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# **Elections in Malawi**

## *2019 General Elections*

### Frequently Asked Questions

Africa

International Foundation for Electoral Systems

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## Frequently Asked Questions

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*Disclosure:*

*These FAQs reflect decisions made by the Malawian elections authorities as of May 17, 2019, to the best of our knowledge. This document does not represent any IFES policy or technical recommendations.*

## **When is Election Day?**

Election Day in Malawi is May 21, 2019. The Constitution of Malawi (1994) Articles 75, 76(4) mandates the Malawi Electoral Commission to set an election date. On Election Day, the polls will open at 6:00 a.m. and close at 6:00 p.m. Malawians will vote in presidential, parliamentary and local government elections.

## **What is the legal framework governing these elections?**

Malawi's legal framework governing elections comprise:

- Constitution of the Republic of Malawi, 1994;
- Parliamentary and Presidential Elections Act, 1993;
- Electoral Commission Act, 1998;
- Political Parties (Registration and Regulation) Act, 1993;
- Local Government Elections Act, 1996; and
- Local Government Act, 1998.

The Parliamentary and Presidential Elections Act has been amended three times – in 1994, 1997 and 1998.

Regionally, the framework governing Malawi's elections comprise the following:

- Principles for Election Management, Monitoring and Observation in the Southern Africa Development Community (SADC) region;
- SADC Principles and Guidelines Governing Democratic Elections; and
- SADC Norms and Standards for Elections.

Malawi has not signed or ratified the African Charter on Democracy, Elections and Governance.

## **Why are these elections important?**

The 2019 general elections will be significant given the political context in Malawi. Recently, the State Vice President Saulos Chilima broke away from the governing Democratic Progressive Party (DPP) to form an independent party – the United Transformation Movement (UTM). The newly formed UTM gained a portion of its members from former DPP party representatives. The UTM has a large following, especially in the major towns and cities. It is making inroads in districts that are traditionally considered DPP's strongholds. Political divisions – coupled with defections by prominent politicians to UTM – have also impacted the major opposition Malawi Congress Party (MCP). Some senior members of the MCP have also defected to the UTM, such as Jesse Kabwila, a vocal and prominent member of Parliament from Salima district, and several district and regional MCP chairpersons. Chilima is the first state vice president to openly challenge his boss and form a political movement to seek power.

Former State President Dr. Joyce Banda withdrew from the presidential race on March 14 and endorsed opposition leader and MCP President Lazarus Chakwera. Banda garnered over 1 million votes in the last elections, which could be enough to tip the scales in favor of Chakwera based on his level of support in 2014. Chakwera scored just under 1.5 million votes while incumbent Peter Mutharika garnered 1.9 million votes.

The emergence of these political divisions has caused violence during the election period. Several houses and vehicles belonging to opposition party members and officials have been set ablaze. The general elections will also be supported by the government of Malawi without donor support. Minister of Finance Goodall Gondwe presented the MWK 1.5 trillion 2018-19 national budget on May 20, 2018, which included funds for the 2019 general elections. The election budget covered voter registration and verification, education and outreach, election materials, material transportation logistics, purchasing of motor vehicles and other costs associated with running the election.

This will be only the second time that Malawi will conduct tripartite elections with presidential, parliamentary and local government elections on the same day, the first being in 2014.

## **What is the electoral system?**

For the presidential election, Malawi uses the first-past-the-post (FPTP) system, in which a presidential candidate is declared winner if they receive the highest number of votes.<sup>1</sup>

On May 21, 2019, Malawi's next president will be directly elected concurrently with members of Parliament and local government councilors. This is provided for in Section 80 (2) of the Constitution and Section 96 (5) of the Parliamentary and Presidential Elections Act.<sup>2 3 4</sup>

In mid-2018, the Malawi Law Commission endorsed the 50+1 system for electing the head of state and government. The commission's endorsement came three months after the Special Law Commission's review report of the Electoral Law. The report recommended drastic changes to how general elections would be handled. The recommendation was a sharp departure from the 1994 legal provision that established the FPTP process. The 50+1 system proposed that for electing presidents, a candidate must acquire 50 percent plus one of the total votes cast to be declared the winner. However, when the proposed change was debated in Parliament the bill was defeated. As such, the FPTP process remains valid for the upcoming 2019 general elections.<sup>5</sup>

## **What is the structure of the government?**

The government of Malawi is made up of three arms: the executive, legislative and judiciary.

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<sup>1</sup> <http://www.maravipost.com/road-2019-elections-malawi-law-commission-endorses-501-electoral-system/>

<sup>2</sup> <http://www.sdn.org.mw/lawcom/docs/d3electoralsys.pdf>

<sup>3</sup> <https://www.worldatlas.com/articles/what-type-of-government-does-malawi-have.html>

<sup>4</sup> <http://www.mec.org.mw/>

<sup>5</sup> <http://www.mec.org.mw/files/electoral%20laws%20final.pdf>

Executive power lies with the president exercised through a vice president and the Cabinet. The vice president is elected on the same ticket as the president. The Constitution also provides for the position of second vice president who is appointed by the president from another party than the president's. However, currently there is no second vice president in Malawi.

Legislative power is vested in the National Assembly (Parliament) consisting of 193 members representing constituencies, directly elected by universal adult suffrage. The tenure of members of Parliament is five years.

Malawi's court system comprises a High Court, a Supreme Court of Appeal and lower courts and tribunals. The chief justice presides over the Supreme Court of Appeal and is appointed by the president and confirmed by two-thirds of the members of the National Assembly. All other judges are appointed by the president on the advice of the Judicial Service Commission, while magistrates are appointed by the chief justice in consultation with the Judicial Service.<sup>6</sup>

## **What is the election management body? What are its powers?**

The Constitution of Malawi mandates the establishment of an electoral commission that is independent of any external authority (Constitution 1994, Articles 75, 76(4)). The High Court has the right of judicial review over the Malawi Electoral Commission (MEC) to ensure that it acts in accordance with the Constitution and Acts of Parliament (Constitution 1994, Articles 76(3), (5)(a)). The National Assembly has the power to confirm the constituency boundaries but is not empowered to alter them, except upon recommendation of the MEC.

The MEC is comprised of a chairperson, who is a judge of the Supreme Court nominated by the Judicial Service Commission, and no fewer than six other members, who are appointed by the president in consultation with the leaders of the political parties represented in the National Assembly. Members may be removed by the president, on advice of the Public Appointments Committee, for incompetence or incapacity (Constitution 1994, Article 75(1), (4); Electoral Commission Act 1998, 4(1)).

The functions of the MEC are to (Constitution 1994, Article 76(2); Electoral Commission Act 1998, 8(1)):

- Delimit constituencies;
- Determine election petitions;
- Direct and supervise electoral operations including voter registration;
- Ensure the security of elections; and
- Conduct civic education campaigns.<sup>7</sup>

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<sup>6</sup> <https://mwnation.com/mec-announces-new-voter-registration-figures/>

<sup>7</sup> <https://malawi24.com/2018/12/13/sms-voter-verification-method-secure-mec/>

## Who are voters casting their ballots for on Election Day?

During the 2019 general elections Malawians will elect the president, vice president, 193 members of the National Assembly and ward councilors for local authorities. There are seven candidate pairs running for president and vice president and 1,331 parliamentary candidates.

## Who can vote in these elections?

According to Chapter VII (Section 77) of the Constitution of Malawi, every citizen of Malawi residing in Malawi and who, on or before Election Day, shall have attained the age of 18 years shall be eligible to register as a voter in an election.

Additionally, according to Part 3 (16) of the Electoral Act, a person shall be registered as a voter in the area where he ordinarily resides, was born, is employed or carries on business. This provides greater flexibility for voters to pick a polling station to register that will be most convenient for them on Election Day. An eligible person wishing to register as a voter in an election shall in person state that he is not registered at any other registration center and shall present to a registration officer proof of his eligibility, usually by presenting a national identification.<sup>8</sup>

Security forces, such as the Malawi Armed Forces and the Malawi Police, are permitted to vote in advance since they perform security duties during polling.

A person is disqualified from registering to vote if:

- They have been convicted by a court of law under the Electoral Law, or have been disqualified by the High Court;
- They have a psychosocial or intellectual disability under the Electoral Law or the Parliamentary Act; or
- They are not a Malawian citizen.

## How was voter registration conducted?

For previous elections, Malawi has always used a paper-based process for voter registration. However, for these elections the Malawi Electoral Commission (MEC) introduced a new biometric voter registration (BVR) system in June 2018. This BVR system used national identification (ID) cards as the only acceptable document for voter registration. The national ID card system also uses biometric data and is issued by the National Registration Bureau (NRB). In the BVR system voters' photographs and fingerprints are scanned into the voter list. This process aims to prevent duplication, multiple registrations or identity theft to improve the accuracy of the voter list.

This system of using the national IDs to create the voter list created challenges as at the end of the registration period only 6 million individuals, out of a potential voting population of 16 million, had registered for the national ID. As such, the MEC decided to work with the NRB so that citizens who might

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<sup>8</sup> <https://mwnation.com/who-will-decide-2019-elections/>

have lost their national ID cards but whose information is still in the system can register. The MEC and the NRB use the same equipment for BVR.

Technically, the BVR system consists of two parts, registering voters and scanning the voter list for duplicate and fraudulent registrants.

The voter registration process ended on December 9, 2018. Between December 10, 2018 and January 9, 2019, the MEC conducted voter registration verification where prospective voters were asked to verify their names and make any corrections or transfers in their polling station, if required. During this time registered voters could verify their personal data in the preliminary voter list by dialing a toll-free verification code, \*2019#.<sup>9</sup>

## **How many registered voters are there?**

By December 9, 2018, the Malawi Electoral Commission had registered a total of 6,859,375 eligible voters, representing 81 percent of its projection.<sup>10</sup> Of the total registered voters, 3,729,588 are 18 to 35 years old, 3,813,578 are women and 3,045,992 are men.

## **Where will voters cast their ballots on Election Day?**

Subject to Subsection (2) of the Electoral Act, a person shall be allowed to exercise their right to vote at a polling station at the registration center where they are registered.

If it is not possible for a person to vote there, the registration officer of that center or another duly authorized officer may, on the request of such person, grant them written authorization to vote at a polling station located in the place where they will be present on Election Day. In this case, the polling station officers at the other polling station shall record in the manner prescribed by the Malawi Electoral Commission (MEC) the voter's name, voter registration certificate number and their designated registration location. This process could only be done during the voter verification exercise, which concluded on March 19, 2019.

Part 4 (67) on the Electoral Act states that MEC shall establish polling stations throughout Malawi and there shall be at least one polling station for every registration center established under Section 21 of the Electoral Act. It further states that all polling stations shall be established and located in public buildings, including schools, community or social halls, administrative offices of government or local authorities, but not at a military unit or police station, in a residential building, a building occupied by a political party, premises where alcoholic drinks are ordinarily sold or consumed, places of worship or dedicated to worship, and hospitals or other health centers.

The Electoral Act does provide some exception by stating that the MEC may establish polling stations at any military unit or police station for purposes of enabling members of the Malawi Defense Force, the

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<sup>9</sup> <http://www.faceofmalawi.com/2018/10/mec-promises-a-smooth-final-voter-registration-phase/>

<sup>10</sup> <https://mec.org.mw/2019-tripartite-elections/>

Malawi Police Service and members of their families to vote in the two days immediately prior to Election Day.

The Electoral Act also mandates that before Election Day the MEC publish in the *Gazette*, in more than one issue of a newspaper in general circulation in Malawi, by radio announcements and by any other appropriate means the names of all places throughout Malawi at which polling stations have been established.

The MEC has established 5,006 polling centers in all 193 constituencies in Malawi to be staffed by 11,095 poll workers.<sup>11 12 13</sup>

## **Will there be out-of-country voting?**

The current Electoral Law does not provide for out-of-country voting and does not allow the Malawi Electoral Commission to conduct external voting or establish polling centers abroad. Malawians living in the diaspora can only vote if they return to Malawi for both registration and voting.<sup>14</sup>

## **Who is managing security on Election Day?**

The Malawi Police Service is responsible for security and public order on Election Day. However, the armed forces, paramilitary or uniformed organizations may be allowed to be present at polling stations if they have been deployed to that station at the request of the Malawi Electoral Commission (MEC) or a polling station's presiding officer to maintain law and order. The MEC and other partners are also training police officers on how to deal with specific election-related issues and complaints for the current election period.

Section (71) of the Electoral Act states that presiding officers at polling stations and, in general, the MEC shall be responsible for creating and guaranteeing all necessary and indispensable conditions for security and for the custody, conservation and inviolability of the items specified in section 70, including, more particularly, the ballot papers and ballot boxes.<sup>15</sup>

## **Who can observe during Election Day? How can they get accreditation?**

The Electoral Act in Malawi allows for electoral observation, and the Malawi Electoral Commission (MEC) always invites stakeholders to observe elections a year or earlier before Election Day. Even without the invitation of the MEC, stakeholders willing to observe the polls are free to request accreditation from the MEC.

The MEC values the role of observers in holding free, fair and credible elections. As such, the MEC has waived the accreditation fee. However, the electoral observers are expected to operate within the

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<sup>11</sup> <https://www.usaid.gov/malawi/democracy-human-rights-and-governance>

<sup>12</sup> <http://www.mec.org.mw/Elections/CodesOfConduct/PoliticalParties/tabid/70/Default.aspx>

<sup>13</sup> <http://www.mec.org.mw/LinkClick.aspx?fileticket=EYRmv9D7DYk%3d&tabid=178>

<sup>14</sup> <http://allafrica.com/stories/201307210093.html>

<sup>15</sup> [http://www.mec.org.mw/category/Steps\\_towards\\_2019.html](http://www.mec.org.mw/category/Steps_towards_2019.html)

provisions of the electoral laws and other legislation. They are also supposed to abide by the code of conduct for electoral observers and other codes of conduct that have been put in place to facilitate smooth conduct of the elections. The MEC also provides an observer information kit that can be accessed on its website. Before elections, all the accredited election observers are invited to briefing sessions, during which the MEC gives updates on its preparations.

Once an electoral calendar has been released, the MEC invites stakeholders to observe the polls. The invitation letter is accompanied by a copy of the electoral calendar to assist the observers in planning whether and when to deploy long- or short-term missions. Observers are welcome to observe all the phases of the electoral process from registration, nomination, campaign, polling and results declaration. However, in practice, many missions have tended to come closer to polling time.

Two categories of elections observers are accredited: international observers and local or domestic observers.

- *International Election Observers:* These include international bodies or organizations, embassies or foreign missions, international charitable organizations, internationally established democracy and governance organizations and foreign media, among others. Diplomats accredited to Malawi who are designated and recognized as international observers may also observe.
- *Local/Domestic Election Observers:* This category includes local charitable organizations, locally established democracy and governance organizations, local media, civil society organizations and faith-based and religious organizations, among others.

In terms of accreditation, the MEC simplified the process to the extent that it can be processed before arrival in Malawi. Processing of accreditation cards is done in Blantyre, at the MEC headquarters. If observation teams send their information and itinerary in time, the secretariat arranges for collection of the identification cards in the regional offices in Lilongwe and Mzuzu.

Regular observers include the African Union, the Institute of Sustainable Democracy in Africa, the European Union, the Southern African Development Community (SADC) Electoral Commission's Forum and the SADC Parliamentary Forum.<sup>16 17 18</sup>

## How will results be transmitted?

The Malawi Electoral Commission shall communicate results in the *Gazette*, by radio broadcast and in at least one issue of a newspaper in general circulation in Malawi.<sup>19</sup>

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<sup>16</sup> [http://aceproject.org/ero-en/regions/africa/MW/malawi-final-report-election-follow-up-mission-eu-1/at\\_download/file](http://aceproject.org/ero-en/regions/africa/MW/malawi-final-report-election-follow-up-mission-eu-1/at_download/file)

<sup>17</sup> [https://eeas.europa.eu/sites/eeas/files/efm\\_malawi\\_2017\\_-\\_final\\_report.pdf](https://eeas.europa.eu/sites/eeas/files/efm_malawi_2017_-_final_report.pdf)

<sup>18</sup> <http://www.mec.org.mw/LinkClick.aspx?fileticket=EYRmv9D7DYk%3d&tabid=178>

<sup>19</sup> [http://uir.unisa.ac.za/bitstream/handle/10500/20162/thesis\\_kaaba\\_o.pdf?sequence=1&isAllowed=y](http://uir.unisa.ac.za/bitstream/handle/10500/20162/thesis_kaaba_o.pdf?sequence=1&isAllowed=y)

## **When will official results be announced?**

The national result of an election will be announced within eight days from the last polling day and no later than 48 hours from the conclusion of the determination and shall specify: the total number of voters registered for the election, the total number of voters who voted, the total number of null and void votes, and the total number of valid votes cast for each classification of votes as specified in section 91 of the act.<sup>20</sup> As such, the results of the 2019 general elections should be announced no later than May 29.

## **How will election disputes be adjudicated?**

The Electoral Act provides that any complaint submitted in writing alleging any irregularity at any stage, if not satisfactorily resolved by the chief elections officer or returning officer, shall be examined and decided on by the Malawi Electoral Commission (MEC). If the irregularity is confirmed, the MEC shall take necessary action to correct the irregularity and its effects.

Section 97(1) states that appeals shall be submitted to the High Court against a decision of the MEC confirming or rejecting the existence of an irregularity. Such appeals should be made by way of a petition, within seven days from the date the MEC made the decision, supported by affidavits of evidence, which shall clearly specify the declaration the High Court is being requested to make.

Provided that, if the court is satisfied that any failure to comply with this act did not affect the result of the election, it shall not declare the election void. The court shall have power to direct scrutiny and recount of votes if it determines, during proceedings on an election petition, that such scrutiny and recount are desirable.<sup>21</sup>

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<sup>20</sup> [http://www.africa.upenn.edu/Govern\\_Political/mlwi\\_const.html](http://www.africa.upenn.edu/Govern_Political/mlwi_const.html)

<sup>21</sup> <http://www.iojt-dc2013.org/~media/Microsites/Files/IOJT/11042013-Enhancing-Capacity-Judges-Resolve-Election-Disputes.ashx>

## Resources

- Malawi Electoral Commission: [website](#) and [Facebook](#)
- Constitution of the Republic of Malawi 1994
- Malawi Electoral Law