



# Freedom in the World 2018

## Malawi *Profile*

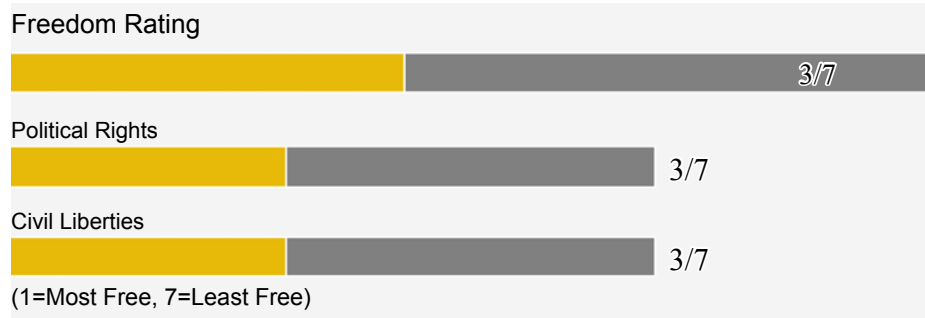
**FREEDOM STATUS:**  
**PARTLY FREE**



### Freedom in the World

#### Scores

#### Quick Facts



Aggregate Score: 63/100 (0=Least Free, 100=Most Free)

## Overview:

Malawi holds regular elections and has undergone multiple transfers of power between political parties, though the changes were frequently a result of rifts among ruling elites rather than competition between distinct parties. Political rights and civil liberties are for the most part respected by the state. However, corruption is endemic, police brutality and arbitrary arrests are common, and discrimination and violence toward women, minority groups, and people with albinism remain problems.



# Key Developments in 2017:



- Former minister of agriculture George Chaponda was implicated in the Maizegate scandal, which involved irregular maize purchases from Zambia. He was fired in February and charged with graft in July. Maizegate is the latest in a string of scandals that have rocked Malawi's political elite.
- An access to information bill was signed into law in February. However, at the end of the year the law still had not been implemented.
- Domestic violence, child labor, and female genital mutilation remained persistent problems.

## Political Rights and Civil Liberties: POLITICAL RIGHTS: 26 / 40

### A. ELECTORAL PROCESS: 8 / 12

**A1. Was the current head of government or other chief national authority elected through free and fair elections?**  

**3 / 4**

In Malawi, the president is directly elected for five-year terms and exercises considerable executive authority. Malawi's last general election was held in 2014. The polls were marred by logistical problems and postelection controversy surrounding allegations of vote rigging made by incumbent president Joyce Banda, but were largely regarded as credible by local and international observers. Peter Mutharika of the Democratic Progressive Party (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, of the People's Party (PP) won 20 percent, and Atupele Muluzi of the United Democratic Front (UDF) won 14 percent.

**A2. Were the current national legislative representatives elected through free and fair elections?** **3 / 4**

The unicameral National Assembly is comprised of 193 members elected by popular vote to five-year terms. The last legislative elections, held concurrently with the presidential election in 2014, were generally regarded as credible, despite a number of irregularities and logistical problems. In the parliamentary elections, the DPP won the most seats with 50.

The opposition MCP won five of six available seats in the October 2017 by-elections for both local and national positions. Voter turnout was relatively low and there were no reports of irregularities in the voting.

**A3. Are the electoral laws and framework fair, and are they implemented impartially by the relevant election management bodies? 2 / 4**



Although it lacks resources and is often unprepared to carry out elections, the Malawi Electoral Commission (MEC) is generally viewed as impartial. The MEC has, however, been plagued by financial mismanagement and in May 2017 fired chief electoral officer Willie Kalonga for alleged fraud and mismanagement.

In 2017, several electoral reform bills proposed by the Malawi Law Commission, including a bill to make the Malawi Electoral Commission (MEC) financially independent and another proposal to increase the threshold for winning presidential elections to 50 percent, were presented to parliament. However, only one bill, which introducing referendums, was passed in December. International analysts have called for requiring political parties to disclose their sources of financing and to report on campaign spending.

## **B. POLITICAL PLURALISM AND PARTICIPATION: 12 / 16**

**B1. Do the people have the right to organize in different political parties or other competitive political groupings of their choice, and is the system free of undue obstacles to the rise and fall of these competing parties or groupings? 3 / 4**

For the most part, people can organize in political parties without undue burden. However, the government has

occasionally held up the registration of new parties that present a threat to the incumbent. In January 2017, the DPP got an injunction to delay the registration of the Democratic Progressive Congress (DEPECO), claiming that the name was too similar to its own.



Recent years have seen the rise and fall of parties through democratic processes. In 2014, the ruling PP finished third in the presidential election. Malawi has four main political parties—DPP, MCP, PP and UDF—all of which have held power at some point. The parties are loosely formed, with politicians frequently moving between parties or breaking away to form their own parties.

**B2. Is there a realistic opportunity for the opposition to increase its support or gain power through elections? 3 / 4**

Political parties are generally able to campaign freely throughout the country. Opposition parties have demonstrated their ability to grow their support and gain power through elections. In 2014, the DPP, an opposition party at the time, won both the presidency and the most seats in parliament.

The playing field during election campaigns is often skewed toward the governing party. In 2014, the ruling PP used state-owned media to broadcast campaign rallies and events where participants wore PP paraphernalia.

**B3. Are the people's political choices free from domination by the military, foreign powers, religious hierarchies, economic oligarchies, or any other powerful group that is not democratically accountable? 3 / 4**

Malawi's population is deeply religious and voting choices sometimes influenced by the opinions of religious leaders. Local traditional leaders can also have an influence on voters' choices, especially in smaller villages. However, the people are largely free from any form of coercion to influence their choices.

**B4. Do various segments of the population (including ethnic, religious, gender, LGBT, and other relevant groups) have full political rights and electoral opportunities? 3 / 4**

All ethnic, religious, and gender groups have full political rights. However, women remain underrepresented in politics, and according to Afrobarometer, are less likely than men to become politically involved. In September 2017, the MEC lowered nomination fees for women by 25 percent in an effort to promote their participation in elections, including in the 2017 by-election. While more women ran as candidates in the 2014 elections, only 32 were elected to the 193-seat National Assembly.

Political parties often appeal to ethnic, regional, and religious groups. The LGBT (lesbian, gay, bisexual, and transgender) community faces societal discrimination, and political parties do not advocate for LGBT rights in their platforms.

## C. FUNCTIONING OF GOVERNMENT: 6 / 12

**C1. Do the freely elected head of government and national legislative representatives determine the policies of the government? 3 / 4**



Executive and legislative representatives are generally able to determine the policies of government unhindered. However, patronage and clientelism are common, and wealthy business leaders often have great influence over policymaking, forging relationships with elected leaders and extracting policy outcomes favorable to their business interests.

**C2. Are safeguards against official corruption strong and effective? 1 / 4**

Corruption is endemic in Malawi. The Anti-Corruption Bureau (ACB), which is responsible for investigating corruption, has been accused by civil society leaders of being ineffective and compromised.

The trial of the 18 main suspects in the 2013 Cashgate corruption scandal, which involved \$800 million in missing public funds, had not concluded at the end of 2017. Former president Banda, under suspicion of involvement in the scheme, was living abroad in self-imposed exile at the end of 2017, and has not been charged with a crime. Maizegate, a corruption scandal involving irregular maize purchases from Zambia by agriculture minister George Chabonda, unfolded in 2017. President Mutharika fired Chabonda in February for his alleged involvement. A raid on Chabonda's home revealed more than \$200,000 in cash hidden in suitcases. Chabonda was charged with graft in July, and his trial was ongoing at year's

end. Despite the allegations, he retained a senior position in the DPP.



### **C3. Does the government operate with openness and transparency? 2 / 4**

Malawi lacks budgetary transparency; the government still fails to make year-end budget audit reports available to the public.

In February 2017, President Mutharika signed an access to information bill after a 12-year civil society campaign.

However, the law had not been implemented by year's end.

Laws require high-level public officials to declare their assets and other financial interests while in public service. Mutharika declared his assets in 2015, but 28 legislators missed the July deadline and faced no sanctions as of December 31.



## **CIVIL LIBERTIES: 37 / 60**

### **D. FREEDOM OF EXPRESSION AND BELIEF: 13 / 16**

#### **D1. Are there free and independent media? 3 / 4**

Freedom of the press is legally guaranteed and generally respected in practice. However, news outlets have experienced intimidation. In January 2017, the offices of the private Times Group were raided and shut down. The government claimed



the raid was based on failure to pay taxes, but the Times M   Group alleged that the shutdown was in response to critical coverage of the Maizegate scandal in its publications. Private media outlets were also frequently denied access to government events. There is still a law against insulting the leader of Malawi, but there were no arrests under this legislation in 2017.

**D2. Are individuals free to practice and express their religious faith or nonbelief in public and private? 4 / 4**

The constitution upholds freedom of religion, and this right is respected in practice.

**D3. Is there academic freedom, and is the educational system free from extensive political indoctrination? 3 / 4**

Malawi's education system is largely free from political indoctrination. However, President Mutharika was criticized in 2015 for saying that university professors should focus on academic publications rather than commenting on public matters in the media.

**D4. Are individuals free to express their personal views on political or other sensitive topics without fear of surveillance or retribution? 4 / 4**

Citizens are largely free to express their personal views on political and sensitive topics without fear of surveillance or retribution. However, according to a November 2017 report by Afrobarometer, many Malawians do not feel comfortable criticizing the government and engage in self-censorship. President Mutharika has not yet signed the Declaration of

Table Mountain, which calls on African governments to abolish criminal defamation laws.’



Civil society leaders suspect that the government surveils private electronic communications. The Malawi Communications Regulatory Authority (MACRA), after a series of court challenges, announced in June 2017 that it would implement the Consolidated ICT Regulatory Management System (CIRMS), also known as the “spy machine” in September 2017. Although the government claims the system is for quality control, critics fear that it will be used to monitor phone calls and text messages.

## E. ASSOCIATIONAL AND ORGANIZATIONAL RIGHTS: 8 / 12

### **E1. Is there freedom of assembly? 3 / 4**

Freedom of assembly is guaranteed in the constitution, but the government sometimes limits this right. In September 2017, 26 students at the Lilongwe University of Agriculture and Natural Resources were arrested for participating in a peaceful protest. Police also blocked MCP supporters from welcoming Lazarus Chakwera at the airport in April.’

### **E2. Is there freedom for nongovernmental organizations, particularly those that are engaged in human rights– and governance-related work? 2 / 4**

Nongovernmental organizations (NGOs) have generally operated without interference from the government. However,

draft amendments to a new NGO law introduced in 2017 have led to an outcry among civil society leaders for potentially placing serious restrictions on their activities. If the law passes, an NGO board would approve NGOs' applications for funding from donors and require that the applications align with the policies of the government. NGOs would also be required to register with the NGO board, which would have the power to deregister them.



### **E3. Is there freedom for trade unions and similar professional or labor organizations? 3 / 4**

The rights to organize labor unions and to strike are legally protected, but workers in essential services have limitations on their right to strike. Unions are active and collective bargaining is practiced, but retaliations against unions that are unregistered and strikers are not illegal.

## **F. RULE OF LAW: 9 / 16**

### **F1. Is there an independent judiciary? 3 / 4**

Judicial independence is generally respected. However, the appointments process for judges lacks transparency and undermines the legitimacy of the judiciary.

The courts have in recent years served as a check on executive power. A notable example occurred when the courts struck down former president Banda's attempt to nullify the results of the 2014 election. However, the judiciary's role as the arbiter of several hot button issues poses a danger that the courts

could become politicized and thus vulnerable to outside interference.



**F2. Does due process prevail in civil and criminal matters? 2 / 4**

Arbitrary arrests and detentions are common in Malawi. Defendants are legally entitled to legal representation, but in practice they are frequently forced to represent themselves in court. Although the law requires that suspects be released or charged with a crime within 48 hours of arrest, these rights were often denied.

**F3. Is there protection from the illegitimate use of physical force and freedom from war and insurgencies? 2 / 4**

Police brutality and extrajudicial killings are not uncommon in Malawi. In 2017, three women accused of assaulting another woman were allegedly assaulted by police. In recent years, there has been an upsurge in criminal activity by police officers, including armed robberies and break-ins. The police are poorly trained and often ineffective. As a result, vigilantism has increased in recent years.

Prison conditions are dire, characterized by overcrowding and extremely poor health conditions; many inmates die from AIDS and other diseases.

**F4. Do laws, policies, and practices guarantee equal treatment of various segments of the population? 2 / 4**

The Malawian constitution explicitly guarantees the rights of all humans. However, violence and discrimination against the LGBT community is a persistent problem. LGBT persons are often unable to access the medical care that they need. Societal stigma against people with HIV leads to patients receiving inadequate care.



Despite constitutional guarantees of equal protection, customary practices perpetuate discrimination against women in education, employment, business, and inheritance and property rights.

Persons with albinism experience discrimination and have been attacked, abducted, killed, and mutilated. In 2016, a UN human rights expert stated that persons with albinism in Malawi are “an endangered group facing a risk of systemic extinction over time if nothing is done.”

## G. PERSONAL AUTONOMY AND INDIVIDUAL RIGHTS: 7 / 16

### **G1. Do individuals enjoy freedom of movement, including the ability to change their place of residence, employment, or education? 2 / 4**

The constitution establishes freedom of internal movement and foreign travel, which are generally respected in practice. However, government policy confines refugees to two camps, and the police frequently round up those found outside of the camps and return them. Hundreds of migrants from various African countries trying to reach South Africa were detained in Malawi on charges of entering the country illegally in 2017.

Many have remained in detention even after finishing their sentences because the government cannot afford to return them to their home countries.



**G2. Are individuals able to exercise the right to own property and establish private businesses without undue interference from state or nonstate actors? 2 / 4**

Property rights are inadequately protected in Malawi. Most land is held under customary land tenure and the process of creating titles that would allow legal ownership of land have moved slowly. Starting a business can be a cumbersome process, a problem worsened by corruption in several key government agencies.

**G3. Do individuals enjoy personal social freedoms, including choice of marriage partner and size of family, protection from domestic violence, and control over appearance? 1 / 4**

Domestic violence is common in Malawi, but victims rarely come forward and the police usually do not intervene in domestic violence cases. According to the Violence against Children and Young People Survey report produced by the Ministry of Gender, Children, Disability and Social Welfare (MoGCDSW) and others in 2015, one in five girls are sexually abused. Around half are married before the age of 18, despite a marriage law that took effect in 2015 that raised the minimum age of marriage to 18 years. There are no laws that specifically prohibit female genital mutilation, and the practice still occurs in some ethnic communities on girls between 10 and 15 years old.

Consensual sexual activity between same-sex couples remains illegal and punishable by up to 14 years in prison. In 2017, the Malawi Human Rights Commission's plan to conduct a survey on LGBT people was abandoned after an outcry from civil society organizations who claimed that the survey would not address the pervasive discrimination that LGBT people face.



#### **G4. Do individuals enjoy equality of opportunity and freedom from economic exploitation? 2 / 4**

Revenues from large, state-run industries tend to benefit the political elite. A study by Oxfam found that between 2004 and 2011, economic inequality increased by around 15 percent.

The enforcement of labor laws is weak, and employees are often paid extremely low wages, despite minimum wage laws. Child labor remained a persistent issue in 2017, even though laws restricting such practices are on the books. Forced labor for children also occurs with some frequency. Trafficking in women and children, both within the country and to locations abroad, remained a problem in 2017. The government, however, has stepped up its efforts to address the issue, prosecuting and convicting 26 traffickers in 2017.

#### **Scoring Key: X / Y (Z)**

**X = Score Received**

**Y = Best Possible Score**

**Z = Change from Previous Year**

#### **Full Methodology**

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