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Malawi

Country:

[Malawi](#)

Year:

2015

FIW Status:

PF

PR Rating:

3

CL Rating:

4

Aggregate Score:

61

Combined Freedom Score:

3.5

Overview:

Peter Mutharika of the Democratic People's Party (DPP) won the presidential election in May 2014, defeating the incumbent, Joyce Banda of the People's Party (PP), and two other candidates. The poll was marred by delays in voting and counting caused by shortcomings on the part of the Malawi Electoral Commission (MEC), as well as some isolated irregularities. However, local and international observers said the vote was generally credible. The DPP also won the most seats in the unicameral National Assembly, but not enough to gain a majority.

As president, Mutharika pledged to address pressing issues such as restoring the donor community's faith in Malawi in the wake of the so-called Cashgate corruption scandal, in which more than \$30 million in state funds was embezzled by mid-level government employees between 2009 and 2013. Some opposition and civil society figures expressed concern that the new president might restart some of the antidemocratic policies of his late brother and former president Bingu wa Mutharika. Peter Mutharika had served in his brother's cabinet, and he was among a group that had allegedly attempted to execute a coup against then vice president Banda after his brother's death in 2012.

Political Rights and Civil Liberties:

Political Rights: 27 / 40 (+1) **[Key]**

A. Electoral Process: 8 / 12

The president is directly elected for five-year terms and exercises considerable executive authority. The unicameral National Assembly is composed of 193 members elected by popular vote to serve five-year terms.

On May 20, 2014, Malawi undertook tripartite elections at the presidential, parliamentary, and local levels. Unlike the 2009 elections—which were deemed the most free and competitive since the advent of democracy in 1994—the polls were marred by logistical problems. Polling stations opened late due to a lack of voting materials, and technical problems with the MEC’s electronic tabulation system delayed the vote counting. Voting was thus extended for two extra days in some areas. In certain districts, evidence suggested the number of votes cast exceeded the total number of registered voters, though this was in part attributed to people voting in districts other than those they were registered in. After preliminary results indicated that Mutharika was in the lead, on May 22 Banda called for a manual recount, citing concerns about vote rigging.

Two days later, Banda announced that she was nullifying the elections due to “rampant irregularities,” and ordered a new round to be held within 90 days, in which she would not compete. At the request of Mutharika and the DPP, the High Court of Malawi issued an injunction halting Banda’s order, declaring it unconstitutional. The MEC and Banda then requested a period of 30 days to recount all four million votes and address all electoral complaints before declaring a winner. Mutharika and the DPP demanded that the results be announced within the required eight days after the end of voting. On May 30, the High Court decided that while the MEC could in theory recount the ballots, it still must announce the results within the eight-day period, essentially forcing the MEC to rely on its original count.

An hour after the court’s decision, Mutharika was declared the winner with 36.4 percent of the vote. Lazarus Chakwera of the Malawi Congress Party (MCP) placed second, with 27.8 percent. Banda won 20.2 percent, and Atupele Muluzi of the United Democratic Front (UDF) won 13.7 percent. In the parliamentary elections, the DPP took 50 seats, the MCP took 48, the PP claimed 26, and the UDF captured 14. Independents won an unprecedented 52 seats. The Malawi Electoral Support Network (MESN)—a coalition of civil society groups—sent out 800 parallel observers on polling day and found almost identical final counts as those released by the MEC. In addition, MESN deployed 84 long-term observers and 1,434 short-term observers for the election period.

International analysts found the electoral framework to be generally fair and in line with basic democratic standards. However, they called for requiring political parties to disclose their sources of financing and to report on campaign spending. They also suggested setting clearer prohibitions on the use of state resources to benefit the incumbent party, along with enforcement mechanisms. The MEC was generally described as impartial but underresourced and unprepared.

B. Political Pluralism and Participation: 12 / 16 (+1)

The main political parties are the PP, the DPP, the MCP—which ruled Malawi for nearly three decades after independence in 1963—and the UDF. New political parties are allowed to register unhindered, and political parties were able to campaign freely in 2014 throughout the country. Opposition parties were more competitive in the 2014 elections than in the past, and

won greater representation in the legislature. The main presidential candidates generally put forward similar platforms, focusing on poverty alleviation, improved agriculture, better education, health services, and employment.

Civil society groups have criticized the PP in recent years for politicizing humanitarian food distribution and favoring its own constituency in the process. These concerns cropped up again during the election campaign, when Banda used the PP to distribute maize intended for the general public at campaign rallies. The Malawi Human Rights Commission (MHRC) sought a court order in early May to prevent the distribution, but the court took no action before the vote and the matter was later dropped.

The DPP took the most votes in the Southern Region, the PP claimed the majority in the Northern Region, and the MCP dominated the Central Region. Critics have accused Mutharika of stacking his cabinet along tribal lines, firing officials from the Northern and Central Regions and replacing them with southerners from his own tribe.

C. Functioning of Government: 7 / 12

Corruption is endemic in Malawi. The Anti-Corruption Bureau (ACB) has estimated that 30 percent of the annual budget is lost to corruption each year, and the true percentage may be much higher. The ACB, which is in charge of investigating and prosecuting official malfeasance, is considered to be competent but underfunded. Malawi was ranked 110 out of 175 countries and territories surveyed in Transparency International's 2014 Corruption Perceptions Index.

In late 2013, Banda's administration was rocked by the Cashgate scandal, damaging her chances in the presidential election. In September 2013, Paul Mphwiyo, the budget director in the Finance Ministry who was investigating the scheme, was shot and almost killed by assailants aiming to disrupt the investigation. However, the probe continued, and by January 2014 nearly 70 civil servants, politicians, and businesspeople had been arrested and brought up on charges of embezzling government funds. The ACB continued investigating Cashgate in 2014, and made periodic arrests of new suspects throughout the year. By the end of 2014 only three cases had been resolved.

Although criminal charges have not yet been brought against Banda in connection with the scandal, she left Malawi for a UN summit in September 2014 and has not returned out of fear that charges could be forthcoming. Banda's former justice minister Ralph Kasambara was arrested in late 2013 over alleged involvement in Mphwiyo's shooting, but his case has been plagued by delays and remained unresolved at the end of 2014. The scandal has had serious financial and administrative implications for Malawi. An independent audit released in October 2014 found that \$30 million had been embezzled in 2013 alone.

Laws require high-level public officials to declare their assets and other financial interests while in public service. However, Malawi lacks a freedom of information (FOI) law, making it difficult for the public to obtain such information in practice. In February 2014, the cabinet approved a draft version of an FOI law, but although the Mutharika government expressed support for the measure after coming to power, the law remained stalled in parliament at year's end.

Civil Liberties: 34 / 60**D. Freedom of Expression and Belief: 11 / 16**

Freedom of the press is legally guaranteed and generally respected in practice. However, threats and harassment against journalists are occasionally reported. In October 2014, Archibald Kasakula, a journalist with prominent media house Times Group, was assaulted by police after he photographed city council officials in Blantyre scuffling with street vendors. He was beaten, arrested, and charged with obstruction, and later released on bail. The case provoked widespread condemnation among media figures and civil society groups, prompting the national police to declare in December that journalists were free to photograph law enforcement operations without prior permission.

Libel remains both a criminal and civil offense in Malawi. After a November 2014 meeting with journalists and press freedom activists, Mutharika agreed to consider signing the Declaration of Table Mountain, which calls on African governments to abolish criminal defamation laws.

The government-controlled Malawi Broadcasting Corporation (MBC) and TV Malawi—historically the dominant outlets—display a significant bias in favor of the government. Early in Banda's tenure MBC made some progress in improving neutrality, giving airtime to diverse viewpoints, including opposition figures, on its talk shows and news programs. However, according to a report by the Southern African Editors' Forum, MBC's coverage of the 2014 elections heavily favored Banda and the PP. By contrast, the Media Institute of Southern Africa found that the Malawi News Agency, though a state-controlled entity, displayed little bias in its election coverage. There are no government restrictions on the internet, but only 5 percent of the population used the medium in 2014.

Religious and academic freedom are generally respected.

E. Associational and Organizational Rights: 7 / 12

Freedoms of assembly and association are guaranteed in the constitution and by law. Sporadic protests erupted on election day 2014 in response to the late opening of polls and lack of voting materials, which prevented some from casting their vote. Protests continued in the days after the ballot in response to the political volleying between Banda and her opponents. Police shot and killed one demonstrator on May 30 during violent protests calling for a recount. The DPP government also disrupted several other protests later in the year, including denying permission for a rally in favor of federalism in September and using tear gas to disperse students protesting the delay in payment of their teachers' salaries in November.

Nongovernmental organizations (NGOs) generally operate without interference from the government. The MESN was key in voter education and monitoring of the 2014 elections. However, certain legal provisions regarding registration and fees for NGOs are considered onerous, and the government has been known to harass those doing politically sensitive work. In September 2014, Mutharika announced a review of the 2000 NGO Act, sparking fear among civil society that the new government would tighten restrictions on such groups, including increasing surveillance and monitoring foreign funding.

The rights to organize labor unions and to strike are legally protected, with notice and

mediation requirements for workers in essential services. Unions are active and collective bargaining is practiced, but workers face harassment and occasional violence during strikes. Since only a small percentage of the workforce is formally employed, union membership is low. Strikes are common among Malawi's public sector workers, who often experience delays in their already low pay. In 2014, strike actions occurred among judicial workers, public health-care workers, schoolteachers, and University of Malawi employees.

F. Rule of Law: 9 / 16

Judicial independence is generally respected. However, the overburdened and inefficient court system lacks resources, personnel, and training. A backlog of cases and commonly exorbitant bail terms mean that most defendants spend months or even years in pretrial detention. Poverty and a lack of state resources result in more than 90 percent of defendants navigating their cases without legal representation. The police force is likewise poorly trained and often ineffective. As a result, recent years have seen an increase in vigilantism that undermines the rule of law.

In 2013, 12 officials from the former government of Bingu wa Mutharika—including Peter Mutharika—were arrested and charged with treason for their role in an attempted coup after the former president's death that would have displaced Banda, then vice president and next in the line of succession, from power. The coup failed when the armed forces declined to back the power grab. The defendants were brought to trial, but in June 2014 the charges against Peter Mutharika were dropped due to the immunity from prosecution he now enjoys as president. Later that month, in a widely criticized move, prosecutors also dropped the charges against eight alleged co-conspirators even though they had no similar change in their legal immunity.

Police brutality is reportedly common, as are arbitrary arrests and detentions. Prison conditions are dire, characterized by overcrowding and extremely poor health conditions; many inmates die from AIDS and other diseases. Abuse of younger inmates is commonplace. In mid-2014, Malawi experienced a surge in violent crime, leading many citizens to express fears about their safety and further emboldening advocates of vigilantism.

Consensual sexual activity between same-sex couples is illegal and punishable with up to 14 years in prison. In 2012, the government announced it was no longer enforcing laws against same-sex activity until the courts had an opportunity to review their constitutionality; this decision was later rescinded after public outcry. However, the DPP government took up this nonenforcement policy again in July 2014. In January 2014, groups affiliated with the United Nations launched a legal challenge to the laws in Malawi's courts, though the matter remained unresolved at year's end.

G. Personal Autonomy and Individual Rights: 7 / 16

The constitution establishes freedom of internal movement and foreign travel, which are generally respected in practice. However, refugees are under an encampment policy in which the government periodically rounds them up and returns them to camps.

Property rights do not receive adequate protection, and starting a business can be a

cumbersome process. Business is also impeded by corruption in the various customs, tax, and procurement agencies.

Women won about 17 percent of parliamentary seats in the 2014 elections, down from 22 percent in the 2009 vote. Despite constitutional guarantees of equal protection, customary practices perpetuate discrimination against women in education, employment, business, and inheritance and property rights. Violence against women is rampant, with authorities reporting nearly 7,000 cases of gender-based and domestic violence in the first half of 2014 alone. Child marriage remains pervasive, with more than half of girls marrying before their 18th birthday. The 2013 Gender Equality Bill brought the country's law into line with the 1979 Convention on the Elimination of All Forms of Discrimination against Women.

Trafficking in women and children, both within the country and to locations abroad, is a problem. Penalties for the few successfully prosecuted traffickers have been cited as too lenient, and the U.S. State Department has criticized the government's efforts to protect victims and prevent trafficking.

Scoring Key: X / Y (Z)

X = Score Received

Y = Best Possible Score

Z = Change from Previous Year

Full Methodology

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