



SALO Malawi Brief

MALAWI | Tense political Environment for re-run of elections on the 23rd of June



Political Context

Today, Malawians are going to the polls in a re-run of the disputed May 2019 presidential election. Opinion polls are currently predicting a majority for the opposition. This comes after the annulment of the May election as ruled by the Constitutional Court on the 3rd of February. This was subsequently supported by the Supreme Court of Appeal on the 8th of May by a declaration stating that the presidential part of the election should be considered as null and

void. This resulted from widespread irregularities, which undermined the credibility of the results declaring that President Peter Mutharika was the winner.

The recent election period was marked by several challenges. This includes a spike in politically motivated violence against opposition groups, civil society actors, and journalists. The political environment is further strained between incumbent President Mutharika's Democratic Progressive Party and the Tonse Alliance, a coalition of nine political formations headed by Malawi Congress Party leader, Lazarus Chakwera. Furthermore, accusations have been made against the state for reportedly encroaching on the work of the judiciary after it attempted to push Chief Justice Andrew Nyirenda into forced leave and early retirement. This judgement was later rescinded.

Lastly, the ability of the Malawi Electoral Commission (MEC) to institute a successful election is questioned as the entity is facing significant logistical and resource constraints. In particular, the MEC has yet to receive the MWK (Malawi Kwacha) 10 billion from the Treasury to finance its operations in the lead up to the elections. Chairperson of the Human Rights Defenders Coalition (HRDC), Gift Trapence, stated during a SALO and OSISA 18th of June multi-stakeholder dialogue, that it is an active decision on the part of the state to *not* adequately fund the election process. Physical and capital resources play a vital role in ensuring a credible and fair election. This includes sufficient ballot papers and election material, the transportation of voting materials to voting centres, and local and external election observers. A shortage of funding has a material impact on the outcome of the election, especially in a context of a partisan distribution of limited resources.

Attacks on the Judiciary

Mutharika's administration tried to bench two senior judges on the 13th of June, almost two weeks before the election, attempting to force Chief Justice Andrew Nyirenda on immediate leave and into early retirement (The Guardian, 2020). Chief Justice Nyirenda led the court that annulled President Mutharika's 2019 election victory and ordered a new election. The judiciary subsequently rejected this after the HRDC, in partnership with the Malawi Association of Judges, obtained a court injunction on 14 June at the High Court in Mzuzu. The attempt to remove the chief justice also elicited protest action on June 17th from lawyers in all major cities, including Blantyre, Lilongwe, Mzuzu, and Zomba. Clearly, the state is increasingly encroaching on the work of the judiciary. Moreover, President Mutharika accused the judiciary of attempting to overthrow his government by way of a coup. These factors encouraged the Commonwealth Magistrates and Judges Association, the Commonwealth Legal Association, the Commonwealth Lawyers Association, and Judges for Judges on the 15th of June to issue a statement asking Malawi's executive arm to desist from interfering in the affairs of the judiciary (CMJA, 2020).

Politicisation and Impact of Coronavirus

The election is taking place in a context of the COVID-19 pandemic - Malawi has 572 total confirmed cases and six associated fatalities. The government affirmed that the virus will not interfere with the elections however, there are concerns around the impact of the international coronavirus-induced border closures. This might negatively impact regional and international election monitoring, which will harm an additional layer of accountability for free, fair, and credible elections in Malawi. This impacts the oversight role of regional and international election monitors, which is already a contentious issue, as the previous May 2019 tripartite

election was declared free and fair with minor misgivings (Obsanjo, 2020). The European Union has also confirmed that they will not be sending foreign observers due to the coronavirus pandemic and a lack of an official invite from the MEC (Obsanjo, 2020; Andalou Agency, 2020), which stands in stark contrast to the 83 observers sent for the 2019 tripartite election. Tadala Peggy Chinkwezule, of the Women Lawyers Association Malawi, has said that the organisation she belongs to is mobilising women lawyers to act as observers around the country. Further, Malawi's civil society organisations have called for help to ensure that the resources are available to allow them to deploy as many local observers as possible to compensate for the absence of international observers.

Additional concerns were raised by opposition leader, Lazarus Chakwera, and reaffirmed by pro-democracy civil society activists, that funds earmarked for COVID-19 prevention and management have been abused, particularly by the ruling-DPP for campaign events (BBC, 2020). Funds have supposedly been redirected toward COVID-19; however, according to Malawian pro-democracy activists in a SALO and OSISA multi-stakeholder dialogue held on the 18th of June, the ruling DPP has reportedly directed funds earmarked for the health crisis toward its political campaign (New Zimbabwe, 2020).

Additionally, President Mutharika was unable to institute a national lockdown as High Court Judge, Kenyatta Nyirenda, ruled against it, citing a failure to implement any social protections for vulnerable groups (Matonga, 2020). Widespread protests, including doctors and nurses downing tools and opposition from civil society groups, led to the injunction. Mutharika's response to managing the virus has been widely criticised. An illustration of this includes Chilima, from the opposition party United Transformation Movement, accusing the government of actively trying to delay the election by allowing a deliberate spread of coronavirus after several hundred people returned to Malawi from South Africa before they could be tested (BBC, 2020). Furthermore, the government does not hold widespread trust with its citizens, as many do not believe in the existence of the virus. Consequently, any social distancing or virus management strategies have not been accepted by citizens. However, there were concerns around voter turnout amid increasing cases of coronavirus and what this means for the credibility of the election.

Increasing Political Repression and Closing of Democratic Space

Widespread politically motivated violence against, and harassment of, opposition parties and civil society actors, as well as targeted state intimidation of the judiciary, were reported during the election period. On the 5th of May, an unidentified group threw Molotov cocktails into the offices of the United Transformation Movement (UTM) in Lilongwe. The UTM is led by former Vice President, Saulos Chilima. This resulted in the deaths of three people and severe injuries to three others (Human Rights Watch, 2020). In a related incident, Chilima's convoy was stoned in Mutharika's hometown, Phalombe, in late May. On the 12th of May, Human Rights Defenders Coalition leader, Timothy Mtambo, stated that suspected ruling party DPP supporters physically attacked him in Blantyre. His security detail subsequently apprehended the attackers and handed them over to the police, who reportedly released them without charge shortly after. Furthermore, an HRDC leader for the Rumphi district in northern Malawi received death threats from a cabinet minister on the 1st of June, apparently to convince him to halt his activism. According to pro-democracy Malawian activists, several of these incidents have actively not been investigated by the authorities and there has been little state commitment to end political violence. Several incidents of this nature have been present throughout the election period (particularly politically motivated attacks) since May on opposition leaders, activists, journalists, and notably, women and girls.

The gendered face of the violence in Malawi

As seen throughout the region, women have borne the brunt of the COVID-19 pandemic. The pandemic highlights and exacerbates sexism, gender-based violence and the vulnerabilities of women. Sarai Chisala-Templehoff from the Gender Justice Unit and Beatrice Mateyo from the Coalition for the Empowerment of Women and Girls, both operating in Malawi, emphasized in SALO and OSISA's 18th of June multi-stakeholder dialogue on Malawi, that state security forces have continuously exerted violence on women and girls as a political tool, in reference to neutralising opposition groups and clamping down on dissent. In this way, Gift Trapence stressed that violence has a gendered face. Most notably, civil society leaders have cited complaints against police officers who sexually assaulted and raped at least eight women and girls in retaliation for the death of a police officer during political demonstrations in October 2019. (Mweninguwe, 2020; Pensulo, 2020).

The COVID-19 pandemic has highlighted and exacerbated the gender inequality and gender-based violence in Malawi. Not only have women been victims of gender-based violence, but they form the vast majority of frontline workers fighting the pandemic. There has been a militarization and criminalization of the pandemic which affects women and girls the most. Women are being accused of witchcraft and vulnerable women, such as transwomen, sex workers, and gender non-conforming individuals, are even more vulnerable due to international NGOs leaving the country following the lockdown. The violence against women actively discourages and limits their participation in the election. This, coupled with the fear of coronavirus, could lead to a low voter turnout – especially amongst women.

Malawi also suffers from sexism at its highest levels. Women in government are mostly tokenist and online abuse is widespread. An illustration of this is when the Malawian President called the previous president a whore and a prostitute online. Women's groups who spoke out against this were added to a WhatsApp group and violently insulted. It is the view of Sarai Chisala-Templehoff that gender inequality laws are openly and without consequence being flouted by high level government officials, which spills over to the public.

Further Challenges and Potential Outcomes

An election poll by the Institute of Public Opinion and Research (IPOR) (The Economist, 2020), suggests that the leader of the opposition alliance, Lazarus Chakwera, is poised to win the re-run. Approximately half of the respondents supported Chakwera, with a third supporting Mutharika, and the remaining undecided or refusing to say. However, the electoral system implemented for the upcoming presidential election requires a 50% + 1 to win the vote, as opposed to the first-past-the-post system, and contingency measures remain unclear should no candidate get the outright majority.

Furthermore, the support bases of Chakwera's MCP and alliance partner Chilima's UTM are complementary, as the MCP has a strong rural base, while the UTM is popular among young urban constituencies. However, should the alliance coalition win, additional challenges include the integrity of the alliance as it is a formation of nine political parties with broad political constituencies and objectives. Within this context, it is difficult to build and maintain

consensus, as well as agreeing on a definitive policy direction. It begs the question - how do you uphold the integrity of this structure and avoid a future political breakdown?

It is clear from the above that there are various strains on Malawi ahead of the polls. If there were to be reports of electoral irregularities, a declaration of the election as unfree and unfair or a change of the date past the July 3rd deadline, it is likely that widespread protests and unrest will take place. This is based on the history of sustained protests by opposition and civil society actors like the HRDC following the May 2019 election. Should this be the outcome of the forthcoming elections, it is likely to undermine the overall political stability of the country. Ultimately, this may prove to be one of the biggest tests for Malawi's democratisation process. With only four main political parties nationwide, elections have historically been closely contested. Malawi had its first peaceful handover of power in 2014, when Mutharika's DPP successfully challenged Lazarus Chakwera's MCP (ACSS, 2020). If the 23rd of June elections are free, fair, and credible, the overall political stability is likely to be upheld, as previous electoral results and court rulings have been respected.

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