpose of the visit is to "discuss strengthening democratic institutions ... and building on Africa's democratic progress to generate increased economic opportunities and expanded trade and investment." White House, "Statement by the Press Secretary Announcing the Visit of African Leaders," March 18, 2013.

an estimated 10% adult HIV prevalence rate in 2011. Several congressional delegations to Malawi in recent years have examined such programs. In late 2011, Malawi also drew congressional scrutiny over its hosting of Sudanese President Omar al Bashir at a regional trade summit. Banda rejected a further proposed visit by Bashir in 2012, as described below.

After taking office, Banda pledged to reverse many of Mutharika's most contentious decisions, particularly those relating to the economy and constitutional rights. This led to rapid improvements in relations with the United States and other foreign aid donors, upon which Malawian public spending has relied heavily since the mid-1990s. Such ties had been severely damaged during

Mutharika's second term over concerns related to economic management, undemocratic governance trends, and his increasingly acrimonious stance toward donors. Several key donors reinstated aid that they had withdrawn or restricted during Mutharika's tenure, a welcome prospect for Malawi's flagging economy. Such donors included the U.S. Millennium Challenge Corporation (MCC).

Banda's leadership is seen as fostering a political environment conducive to ensuring more robust, sustained returns on U.S. investment in development, a key U.S. policy goal under the Obama Administration's *U.S. Strategy Toward Sub-Saharan Africa*, released in June 2012. According to the State Department,

The United States commends the bold actions taken by Malawi's President Joyce Banda since her inauguration. . . . In her State of the Nation address, President Banda articulated a positive vision for Malawi's future. Fulfilling this vision would put Malawi on sounder financial footing, invest more in the potential of its people, and better protect the human rights of its citizens. As Malawi's largest donor, the United States remains committed to working with President Banda and all Malawians to achieve these goals.<sup>2</sup>

In September 2012, Banda addressed U.S.-Malawian relations at a congressional event in honor of herself and the African Diplomatic Corps in Washington, DC. She used the occasion to thank Congress, the Obama Administration, and African ambassadors for working together to extend from 2012 until 2015 the "third country fabric provision," a trade benefit under the U.S. African Growth and Opportunity Act (AGOA; P.L. 106-200, Title I, as amended).<sup>3</sup> She also praised the

### Malawi at a Glance

**Geography:** Landlocked; about the size of Pennsylvania  
**Population:** 16.3 million (2012)  
**Population growth rate:** 2.8% (2012)  
**Gross Domestic Product (GDP):** \$5.7 billion (2011)  
**GDP per capita:** \$371 (2011)  
**External Debt:** \$1.33 billion (late 2011)  
**Major Exports:** Tobacco, tourism, tea, sugar, cotton, coffee, macadamia nuts & peanuts, wood, apparel  
**Official Languages:** English; Chichewa  
**Ethnicity:** Chewa/Nyanja, Tumbuka, Yao, Lomwe, Sena, Tonga, Ngoni, Ngonde, Asian/European  
**Religions:** Christian 83%, Muslim 13%, Other 2%, None 3% (2008 census)  
**Adult Literacy:** Male, 80%; Female, 67% (2009)  
**Under-5 Mortality rate:** 92 deaths/1,000 births  
**HIV/AIDS adult infection rate:** 11% (2009)  
**Life Expectancy, years:** Male: 52; Female: 53 (2012)  
**Sources:** CIA World Factbook 2012; World Bank data

<sup>2</sup> State Department, "President Joyce Banda's First Six Weeks," May 21, 2012.

<sup>3</sup> The provision, which was to expire at the end of fiscal 2012, allows AGOA-eligible countries to use third-country yarns and fabrics to manufacture apparel exported to the United States under AGOA. For background, see CRS Report RL31772, *U.S. Trade and Investment Relations with sub-Saharan Africa and the African Growth and Opportunity Act*, by Vivian C. Jones and Brock R. Williams.

priorities set out under the Obama Administration's new Africa strategy; called for increased U.S. investment in Africa; outlined her policy priorities; and assessed bilateral relations and prospects.<sup>4</sup>

Banda's September visit to the United States, during which she also addressed the U.N. General Assembly, followed then-Secretary Clinton's August 2012 trip to Malawi, among other African countries. In Malawi, Clinton discussed economic reform and political governance and highlighted bilateral development cooperation projects.<sup>5</sup> Secretary Clinton's trip was preceded by the communication, in July 2012, of a joint letter to Banda by 38 Members of Congress. In their letter, the Members lauded Banda's efforts to engage with the international financial institutions; her focus on bilateral development partnerships and outreach to foreign private sector investors; and her support for democracy and socioeconomic opportunity for women, inter alia.

### **President Banda: Personal Background**

Joyce Banda, after founding a clothes-making firm and other businesses in the early 1980s, began her public service career as an advocate of women's rights and economic empowerment following her departure from an abusive marriage. Her early work in advancing female entrepreneurship was supported by the U.S. Agency for International Development (USAID). Her cooperation with USAID has continued since her accession to the presidency; she has participated in two recent high-level USAID leadership forums on socioeconomic development, among other activities, the latter event in collaboration with Secretary Clinton. Prior to being elected as Vice President under Mutharika, Banda had served as his Minister of Gender, Child Welfare and Community Services (2004-2006) and Minister of Foreign Affairs (2006-2009). She had earlier founded several non-governmental organizations, including the National Association of Businesswomen of Malawi, and coordinated other private sector efforts aimed at expanding micro-enterprise lending and business growth; alleviating poverty; and increasing socioeconomic gender equality and women's empowerment. Other work had centered on improving food security and access to healthcare and education, among diverse related goals. The Joyce Banda Foundation, a private charity founded by Banda, provides diverse types of support (e.g., health, education, and water) to a reported 250,000 resource-poor rural recipients.<sup>6</sup>

## **Banda: Succession and Administration**

Banda took office after Mutharika died of a reported heart attack, on April 5, 2012, while serving an increasingly contentious second term; Banda was vice president at the time of his death and therefore succeeded him. President Banda is serving out the late president's term, which will end following national elections slated to be held in May 2014.

While Banda was the incumbent vice president at the time of Mutharika's death because she had been elected to the post in 2009 as his running mate on the ticket of his Democratic Progressive Party (DPP), relations between them had soured. At the time of his death the two had an extremely tense relationship and were political rivals. Their mutual antagonism had grown out of Mutharika's alleged efforts to position his brother to succeed him as head of the DPP and as Malawi's president. Mutharika's actions led to Banda's political ostracization within his

<sup>4</sup> The event, co-hosted by Representative Karen Bass and Senator Chris Coons, was sponsored by General Electric in coordination with the Congressional Black Caucus. Government of Malawi, "Malawi: President Banda's Address to U.S. Congressional Black Caucus Foundation," September 19, 2012.

<sup>5</sup> State Department, "Background Briefing on Secretary Clinton's Travel to Africa," August 4, 2012; Gabe Joselow and Lameck Masina, "Clinton Praises Banda During Malawi Visit," Voice of America, August 5, 2012.

<sup>6</sup> Malawi Government, "The President's Profile," 2012; State Department, "Remarks at Feed the Future: Partnering with Civil Society," September 27, 2012; and Sudarsan Raghavan, "Malawi's Joyce Banda Ushers in a New Kind of African Leadership," *Washington Post*, July 29, 2012.

administration and then to her expulsion from the DPP in late 2010, along with attempts to force her resignation and a possible attempt on her life.<sup>7</sup> Their feud ultimately spurred Banda to form her own People's Party in 2011. These dynamics also appear to have played a role in Banda's accession to the presidency after Mutharika's death. It took place in accordance with the constitution, but after a two-day delay attributed to a civilian leadership attempt to engineer an extra-legal succession by Mutharika's brother, Peter Mutharika. The plot was the subject of a public inquiry, completed in March 2013, which named Peter Mutharika and 10 others as co-conspirators in these efforts.<sup>8</sup>

After becoming president, Banda took steps to distance herself from many of Mutharika's appointees and a number of his policies. She chose a close political ally as her vice president and replaced several top Mutharika-appointed heads of key government agencies, notably including the national police chief. The police chief had been accused of overseeing a harsh crackdown on demonstrators protesting economic conditions and various government actions in July 2011, which led to 20 reported deaths. He was also alleged to have played a role in the events leading to the September 2011 death of Robert Chasowa, a university student and government critic involved in anti-Mutharika protests. An inquiry found that Chasowa was murdered by unknown persons after being seen in police custody in a case that involved a conspiracy implicating DPP functionaries and elected officials, in coordination with multiple police officials.

Banda also appointed a new cabinet. She has changed its composition several times, but its initial membership was viewed as relatively inclusive and aimed at fostering political reconciliation. Although several key Mutharika allies were ousted from the cabinet, others were reappointed. Banda, who heads the national police force as well as serving as commander in chief of the military, also appointed herself head of a new, multifaceted ministry that oversees broad aspects of state administration and HIV/AIDS.<sup>9</sup> Khumbo Kachali, a former DPP member and cabinet minister who also faced ostracization by the Mutharika administration, was named vice president. He is a member of Banda's People's Party, which in August 2012 held its first convention and elected Banda as party president.

Banda's efforts to reverse the policy and administrative status quo inherited from Mutharika included her backing of the parliament's repeal in May 2012 of a media control law enacted by Mutharika and his allies that had drawn strong domestic and foreign criticism. Similarly, she called for parliamentary repeal of other laws, including ones banning sex between males and allowing warrantless arrests. Banda also has cultivated a leadership image that differentiates her from Mutharika, who had adopted the honorific title *Ngwazi* ("the conqueror," mirroring Malawi's first, longtime authoritarian president, Hastings Kamuzu Banda). She reportedly prefers

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<sup>7</sup> In an August 2012 interview, Banda stated that she had been the victim of an attempted assassination attempt in 2010 linked to her rift with Mutharika. AFP, "Malawi Leader Claims Proof of Attempt on Her Life," August 12, 2012.

<sup>8</sup> The inquiry found that after Mutharika's death, top pro-Mutharika officials conspired in various ways to stop Banda from being sworn in and unsuccessfully requested that top military chiefs assume power if their efforts failed. The military then played a key role in enabling Banda to assume power through a symbolic show of deference to Banda by military officers at a press conference that she held prior to being sworn in. The plotters reportedly approached foreign diplomats, including U.S. representatives, regarding a possible deal to install Peter Mutharika as president, which the foreign envoys refused. On April 6, 2012, U.S. Assistant Secretary of State Johnnie Carson publicly stated that "we are concerned about the delay in the transfer of power." Commission report, State Department release, and press accounts.

<sup>9</sup> Kachali, like Banda, was a former Mutharika appointee but later broke with him. Banda serves as Minister of Public Affairs, Statutory Corporations, Civil Service, Administration, National Relief and Disaster Management, and Nutrition, HIV and AIDS. *Africa Confidential*, "A Long-Distance Run for Banda," May 11, 2012, among others.

being called Mrs. Banda rather than “Madam President,” as many initially addressed her, and is selling off a presidential jet and a fleet of luxury cars used by state officials. The purchase of the \$12 million jet and vehicles during Mutharika’s economically difficult second term had provoked widespread resentment. In October 2012 Banda also signaled her support for government austerity by announcing that she and her vice president would each take a 30% salary cut. Banda also appointed new members of the Malawi Electoral Commission (MEC), which had been suspended and rendered inoperational by Mutharika. The appointees were drawn from several leading parties, but excluded members of Mutharika’s DPP party. In December 2012, however, she drew criticism after appointing Vice President Kachali to oversee MEC operations; critics alleged that this would undermine the MEC’s independence, and she later reversed the appointment.<sup>10</sup>

### **Civil and Constitutional Rights: Background and Trends Under Banda**

President Banda vowed in May 2012 to push to overturn several controversial laws. One giving the minister of information substantial authority to ban publications and another law limiting court orders of injunctions against the government have since been repealed. Banda also suspended enforcement of a law making homosexual acts (albeit technically only those between males) illegal. Two other laws, including a provision broadening the judicial authorities of traditional leaders and another allowing for warrantless police searches and arrests, remain in place.

Banda’s suspension of the anti-homosexuality law in early November 2012 came as a surprise to some observers because, despite her initial pledge to support abolishment of the law, in September she had stated that repeal was unlikely due to popular support for such laws.<sup>11</sup> These remarks had drawn a cautionary statement from foreign aid donors indicating that they expected sexual minorities’ rights to be upheld. Malawi’s treatment of homosexuality under Mutharika and his government’s support for the censorship and detention laws discussed above had drawn widespread international condemnation, including from the United States, while Mutharika was in power.

The homosexuality issue, in particular, garnered the attention of international human rights activists and some foreign governments following the 2009 arrest of a gay couple for becoming engaged to be married and their sentencing in 2010 to 14 years in prison for committing “unnatural acts.” In March 2011, a group of donors threatened to withhold more than \$400 million in aid in protest of a law preventing gay marriages and a separate one permitting bans on newspapers’ publication of material deemed indecent. In late 2011, President Barack Obama issued a directive tying protection of lesbian, gay, bisexual, and transgender persons to U.S. foreign assistance and bilateral engagement. This donor pressure did not prompt the Mutharika government to repeal or reform the laws at issue, but did appear to have spurred some moderation in its outlook. Mutharika pardoned the gay couple after their sentencing, and in late 2011 announced that his government would seek a review of some of the other laws discussed above. The Obama Administration criticized the men’s conviction and praised their pardon, as did several other donor governments.<sup>12</sup>

Despite President Banda’s strong rhetorical support for human rights, there are some indications that the kinds of police excesses that were common under Mutharika have not entirely ended under her tenure. In October 2012, a journalist was arrested (and later released on bail) on charges of allegedly insulting the president and publishing false information and, in a separate incident, police tear-gassed vendors protesting the arrest of a peer. There have long been periodic disputes between petty vendors and city authorities, sometimes leading to protests and forceful police responses. Police have also deployed in force at several recent political protests in 2013.

<sup>10</sup> AFP, “Malawi Scraps Contentious Media Law,” May 31, 2012; and APANEWS, “New Poll Commissioners in Malawi Appointed,” May 22, 2012.

<sup>11</sup> A reported 94% of Malawians, including 99% of members of Banda’s PP party, do not support such rights according to a recent survey. See Afrobarometer/University of Malawi, “Malawi AB R5 Survey Results First Release,” September 4, 2012; and David Stringer, “AP Interview: Malawi’s Banda Says Country Unlikely To Overturn Laws Against Homosexuality,” Associated Press, September 28, 2012.

<sup>12</sup> Claire Ngozo, “Malawi Donor Funding Threatened by Rights, Governance Issues,” IPS, March 17, 2011; Anthony Kasunda, “Donors Caution Malawi on Gay Rights,” *The Nation*, October 8, 2012; White House, “Statement by the Press Secretary on Today’s Pardoning in Malawi,” May 29, 2010; State Department, Daily Press Briefings, May 18, 2010, and May 20, 2010; White House, *Fact Sheet: Working to Advance the Human Rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) Persons Globally*, December 6, 2011.



Initially, Banda appeared politically well-positioned to implement her policy agenda. When parliament convened in May 2012, 100 members of parliament (MPs), many from the DPP, reportedly joined Banda's People's Party (PP), giving it as many as 105 seats in the 193-member parliament. Some members later crossed back to their parties of origin, however, and by February 2013, the PP reportedly held only 83 seats. More party crossing may occur, as Section 65 of the constitution bars such actions by MPs, but is currently suspended by a court injunction relating to a contested decision to hold by-elections. If it is enforced, the PP could suffer a sharp loss of support, as PP parliamentarians who won election on other parties' tickets could be forced to return to their parties of origin or face by-elections.<sup>13</sup>

## Foreign Relations

A key Banda goal has been to reestablish strong relations with donors. Days after taking office, she requested renewed technical support and credit arrangements from the International Monetary Fund (IMF). In May, an IMF assessment team, citing Banda's pledge to devalue the national currency, the *kwacha*, submitted a positive report on prospects for economic reform after consultations with her government. They recommended that IMF programs resume and that the IMF provide a \$156 million concessional Extended Credit Facility (ECF) loan, which the IMF's Board approved in August.<sup>14</sup> The IMF's decision was preceded by the award of a \$40 million African Development Bank (AfDB) grant designed to restore fiscal stability and social protections and a South African bilateral \$35 million loan to help ease fuel shortages. Since the start of Banda's tenure, the World Bank has approved seven projects, worth \$301 million in total, in support of macroeconomic stability, social safety nets, market-based growth, environmental management, and agriculture. Other efforts by Banda to reach out to the international community have also had positive effects. In late April, Britain restored full diplomatic ties, which had been broken after the Mutharika administration expelled the former British ambassador a year earlier for reportedly criticizing Mutharika.<sup>15</sup> The United Kingdom (UK), the European Union, and other donors, such as the United States, have reportedly provided an aggregate of about \$600 million in aid to Malawi since Banda took power. In January 2013, IMF Managing Director Christine Lagarde visited Malawi, where she endorsed the policy priorities that Banda has pursued.<sup>16</sup>

Banda has also sought constructive ties and cooperation within Africa, although there have been some indications that the Banda government may pursue a foreign policy at odds with some of its African peers but potentially aligned with selected U.S. regional policy goals. Shortly after her

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<sup>13</sup> Section 65 was not enforced under Mutharika. In July 2012, British parliamentarians stated their concern that the government was not enforcing Section 65, which is reportedly supported by a majority of Malawians. *Africa Confidential*, "Malawi: The Honeymoon's Over," June 22, 2012, and "Banda Takes on Her Deputy," February 15, 2013, and multiple local press reports.

<sup>14</sup> Until August 2011, Mutharika had refused to pursue devaluation, which was required under a 2010 IMF credit agreement, seeing it as an inflationary trigger that would negatively affect the poor and make imports—including fertilizer, a politically sensitive farm input—more expensive. This, along with other facets of Mutharika's economic management and a range of political factors, became a key point of dispute with donors and contributed to the suspension of aid by most, including the withdrawal in 2011 of a \$79 million IMF credit line.

<sup>15</sup> He was expelled after being quoted in the press as stating that Mutharika was "becoming ever more autocratic and intolerant of criticism." PANA, "Malawi Expels British Envoy Over Scathing Leaked Document," April 18, 2011.

<sup>16</sup> Wisdom Chimgwede, "EU Backs Joyce Banda on Reforms," *The Nation*, March 4, 2013; and IMF, "Press Statement by IMF Managing Director Christine Lagarde at the Conclusion of a Visit to Malawi," January 5, 2013.

inauguration, Banda visited Liberia to meet with President Ellen Johnson Sirleaf, Africa's first female president, to discuss regional issues and to draw insights from Sirleaf's experience.<sup>17</sup>

Banda has also shown a willingness to break with other African leaders. As previously noted, in early May 2012, Banda announced that Malawi, as a state party to the Rome Statute of the International Criminal Court (ICC), would refuse to host Sudan's president, Omar al Bashir, at an AU summit that was slated to be held in Malawi in July 2012 because Bashir is wanted by the ICC for war crimes. The government suggested that Sudan send representatives not subject to ICC warrants, as Malawi's ICC membership may arguably have required Malawi to arrest Bashir. The move caused controversy in Africa, drawing criticism from Sudan. The AU Commission reportedly sent a communication stating that Malawi was required to host all AU presidents and heads of state. In response, on June 8, Malawi announced that it would not accept the AU's conditions and therefore would not host the summit. Banda's decision stood in sharp contrast to Mutharika's decision to host Bashir at a Common Market for Eastern and Southern Africa (COMESA) summit in October 2011, which had drawn congressional criticism, as have other governments' hosting of Bashir. The Banda administration could potentially also act as an advocate of more proactive Southern African Development Community (SADC) efforts to help spur completion of constitutional reforms and the conduct of free and fair elections in Zimbabwe, a key U.S. goal. Banda made comments in June 2012, however, that suggest that she may take a hands-off approach toward Zimbabwe for the time being. She has, however, reportedly pushed for Zimbabwe to repay a 2007 Mutharika administration loan to the Mugabe government.<sup>18</sup>

Banda's foreign policies may also present some challenges for the United States. Her government has been at odds with the government of Tanzania, a key U.S. partner in the region, over energy exploration in Lake Malawi, which separates the two countries. The Banda administration has also maintained strong relations with China, which has been increasing its political and economic engagement in Africa and is seen by some as a U.S. competitor in the region. Chinese-Malawian ties have grown since 2008, when Malawi dropped its recognition of Taiwan. China has become an increasingly important financing source for the government, as well as an increasingly important trade partner, although local resentment of Chinese retailers has sparked a backlash against private Chinese businesses.<sup>19</sup>

Banda's government sparked a border dispute with Tanzania by authorizing oil and natural gas exploration in Lake Malawi, over which each country claims territorial jurisdiction; Malawi claims sovereignty over the entire lake, while Tanzania claims a 50% share. The territorial dispute is not new—it has reportedly existed for about 50 years—but was long dormant. It has taken on new urgency in light of the large economic stakes now potentially at issue, and at one point looked set to cause a major rift between the neighbors. In October 2012, the Banda government announced that it was halting dialogue with Tanzania over the dispute, after alleged Tanzanian government harassment of Malawian fishermen. In November, the two countries agreed to seek

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<sup>17</sup> Liberian Government, "Malawi President Banda Visits Liberia for Talks with President Sirleaf," April 28, 2012.

<sup>18</sup> SADC is a 15-member state intergovernmental organization focused on economic integration. It also plays a role in resolving shared regional political and security challenges, and is a key guarantor of a political agreement under which a joint interim government was formed by the opposed parties prior to planned elections. Malawi Democrat, "Malawi Turns Screws on Zimbabwe Over Debt," May 18, 2012; and Chatham House, "Malawi's Policy and Priorities for a Globalized World," Transcript Q&A with Joyce Banda, June 7, 2012.

<sup>19</sup> Jenny W. Hsu, "Malawi, Taiwan End 42-year Relations," *Taipei Times*, January 15, 2008; Xinhua, "Chinese President's Special Envoy Meets Malawian Leader," April 24, 2012; and Claire Ngozo, "Malawi Checks China's African Advance," IPS, August 4, 2012, among others.

regional mediation of their dispute; mediation began in March 2013. If it fails, however, Malawi has indicated that it may seek International Court of Justice arbitration in the matter.<sup>20</sup>

## Political Background

Malawi, a former British colony, is a small, poor, mostly agricultural developing country in southeastern Africa. It lies along the western and southern shore of Lake Malawi, the most southern of Africa's Great Lakes. In 1993, social unrest and broad public and church opposition to the authoritarian, patriarchal, and personalistic one-party rule of Malawi's founding leader, Hastings Kamuzu Banda (no relation to current President Joyce Banda) grew. It culminated in a referendum mandating the creation of a multi-party political system, ending the monopoly on political power of the Malawi Congress Party (MCP) and Banda, who had led the country since 1964. Opposition party criticism of Banda's rule, along with his age-related debility (he was in his mid-90s), led to his electoral defeat by opposition leader Bakili Muluzi of the United Democratic Front (UDF) party in 1994. In 1999, Muluzi, a Muslim (13% of Malawians are Muslim) from the southeast, narrowly bested the MCP candidate to win re-election in an electoral process generally seen as credible, but marred by some political violence.

During Muluzi's two terms, political pluralism grew, civil and press freedoms increased, and the economy was increasingly liberalized. The administration was repeatedly accused of corruption, however, and was strongly criticized for selling off grain reserves in 2003 prior to a period of food shortages. Its assertion of strong executive branch powers also limited the growth of political pluralism and a stronger parliament. Among the most contentious political issues during Muluzi's second term were repeated UDF attempts to enact constitutional changes that would have waived presidential term limits and allowed Muluzi to seek a third term. This effort faced broad opposition, and led to political protests, some violent. In the face of this opposition, Muluzi reversed his decision to seek reelection, but remained UDF chair. He instead announced the nomination of Mutharika as the 2004 UDF presidential candidate. Mutharika was seen by many observers as a lackluster candidate without a large constituency, and his nomination sidelined several more popular UDF politicians, causing controversy within the party.<sup>21</sup>

Mutharika's first term was politically tumultuous. He broke with the UDF and formed his own Democratic Progressive Party (DPP) and pursued an anti-corruption campaign that targeted some high-profile political figures, including some of the UDF leadership. He also pursued economic reform policies that led to closer cooperation with many donors, and oversaw the creation of a politically popular and economically productive national fertilizer and seed subsidy. The relative success of his first term led to his reelection. In his second term, however, an increasingly unilateral, semi-authoritarian governance style; poor economic performance attributed to poor policy implementation by many observers; and rocky relations with donors led many to limit or withdraw aid. Mutharika also faced growing domestic political dissent. Further information on Mutharika's tenure is provided in the **Appendix** to this report.

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<sup>20</sup> The two countries chose as a mediator the African Forum of Former Presidents, a network of former African heads of state that helps implement African regional organization goals in diverse areas, including conflict prevention and resolution. Reuters, "Tanzania, Malawi Agree to Mediation Over Border Dispute," November 17, 2012, among others.

<sup>21</sup> Danielle Resnick, *Two Steps Forward, One Step Back: The Limits of Foreign Aid on Malawi's Democratic Consolidation*, Working Paper No. 2012/28, United Nations University World Institute for Development Economics Research (UNU-WIDER), March 2012.

## Economy and Development<sup>22</sup>

Diverse challenges confront President Banda in managing the stumbling economy she inherited from Mutharika. Under Mutharika, Malawi had faced foreign exchange (forex) shortages due to the government's costly maintenance of an overvalued *kwacha* (MK), despite the 10% devaluation in 2011. A poor harvest and damaging state interventions in the market for burley tobacco, a top export, also contributed to a lack of hard currency. Forex shortages prevented adequate purchases of fuel and other imports, leading to domestic fuel and imported goods shortages and other negative collateral effects on the broader economy. Transport costs rose, as did prices of key imports and general inflation, while utility service cuts became increasingly common and poor harvests generated food insecurity in the densely populated south. Low prices for tobacco and weather-related production challenges in 2011 reportedly sharply decreased tobacco output in 2012, which is likely to continue to limit growth in foreign exchange earnings.

To correct these imbalances and comply with donor requirements for the reestablishment of aid flows, Banda made the politically difficult decision to devalue the *kwacha* by 50% in early May 2012 and then let it float at market-set rates. In the long run, the devaluation is intended to bring parity to the official and black market currency exchange rates, and provide market incentives to spur greater domestic production and export of crops like tobacco and sugar.

### The Political Challenges of Economic Reform

In the short run, Banda's currency devaluation has proven economically and politically challenging. It spurred an immediate 31% rise in fuel prices and a run on staples and household goods sparked by consumer fears of sharp price rises. Such fears were realized, as annual inflation had risen to 25% by August. Prices for maize, the national staple food, saw a particularly large increase, of 47%. Maize inflation, however, is a double-edged sword; while food inflation may hurt the urban poor, it could benefit poor rural farmers. The Banda government also provided a cushion for civil servants by giving them a 21% pay raise in June 2012, but the *kwacha*'s devaluation and rising inflation largely negated the effect, prompting public sector labor strikes. These labor actions have been invigorated by a reported 80% rise in cabinet ministers' travel stipends, which may seem at odds with the austerity message that Banda has generally tried to foster. While donors have urged the government to maintain its reforms, they are reportedly releasing promised aid more slowly than many observers had initially expected, conditioning its provision on the Banda government's economic governance record, and in some cases imposing new demands.<sup>23</sup>

The devaluation and related fiscal balancing measures are being pursued under an 18-month Economic Recovery Plan (ERP) that also provides for market-based fuel price setting, although the government has reimposed controls on fuel prices to help alleviate fuel inflation. The ERP also provides for short-term social support programs for the poorest and most vulnerable sectors of the population consisting of labor-intensive public works, a planned scaling up of fertilizer subsidies and seed distribution programs, school food supplements, and a cash transfer program (a program targeting small amounts of money to very poor families with

<sup>22</sup> This section draws from Resnick, *Two Steps Forward, One Step Back* and Cammack, "Malawi in Crisis, 2011–12," *op. cit.*; Economist Intelligence Unit (EIU), *Malawi Country Report*, October 2012; World Bank *Malawi: Country Brief*, 2012, among other sources.

<sup>23</sup> Edward Joy, "Facing the Costs of Food Insecurity and Rising Prices," *ThinkAfricaPress*, September 28, 2012; APANEWS, "Malawi Civil Servants Threaten To Strike Over Salary," September 6, 2012, and "Malawi's Maize Prices Up By 47 Per Cent-World Bank Report," September 15, 2012; and Ronel Oberholzer, "EU Not Ready to Increase Aid to Malawi," September 25, 2012, and "Development Partners Highlight Economic Challenges Facing Malawian Government," October 9, 2012, *IHS Global Insight Daily Analysis*, and multiple other press reports.

children enrolled in school). The ERP also prioritizes “expenditures to sectors that would enhance economic growth, create employment, and boost production and diversification for the export market for quick foreign exchange generation.” Targets for export growth in the short term include agriculture, fisheries, and tourism. Medium-term priorities for development include the energy, mining, digital communication, and transport sectors.

The problems Banda faces developed as a result of the 2008 global economic downturn and worsened after Mutharika’s 2009 re-election, but are also underpinned by long-term structural and institutional factors. Prior to 2009, Mutharika’s economic record was viewed as positive. Malawi, which formerly faced severe food shortages, had, for instance, become a regional exporter of maize, the staple grain. This increase in food output was attributed to several factors, such as favorable weather conditions, the adoption of more efficient farming methods, and the government’s fertilizer subsidy program. Nevertheless, Malawi continued to suffer from inadequate infrastructure and public sector inefficiencies, and corruption and poverty remained deep-seated and extensive.

### Social Indicators

Malawi suffers from high rates of maternal, infant, and child mortality, as well as HIV/AIDS, but there has been steady progress in improving these indicators. While an estimated 10% of adults (ages 15-49) were HIV-positive in 2011 (the most recent year for which data are available), the rate is down from 14.2% in 2000. The under-5-year child mortality rate fell from 164 per 1,000 births to 82 in the same period, and the modeled maternal mortality rate fell from 840 per 100,000 births in 2000 to 460. The physician-to-population ratio has remained very low for many years, although it has increased in relative terms, from about 0.01 doctors per 1,000 persons in 2003 to almost 0.02 in 2010, while the number of nurses and midwives dropped from 0.6 per 1,000 persons in 2004 to 0.3 in 2010. Child malnutrition rates have fallen moderately in recent years, but remain high, and food insecurity in some areas is common. Fertility rates, estimated at 5.9 children per woman, remain high, but have dropped slightly over the past decade. Most Malawians are extremely poor, particularly in rural areas. Poverty rates by the national standard stand at 50%, and about 25% of the population is considered by the World Bank to be “ultra-poor.” Although recent data are not available, a large majority, 90.5%, lived on the equivalent of \$2 or less per day in 2004 (and 74% subsisted on far less—\$1.25 per day). Efforts to improve these social indicators are pursued under Malawi’s national socioeconomic development framework, the *Second Malawi Growth and Development Strategy (MGDS II) 2011-2016*, and the ERP.

Over 80% of Malawi’s export earnings come from the agriculture sector, which employs over three-quarters of the labor force.<sup>24</sup> Most Malawians are subsistence farmers and petty producers of cash crops, notably tobacco, the source of about 60% of export earnings,<sup>25</sup> along with plantation-grown tea and sugar. All of Malawi’s main export crops are subject to world market price shocks and weather-related risks, especially in the arid far south. The country periodically suffers erratic rainfall and has little irrigation infrastructure—despite being largely situated alongside Lake Malawi—and continues to face periodic regional food insecurity and widespread chronic malnutrition. Malawi’s first uranium mine, completed in 2009, has boosted national export earnings. Malawi has a small manufacturing base focused on agricultural processing and limited consumer goods production. The formal sector and skilled workforce are small. Malawi is

<sup>24</sup> For more information, see the World Bank’s “Malawi Country Brief,” at <http://www.worldbank.org>.

<sup>25</sup> The importance to Malawi of tobacco exports was recently demonstrated by the country’s questioning within the World Trade Organization (WTO) of an anti-smoking law proposed by the EU, an important aid donor to Malawi. Malawi asserted that unless the scientific merit of the proposed EU rule can be proven, the rule would effectively represent a WTO non-compliant technical barrier to trade. Tom Miles, “EU’s Planned Tobacco Curbs Break WTO Rules, Malawi Says,” Reuters, March 15 2013; and Charlie Dunmore, “EU Tobacco Regulations: Law Would Make Cigarette Branding Less ‘Attractive,’” Reuters, December 19, 2012.

landlocked and its undiversified economy is import-dependent for many inputs, such as fuel and manufactured goods. These factors, along with poor physical and communications infrastructure, contribute to high transport and import costs and inhibit economic growth and trade, though cell phone networks are increasingly widely accessible.

These structural challenges are the focus of state economic development and reform efforts. Key government policy objectives include private sector growth and liberalization of trade and pricing controls; reduction of administrative overhead costs and civil service reforms; and streamlining of investment and investment licensing procedures. Multiple state enterprises have been or are being partly or wholly privatized in recent years. Malawi reached the Highly Indebted Poor Countries (HIPC) completion point in 2006 and subsequently qualified for debt relief under the Multilateral Debt Relief Initiative (MDRI). As of the end of July 2011, it had received \$3.5 billion in total HIPC and MDRI debt relief.<sup>26</sup> Nevertheless, Malawi has continued to depend on donors for much of its public funds. Malawi also pursues development through regional cooperation. It is a member of SADC, which backs efforts to link the transport and electricity networks of Malawi and its neighbors, and eventually engage in regionally integrated development of their shared mineral, agricultural, forestry, gas, and tourism potential.

## U.S. Relations and Assistance

Traditionally cordial U.S.-Malawi relations strengthened following Malawi's democratic transition in 1994, but became strained during Mutharika's second term. As previously noted, the Obama Administration and a number of Members have welcomed Banda's presidency. To help foster its ties with the United States, the Malawian government engaged a U.S. lobbying and trade development firm in early April 2012.<sup>27</sup> The U.S. Ambassador to Malawi, Jeanine Jackson, speaking in early October 2012, stated that there are a number of key shared U.S.-Malawian principles that "must be in place for our partnership to succeed" and, ultimately, for Malawians to "assume ownership of development." She listed these as:

- **Good governance and human rights.** Jackson lauded the Banda government's "progress" and ongoing efforts to strengthen institutions that are "vital to this democracy" and ensure access to "fundamental human rights" by all.
- **Sound economic policies.** Jackson expressed U.S. "confidence that Malawi will stay the course on its economic recovery plan [... which] is essential—not for us, but for Malawi. Our assistance can only be successful if the local and international private sector is given space to invest and expand, only if trade is stimulated by improved policies and processes, and only if government budgets

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<sup>26</sup> HIPC and MDRI, administered by the World Bank and IMF, are inter-related debt schemes under which donors jointly agree to conditions for varying levels of debt relief for highly indebted poor countries. For debt relief assistance provided by creditor and year, see World Bank/International Development Association and IMF, *Heavily Indebted Poor Countries (HIPC) Initiative and Multilateral Debt Relief Initiative (MDRI)—Status of Implementation and Proposals for the Future of the HIPC Initiative*, November 8, 2011. For background on HIPC and MDRI, see CRS Report RS22534, *The Multilateral Debt Relief Initiative*, by Martin A. Weiss.

<sup>27</sup> The firm, the Whitaker Group, Inc., signed an agreement with the Banda administration to "support meaningful engagement with key stakeholders, including Congressional and Administration officials in the US, with the aim of educating and promoting positive dialogue on US trade and development policies affecting the people of Malawi." Justice Department, "Exhibit A to Registration Statement Pursuant to the Foreign Agents Registration Act of 1938, as amended," OMB NO. 1124-0006, expiration February 28, 2014.

are well-managed to the benefit of all.... Turning around an economy which was ... about as bad as it could get, is painful.”

- **Transparency and accountability.** Jackson asserted that “in a democracy and a free-market economy, transparency and accountability are simply essential.... tax payers in the United States have access to information on how every dollar is being spent in Malawi, and want to see it being used wisely and to good effect.”
- **Anti-corruption efforts.** Jackson stated that “corruption must be attacked at every level—from the marketplaces to the medical shelves, and from the border crossings to the board rooms. Corruption is a disease that could kill all the great efforts to move this country forward to meet the President’s vision of moving from aid to trade.”<sup>28</sup>

Key U.S. bilateral assistance goals in Malawi include increased food security and agricultural growth; poverty reduction; and stronger institutions to ensure effective social service delivery. Others include increased private sector and civil society capacity; the preservation of biodiversity and strengthening of local capacities to mitigate climate change effects; and further consolidation of democracy and good governance.<sup>29</sup> State Department- and U.S. USAID-administered bilateral assistance to Malawi totaled over \$172.6 million in FY2011 and stands at an estimated \$166.7 million in FY2012. The Obama Administration has requested \$145.8 million for FY2013. Malawi also receives some USAID regionally programmed aid, and periodic functionally specialized, generally small-scale program aid from other federal agencies and MCC assistance, discussed below. There is a Peace Corps program in Malawi, funded at \$2.7 million in FY2012, with \$2.6 million requested in FY2013. It undertakes work in the areas of education, environment, agriculture, and health. The number of volunteers in the program, 90 in FY2012, is slated to fall to 80 in FY2013.

U.S. efforts to support good governance in Malawi seek to reverse a situation in which, according to the FY2013 State Department *Congressional Budget Justification for Foreign Operations* (CBJ), “government policies, decisions, and management are conducted with minimal transparency and openness, and citizens are not sufficiently empowered to seek accountability from government.” Such trends were illustrated by the continued postponement of local elections until 2014 and the passage, under Mutharika, of laws restricting civil liberties (as discussed above). U.S. programs focus on building the capacity of civil society to contribute to public policy making and implementation monitoring, with an emphasis on enhancing state accountability and transparency. They also support media training, strengthening of local knowledge about human rights and civil liberties, and efforts to counter discrimination against various minorities or marginalized groups. U.S. civic education aid is also planned in the run-up to elections in 2014. Malawi’s military receives U.S. International Military Education and Training (IMET) and has participated in the African Contingency Operations Training and Assistance (ACOTA) program and a related Defense Department program, the U.S. Africa Command’s (AFRICOM’s) Africa Deployment Assistance Partnership Team (ADAPT) program,<sup>30</sup> which focus on peacekeeping training and deployment support.

<sup>28</sup> USAID, “U.S. Amb. Jackson on USAID Development Cooperation with Malawi,” October 3, 2012.

<sup>29</sup> State Department, *Congressional Budget Justification for Foreign Operations FY2013* (CBJ hereafter).

<sup>30</sup> ADAPT “is a Theater Logistics Engagement activity that helps build deployment capacity for African partners who conduct peacekeeping, counterterrorism, or humanitarian relief operations in Africa.” AFRICOM, “ADAPT Africa Deployment Assistance Partnership Team,” U.S. Africa Command Fact Sheet, September 2012.

**Table I. Malawi: Bilateral State Department and USAID Aid, FY2011-FY2013**  
(\$ in millions)

Accounts	FY2011 Actual	FY2012 Estimate	FY2013 Request
<b>Accounts Total</b>	<b>172.6</b>	<b>166.7</b>	<b>145.8</b>
<b>Development Assistance</b>	37.0	31.5	19.0
<b>Food for Peace Title II</b>	20.7	18.0	11.0
<b>Global Health Programs-State</b>	46.4	46.4	45.1
<b>Global Health Programs-USAID</b>	68.0	70.5	70.4
<b>International Military Education and Training</b>	0.4	0.3	0.3

**Source:** State Department, *CBJ*, FY2013; and State Department FY2012 current estimate data.

Malawi receives significant U.S. HIV/AIDS assistance for a country of its size through the President’s Emergency Plan for AIDS Relief (PEPFAR) and related healthcare programs, which focus on prevention, care and treatment, and support for orphans and vulnerable children. It is a recipient of U.S. Presidential Malaria Initiative (PMI), Global Health Initiative (GHI), and Centers for Disease Control and Prevention-administered aid. Health sector programs support maternal and childhood health efforts, notably at the community level; immunization; increased access to clean water; tuberculosis detection and treatment; and nutrition access, especially for vulnerable populations. Malawi receives aid through the Administration’s global food security initiative, Feed the Future (FtF), centering on dairy and pulse production and market integration, seed production, and efforts to enhance farm policy making. Aid also seeks to improve access to quality basic education, particularly for disadvantaged children, and state capacities necessary to provide it. Assistance also supports the Famine Early Warning System services in Malawi and efforts to improve state drought and other humanitarian emergency response capacities. Food for Peace Title II programs support improved maternal and child health and nutrition among vulnerable populations, notably households caring for orphans and vulnerable children.

### MCC Assistance

Malawi was awarded a \$21 million MCC Threshold program in 2005, since completed, which focused on enhancing good governance and fighting corruption. The MCC approved a \$350 million, five-year compact for Malawi in early 2011, but suspended its decision in February based on concerns about governance trends. The compact was ultimately signed in April 2011, but MCC officials later expressed concerns about changes to the penal code and issues of freedom of expression and human rights. They indicated that they would continue to monitor the government’s commitment to good governance during implementation of the compact, which is designed to improve electricity delivery by expanding and upgrading national power generation and distribution network capacities.

In March 2012, just prior to Mutharika’s death, the MCC suspended the compact, citing “very serious concerns about the economic and political situation,” non-adherence to the government’s IMF commitments, and non-compliance with various MCC eligibility criteria. It also stated that the suspension was due to “arrests of opposition and human rights leaders and inflammatory rhetoric by senior government officials.” It also stated concern over “Malawi’s decision to allow Sudanese President Omar Bashir to attend a trade summit in Lilongwe,” despite the ICC’s outstanding warrant for his arrest. Malawi’s stance regarding Bashir had drawn sharp criticism from Representative Frank Wolf, who in late 2011 advocated termination of the country’s compact. The MCC Board reportedly was on track to terminate the project in June 2012.<sup>31</sup>

<sup>31</sup> MCC, “MCC Board Approves Zambia Compact, Suspends Compact With Malawi,” March 26, 2012; and Representative Frank R. Wolf, “Malawi Shouldn't Be Rewarded For Coddling War Criminals,” [Dear Colleague letter], November 14, 2011.



On June 21, 2012, the MCC reinstated the compact in response to what the MCC stated were the Banda administration's "clear steps to reverse" the decisions that had led to the suspension. Actions cited by the MCC included "efforts to improve the human rights environment and to ensure that laws and institutions support democratic rights and processes"; a "demonstrated ... commitment to providing accountability for the violent police response to demonstrations in July 2011"; and "the resumption of sound economic policy."<sup>32</sup>

## **Bilateral Trade and Investment**

Malawi and the United States are minor bilateral trading partners; in 2011, 6% of Malawi's exports went to the United States, and nearly 4.5% of its imports came from United States. Bilateral trade has grown moderately over the past decade, from \$100 million in 2002 to \$131 million in 2011, peaking in 2005, at \$143 million. U.S. exports to Malawi are variable; they stood at \$40 million in 2009, dropped to \$37 million in 2010, and grew to a record \$66 million in 2011. They consist of diverse goods, notably cereals, machinery, pharmaceuticals, and miscellaneous low value products. U.S. imports from Malawi stood at \$65 million in 2009, and rose to \$72 million in 2010 and then dropped to \$65 million in 2011. They have consisted primarily of tobacco, apparel and textiles, tea, sugar, and macadamia nuts.

Malawi is eligible for trade benefits under the U.S. African Growth and Opportunity Act (AGOA; P.L. 106-200, Title I, as amended), including the apparel provision and the special rule for apparel.<sup>33</sup> While the value of Malawi's exports to the United States is limited, Malawian exporters have generally taken proportionally greater advantage of AGOA benefits than their peers. Malawi had the fourth-largest share of exports under AGOA, relative to its total exports, over the past decade and in the past two years. Over the past decade, an average of 59% of Malawi's exports to the United States have enjoyed duty-free treatment under AGOA, but in multiple years the level was in the 60% to 75% range, and in the most recent three years averaged just over 70%. Most of these exports are made up of tobacco, apparel, and textiles. The United States provides Malawi with varying levels of trade capacity building (TCB) assistance, most of which is authorized, mandated, or encouraged under AGOA. Such aid focuses primarily on export market promotion and business development; trade-related labor improvements; and efforts to boost trade-related aspects of the agribusiness sector.<sup>34</sup>

The State Department reports that foreign investment in Malawi faces virtually no hindrances, that the transfers and remittances of investment flows are generally unrestricted, and that Malawi offers a range of investment incentives to foreign investors. Expropriation risks, it reports, are generally low, although there are periodic restrictions or pricing controls on trade in some farm exports. There are also some restrictions on foreign land ownership. The courts undertake effective, if often slow, dispute settlement, and according to the department, "Malawi has legislation that offers adequate protection for property and contractual rights."

<sup>32</sup> MCC, "MCC Board of Directors Votes to Reinstate Compact with Malawi," June 21, 2012.

<sup>33</sup> The apparel provision allows for exports to the United States of certain types of apparel, textiles, and knit goods while the special rule for apparel allows U.S. for duty- and quota-free exports of apparel incorporating non-U.S. fabric and yarn assembled in the exporting country. See International Trade Administration, "Qualifying Textile and Apparel Articles." On AGOA, see CRS Report RL31772, *U.S. Trade and Investment Relations with sub-Saharan Africa and the African Growth and Opportunity Act*, by Vivian C. Jones and Brock R. Williams.

<sup>34</sup> During the last decade, TCB aid levels have ranged between \$330,700 (FY2002) and \$7.45 million (FY2004). For a discussion of TCB and how it is provided, see CRS Report RL33628, *Trade Capacity Building: Foreign Assistance for Trade and Development*, by Danielle Langton. TCB data are from USAID's *Trade Capacity Building Database*.

Telecommunications and postal sector capacity growth and reforms and the creation of new energy and communications regulatory authorities have helped improve the foreign investment climate, according to the State Department. It reports, however, that

Despite government efforts to promote foreign investment, a number of factors have contributed to limiting such investment. These include high transportation costs, unreliable power and water supplies, cumbersome bureaucracy (especially for imports and exports), difficulty in accessing foreign exchange, lack of skilled labor, and government market interventions. [In addition,] procedural delays and red tape continue to impede the business and investment approval process... Notable negative developments include government interventions into the fuel sector and current account transactions (rationing foreign exchange, restricting foreign exchange bureaus, and requiring tobacco sales revenue to go to the RBM [Reserve Bank of Malawi] instead of the commercial banks).<sup>35</sup>

## Outlook

U.S.-Malawian relations have warmed considerably since the inauguration of President Banda, who has garnered substantial U.S. and international goodwill. It is likely—assuming that the Banda administration continues to prioritize economic and governance reform, socioeconomic development, and poverty alleviation—that the United States will continue to support these efforts through aid and diplomacy. In the medium term, however, Banda will likely have to demonstrate through concrete action that she continues to warrant the international goodwill that has thus far been accorded her based upon her policy pledges and initial actions, political contrast to her predecessor, and personal background. Thus far, she appears to be succeeding on the international front, in part as implied by her March 2013 meeting with President Obama.

Banda's domestic challenges are substantial. She faces many of the same players and political dynamics that prevailed under Mutharika, and while she initially appeared politically well-positioned to achieve her policy goals, she is facing a growing number of political hurdles. The number of MPs who joined her PP party after she took power has waned, and the party reportedly has faced some internal rifts. The PP may also suffer politically if laws forbidding party crossing are enforced, as MPs from other parties who joined the PP may have to rejoin their parties of origin. The recent arrests of key former opposition officials on charges of treason relating to efforts to prevent Banda from succeeding Mutharika have also sparked protests and energized ongoing acrimony between the opposition DPP and the Banda administration.

To achieve her policy agenda, Banda may have to accommodate political demands that may run counter to it, particularly given that the economic liberalization policies that she has prioritized are causing substantial, widespread economic pain. The effects of these economic reforms may motivate potentially strong public demands for price controls and other state interventions in the economy, and could inhibit long-term reform efforts. Banda has vowed to stick with her reform agenda, but how she chooses to advance her priorities while balancing competing political demands is likely to inform how she is viewed as a leader and her long-term political prospects. A key challenge will be to refrain from attaining her goals through the use of executive powers—and risk being accused of the same kind of sometimes extralegal unilateralism as Mutharika—while using all means of authority at her disposal to avoid being viewed as an ineffective leader.

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<sup>35</sup> State Department, *2012 Investment Climate Statement - Malawi*, June 2012.

Figure I. Map of Malawi



Source: United Nations, "Malawi," Map No. 3858, Rev. 3, January 2004.

## Appendix. The Mutharika Presidency

### First Term

Bingu wa Mutharika, a minister of economic planning and development under Muluzi, narrowly won the 2004 presidential election. He was initially viewed as an unassuming technocrat who would act as a surrogate through whom Muluzi could indirectly exercise power.<sup>36</sup> After Mutharika was elected, however, he adopted a governing agenda that contrasted sharply with that of Muluzi, and increasingly clashed with his erstwhile political patron. He initiated a “zero tolerance” policy toward public sector waste and corruption, which resulted in the arrest or investigation of several high-profile figures, some within the UDF, including Muluzi. He also set out an ambitious economic reform agenda and prioritized improved donor relations, which had suffered under Muluzi due to excessive public spending and alleged corruption. Relations between Mutharika and the UDF grew ever more antagonistic, and Mutharika quit the party after it sought to expel him. He then launched his own party, the Democratic Progressive Party (DPP), shaking up the political establishment.<sup>37</sup> Initial prospects for the DPP were unclear, but it attracted some UDF defectors and other opposition parliamentarians, and its power grew. Conflicts with the UDF persisted. UDF MPs unsuccessfully tried to impeach Mutharika in parliament on a series of charges, but the effort ultimately failed in the face of legal challenges and the withdrawal of the charges by the sponsoring MP.

As his first term progressed, Mutharika increasingly used executive and police powers to promote or demote various politicians—often in a sudden, mercurial manner, at times alleging that his targets were party to various conspiracies. MPs at the center of the impeachment proceedings against him, for instance, were arrested, reportedly under presidential pressure, on various fraud charges thought to have been aimed at having them disbarred from parliament. Similarly, in 2006, Mutharika tried to sack the national vice president, Cassim Chilumpha. When this failed, due to court challenges, Mutharika accused Chilumpha of orchestrating a presidential assassination plot, in which multiple top opposition figures were implicated and arrested.<sup>38</sup> He later fired the attorney general, a close ally, for undisclosed reasons believed linked to the plot prosecution.

Despite his volatile tenure, Mutharika gained public support due, in part, to his initially positive ties with donors and ability to secure development aid; anti-corruption efforts; and pursuit of economic reforms. He also used state resources to purchase national maize food stocks and establish a national seed and fertilizer subsidy program after a drought that led to widespread food insecurity in 2005. The fertilizer program helped underpin a sharp increase in production and proved extremely popular, as it targeted small farmers—a key constituency, given that 80%

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<sup>36</sup> Mutharika, who held a doctorate from an unaccredited U.S. university, had served as an economist and trade functionary in various international and regional organizations, and as a deputy Malawi central bank governor. He had also run as a fringe presidential candidate in elections in 1999.

<sup>37</sup> The launch of the DPP was preceded by an unusual apparent power play in which Mutharika accused three UDF party officials who came to attend a meeting with him of being armed with guns and knives and of trying to assassinate him. The officials, who were allegedly aided by agents of the National Intelligence Bureau (NIB, created under Muluzi), were arrested for treason but immediately pardoned by Mutharika, and the NIB was temporarily dissolved.

<sup>38</sup> Mutharika claimed that Chilumpha, a UDF member and Muluzi ally, had resigned by not attending cabinet meetings and that Mutharika thus had the right to dismiss him, but this action was repeatedly rebuffed by courts. Chilumpha was later placed under house arrest. The case remained technically active but procedurally latent until well after Chilumpha’s term ended due to the 2009 elections, in which Joyce Banda succeeded him as vice president.

of Malawians are rural dwellers. In combination with favorable rains, the program helped underpin a sharp increase in production, prompting donors, many of whom were initially wary of its prospects, to support the scheme.<sup>39</sup>

## **Second Term**

Mutharika was re-elected in 2009 with 66% of votes, with Joyce Banda as his vice president. In his second term, backed by a DPP majority in parliament, he took on an increasingly unilateral decision-making style. He oversaw passage of bills increasing state detention powers and executive control over local government, and periodically used the security apparatus to crack down on opponents. Some analysts saw him as cultivating a Hastings Banda-like image. His second term was beset by growing economic stagnation spurred by poor global economic growth and reportedly lackluster implementation of economic policy. Economic difficulties—signified by shortages of fuel, electricity, water, and sugar, along with increasing dissatisfaction at his style of rule—sparked confrontations with diverse political opponents. Malawi’s relations with donors also deteriorated due to a combination of factors. These included passage of a restrictive media law; maintenance of an overvalued official foreign exchange rate, contributing to shortages of hard currency used to purchase imports and as a savings vehicle; and anti-homosexuality legislation reportedly largely supported by the country’s conservative population.

Mutharika’s rift with Banda and other actions by his government spurred increasing political tension and suggested to donor governments and political analysts that an undemocratic centralization of power was under way.<sup>40</sup> In April 2011, a University of Malawi professor was interrogated after giving a lecture on the uprisings in North Africa, in which he compared the political tensions there to the growing dissatisfaction in Malawi. The incident led the government to fire several lecturers and close two colleges; this led to student demonstrations against these moves. Court cases eventually led to a reversal of the government’s actions.<sup>41</sup> In late April 2011, the British High Commissioner to Malawi was expelled after being quoted in the press as reporting that President Mutharika “is becoming ever more autocratic and intolerant of criticism.”<sup>42</sup> As a result of these and other developments, the United Kingdom (UK), a top donor to Malawi, and Germany, among several other donors, considered suspending some of their assistance to Malawi. In late July, large-scale nationwide demonstrations turned violent, in part due to armed thuggery by DPP youth supporters. The protests were harshly repressed by police, resulting in 20 deaths and as many as 500 arrests.

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<sup>39</sup> The program was, however, the subject of concerns focused on various criminal diversions of fertilizer stock and subsidy distributions.

<sup>40</sup> On the unrest in 2011, see Diana Cammack, “Malawi in Crisis, 2011–12,” *Review of African Political Economy*, (39: 132), June 2012; and Resnick, *Two Steps Forward, One Step Back*, *op. cit.*, among other sources.

<sup>41</sup> *University World News*, “Malawi: Court Overrules President On Lecturer Strike,” March 27, 2011; and *The Malawi Democrat*, “Malawi University Lock-Out is Illegal, Court Agrees,” April 5, 2011.

<sup>42</sup> PANA, “Malawi Expels British Envoy Over Scathing Leaked Document,” April 18, 2011.

### Motivations for July 2011 Protests

Demonstrators who took to the streets in July 2011 were protesting poor economic trends, the government's increasingly poor relations with donors, and various anti-democratic government actions. They also called for fiscal restraint and transparency measures—centering on such issues as presidential spending on luxury cars, a jet, global travel, and a state salary for the first lady for doing charity work—among other demands in a 20-point petition submitted to the government.

Governance concerns motivating the protests were diverse. They included monitoring of university lecturers and efforts to restrict access to higher education by students from regions not supportive of the president; passage of laws allowing warrantless search (2009) and increased state censorship powers (2010/2011), and backing of a law limiting court injunction powers, limiting judicial oversight of government. Other grievances included a ban on state advertising in a national newspaper, *The Nation*, which published the remarks by the British High Commissioner that led to his expulsion; curtailments on rights of assembly and demonstration; the suspension of the Electoral Commission over allegedly missing funds; and the further postponement of long-delayed local elections. Critics also alleged that Mutharika had attempted to engineer his succession by his brother, then-Foreign Minister Peter Mutharika and the DPP's presumptive 2014 presidential candidate. They also criticized government disregard for independent oversight bodies; the political marginalization of officials who expressed policy critiques within the state; and threats of repression against demonstrators and government critics. In late 2011, state security forces allegedly hacked a journalist's email account to plant a false message implying he was party to a violent political plot.

Prior to the demonstrations, in June 2011, the World Bank had reportedly held back budget support over Malawian non-compliance with IMF programs, a concern also cited by multiple other donors, and in mid-July, the UK ended its budget support aid programs.<sup>43</sup> In the wake of the protests, the U.S. MCC placed an “operational hold” on its five-year, \$350 million Compact with Malawi. Then, in March 2012, the U.S. Millennium Challenge Corporation formally suspended the compact. In the wake of the suspension of aid by Western donors, Iran reportedly pledged an assistance package focused on bolstering the mining sector.<sup>44</sup> Western donor criticism and aid restrictions prompted some positive steps. In August 2011, Malawi devalued its currency by 10%. In September the foreign minister traveled to Europe to try to repair relations with donors and Malawi resumed talks with the IMF. In late 2011, the UK and other donors agreed to help subsidize Malawi's fertilizer and seed program.

In early 2012, however, an arson attack on a high profile Mutharika critic renewed controversy.<sup>45</sup> Then, in early March, Mutharika again drew negative attention by alleging that Western donors had falsely accused him of being undemocratic, were aiding non-governmental organizations intent on overthrowing him, and should “go to hell.”<sup>46</sup> Days later, Atupele Muluzi, a self-announced UDF contender in the 2014 presidential elections and the son of former president Muluzi, was arrested for inciting public violence after police tear-gassed a crowd he was about to address.

<sup>43</sup> In doing so, it stated: “demonstrations have been suppressed, civil society organisations intimidated, and an Injunctions Bill passed that would make it easier for the Government to place restrictions on opponents without legal challenge,” and also cited increasingly poor economic policy making. UK Department For International Development (DFID), “Government to Suspend General Budget Support to Malawi,” July 14, 2011.

<sup>44</sup> Ronel Oberholzer, “Iran Steps Up Aid to Malawi As Traditional Aid Partners Withdraw,” *IHS Global Insight Daily Analysis*, August 8, 2011.

<sup>45</sup> The attack, in February, involved an incident in which the offices of then-former Attorney General Ralph Kasambara (who has since been reappointed to the post by Banda) were targeted in an alleged attempted arson attack that was halted by his body guards. Members of his retinue were later arrested on kidnapping and other charges, along with Kasambara, when they tried to turn over to police the suspects, who reportedly had links to the presidency. Kasambara had served as Mutharika's first attorney general, but Mutharika dismissed him from the post. Kasambara then joined the political opposition, acting as Banda's legal representative in various legal proceedings between her and the Mutharika administration.

<sup>46</sup> BBC, “Malawi's President Mutharika Tells Donors ‘Go to Hell’,” March 5, 2012.

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