

Malawi

Country:

Malawi

Year:

2016

Freedom Status:

Partly Free

Political Rights:

3

Civil Liberties:

3

Aggregate Score:

64

Freedom Rating:

3.0

Overview:

The so-called Cashgate corruption scandal continued to reverberate in Malawi in 2015. The results of a national audit, released in June, revealed that the equivalent of \$800 million had been looted from public coffers between 2009 and 2014. Prosecutions of those involved in the scandal have been slow, and President Peter Mutharika's administration has struggled to regain the confidence of international donors who cut off budget support in its wake.

In his first year and a half in office, Mutharika has not reintroduced the antidemocratic policies of his late brother. However, relations between the presidency and civil society and the independent media deteriorated during 2015.

Malawi made progress on the protection of women's rights through the passage of comprehensive marriage legislation, which raised the minimum marriage age to 18 years and provided legal protection to women on a range of other issues. However, the same law effectively banned same-sex marriage.

Political Rights and Civil Liberties:

Political Rights: 27 / 40 [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.

In May 2014, Malawi undertook tripartite elections at the presidential, parliamentary, and local levels. The polls were marred by logistical problems and postelection controversy, but were largely regarded as credible by local and international observers. Polling stations opened late due to a lack of voting materials, and technical problems with electronic tabulation systems delayed the vote counting. Voting was thus extended for two extra days in some areas. In certain districts, evidence suggested there were more votes cast than the 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, then president Joyce Banda called for a national recount, citing concerns about vote-rigging.

Two days later, Banda announced that she was nullifying the elections, and ordered a new round be held within 90 days, in which she would not compete. However, Banda's order was declared unconstitutional by the High Court. The Malawi Electoral Commission (MEC) and Banda then requested a period of 30 days to recount all four million votes and address electoral complaints before declaring a winner. Mutharika and the Democratic People's Party (DPP) demanded that the results be announced within the required eight days after the end of voting. At the end of May 2014, 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.

Immediately after the court's decision, Mutharika of the DPP was declared the winner with 36 percent of the vote. Lazarus Chakwera of the Malawi Congress Party (MCP) placed second, with 28 percent. Banda won 20 percent, and Atupele Muluzi of the United Democratic Front (UDF) won 14 percent. In the parliamentary elections, the DPP took 50 seats, the MCP took 48, the People's Party (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.

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

The main political parties are the ruling DPP, the PP, 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 throughout the country ahead of the 2014 polls. Opposition parties were more competitive in the 2014 elections than in the past, and won greater representation in the legislature. Politicians frequently move between parties or break away to form their own parties. Indeed, the DPP is a breakaway of the UDF, and the PP a breakaway of the DPP.

The UDF has formed a working alliance with the ruling DPP. UDF president Muluzi is the only member of the opposition in cabinet. (Muluzi is the son of former president Bakili Muluzi with whom Mutharika's brother, former president Bingu wa Mutharika, fell out in 2005, resulting in the formation of DPP.) In May 2015, most of the UDF's legislators—though not the party's leader—moved to the ruling parties benches in Parliament. The move prompted a petition from a civil society leader to the speaker of the National Assembly, Richard Msowoya, of the opposition MCP, to declare the UDF lawmakers' seats vacant, as the constitution prohibits members of parliament from defecting to another party. However, the attorney general advised the speaker that the provision was not applicable as the UDF lawmakers had not actually changed parties. The MCP expressed fears that

the DPP-led parliamentary coalition was seeking to impeach the speaker, but the DPP said it had no such intention.

Mutharika has made good on his promise to meet with opposition leaders to discuss matters of concern for the whole nation. However, he has been criticized for selecting cabinet ministers mostly from the southern region of the country and from his own ethnic group.

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.

In June 2015, a German-funded national audit conducted by PricewaterhouseCoopers was made public. The audit report revealed that 577 billion kwacha (\$800 million) in public funds had gone missing between the beginning of 2009 and the end of 2014, and recommended further investigations. Arrests and prosecutions of those implicated in the scandal, which first emerged in 2013 and is known informally as Cashgate, continued in 2015. In September, Oswald Lutepo, a former PP senior official, was convicted on charges of money laundering and theft of 4.1 billion kwacha (\$8.5 million), and received an 11-year sentence. Lutepo insisted that the corruption was carried out on behalf of former president Banda, a claim she disputes.

Although no criminal charges were brought against Banda in connection with the scandal, she left Malawi for a United Nations summit in 2014 and had yet to return to Malawi at the end of 2015. The scandal has had serious financial and administrative implications for the country; international donors in February 2015 cut off \$150 million in budget support.

Laws require high-level public officials to declare their assets and other financial interests while in public service. In March 2015, Mutharika declared assets valued at nearly \$10 million. Malawi was ranked 112 out of 168 countries and territories surveyed in Transparency International's 2015 Corruption Perceptions Index.

Civil Liberties: 37 / 60 (+3)

D. Freedom of Expression and Belief: 13 / 16 (+2)

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

Libel remains both a criminal and civil offense. Mutharika has not yet signed the Declaration of Table Mountain, which calls on African governments to abolish criminal defamation laws, despite telling journalists and press freedom activists that he would consider doing so after a meeting with them in 2014. Malawi lacks a freedom of information (FOI) law. Despite previous pledges of support for one, Mutharika dismissed a FOI bill in a November 2015 cabinet meeting, claiming it contained "many inconsistencies."

The government-controlled Malawi Broadcasting Corporation (MBC) and TV Malawi—the dominant outlets—display bias in favor of the government. There are no government restrictions on the internet, but just 9 percent of the population used the medium in 2015.

The constitution upholds freedom of religion, and this right is respected in practice. Academic freedom is generally respected. However, Mutharika was criticized for remarking in May 2015 that university professors should focus on academic publications rather than commenting on public matters in the media. But in October, he reassured academics of the government’s commitment to academic freedom.

E. Associational and Organizational Rights: 8 / 12 (+1)

Freedoms of assembly and association are guaranteed in the constitution and by law. The government generally respects people’s rights to protest peacefully, and there were several peaceful protests in 2015 against issues including inadequate health care services, poor leadership and financial mismanagement by the government, and xenophobic attacks in South Africa. Many South African–owned business remained closed for a day during the antixenophobia protests, which called for the boycotting of South African products and businesses. Mutharika has apologized on several occasions for the slaying of about 20 protestors by his brother’s administration in 2011. On the anniversary of the killings in July 2015, a presidential spokesperson acknowledged that the protestors were not “thieves” as originally claimed.

Nongovernmental organizations (NGOs) generally operate without interference from the government. However, certain legal provisions regarding registration and fees for NGOs are considered onerous, and the government has been accused of harassing groups doing politically sensitive work. In October 2015, a group of civil society organizations called on the president to resign on the grounds that he has failed to address the governance and economic challenges facing the country. Although no reprisals were reported, a cabinet minister in June 2015 threatened that “noisy” NGOs would be banned if they failed to register with the NGO Board. In November, a group of regional NGOs called for the depoliticization of Malawi’s NGO Board, saying it strategically funded pro-government groups whose activities in large part included defending the government against corruption and other allegations levied by “bonafide” NGOs.

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 in the past workers have faced 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 2015, strike actions occurred among judicial workers, public health care workers, teachers, and parliamentary support workers.

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 the vast majority 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.

Police brutality is common, as are arbitrary arrests and detentions. In June 2015, a police station in Blantyre was set on fire by residents following the death of a person allegedly tortured by the police. In July, a police officer was convicted of the 2012 murder of a student who was being held in police custody.

Prison conditions are dire, characterized by overcrowding and extremely poor health conditions; many inmates die from AIDS and other diseases. Hundreds of migrants from various African countries trying to reach South Africa are detained in Malawi on charges of entering the country illegally. Many have remained in detention even after finishing their sentences because Malawi cannot afford to return them to their home countries.

There has been a recent upsurge in criminal activity by members of the police force, including armed robberies and break-ins, which has eroded the credibility of law enforcement. Police officers cite low pay and promotions based on tribalism and political affiliation as some of the reasons for discontent in their ranks.

Consensual sexual activity between same-sex couples remains illegal and punishable by up to 14 years in prison. However, the application of the law has been suspended pending a High Court decision on its constitutionality, and in December 2015 the government dropped charges against two men who had been charged under its provisions. A new marriage law that took effect in April 2015 defined marriage as between a man and a women, ruling out the possibility of same-sex marriages.

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. In November 2015, Malawi's land minister issued a warning that unused land owned by developers would be repossessed by the government unless the developers started to use it.

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 prevalent. Child marriage remains pervasive, with around half of girls marrying before their 18th birthday. The new marriage law that took effect in April 2015 raised the minimum age of marriage to 18 years. In June, a chief in Dezda District annulled 330 child marriages. However, the constitution, which provides that children above the age of 15 years may marry with parental consent, has yet to be amended. The 2015 marriage law also has provisions intended to protect women from being deprived of property after the death of their husbands, and from domestic violence and marital rape.

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 as inadequate.

Scoring Key: X / Y (Z)

X = Score Received

Y = Best Possible Score

Z = Change from Previous Year

Full Methodology

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