



**Pre-conditions for Elections Programme in Southern Africa (PEPSA)
Baseline Analysis Questionnaire**

Country	Malawi	Researcher	Claude Kabemba
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Please enter your answers in the space below each question.

[I] Country Political Context (Introduction Section of the SADC Principles)

General

1. *Has the country undergone a democratic transition? If so, when and how?*

President Hastings Banda stayed in power from 1964 to 1994. It was an autocratic regime where opponents were forcibly driven into exiled or silenced. Malawi achieved its democratic transition in 1994, when it organised its first multi-party democracy. Bakili Muluzi of the United Democratic Front (UDF), who worked in Banda's government, won the elections.

2. *Has the country's government signed and ratified major international human rights declarations and protocols? Which ones?*

Yes.

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);***
- International Covenant on Civil and Political Rights (1966)ICCPR;***
- International Covenant on Economic, Social and Cultural Rights (1966);***
- Convention on the Elimination of All Forms of Discrimination against Women (1979);***
- Convention on the Elimination of All Forms of Racial Discrimination (1965);***
- Convention on the Rights of the Child (1989);***

(Source: Report of the International Bar Association to Malawi, 2002)

Political parties

3. *Is the country a multi-party democracy?*

Yes. The constitution of Malawi in its Chapter IV section 40 recognises every person right to form, to join, to participate in the activities of, and to recruit members for, a political party. the country is multi-party democracy since 1994.

4. *How many political parties are registered and active?*

Yes, 28 registered parties

5. *How many parties are represented in the legislature?*

9 parties.

6. *Do political parties have programmes?*

All political parties have manifestos. But a close look at these instruments reveals greater similarities than differences.

7. *Which party is the ruling party?*

Following the recent election the UDF coalition formed the government. Soon after due to problems between the current president and the former president, the new President formed his own political party the Democratic Progressive Party (DPP).

8. *What is the total number of elected parliamentary seats and share of seats for the ruling party?*

<i>193 seats. With the creation of the new party by the new president which intervened after election, it is difficult to say.</i>
9. <i>Which one is the main opposition party?</i>
<i>The Malawi Congress Party (MCP).</i>
10. <i>What is its share of elected parliamentary seats</i>
<i>59 seats.</i>
11. <i>How is the participation of parties in elections regulated and legislated?</i>
<i>It is very easy to form a political party in Malawi. Section 5 to 7 of the political Parties (Registration and Regulation) Act (1993) gives guidelines on how to register a political party. The Constitution requires the state to fund any political party which secures more than one tenth of the national vote (see Section 40(2)).</i>
12. <i>Are political parties generally aware of the SADC principles governing democratic elections?</i>
<i>Yes. But there has not been a debate around the Principles.</i>
13. <i>If so, what is their attitude towards the principles?</i>
<i>Not clear yet. They have not yet been tested in the Malawi situation.</i>
14. <i>How have political parties promoted the implementation of the SADC principles?</i>
<i>The SADC principles were adopted after the 2004 election in Malawi. Parties in Malawi are generally aware of SADC political pronouncements.</i>
Civil society
15. <i>What is state of civil society organisations?</i>
<i>Malawi has a vibrant and relatively well organised civil society. They range from human rights groups, gender groups, media monitoring groups, civic and voter education groups and youth groups.</i>
16. <i>Is the general legal and political environment conducive for civil society organisations to operate?</i>
<i>Yes, the constitution guarantees freedom of association, of conscience, opinion and expression (see Chapter IV of the Constitution). Civil society is mainly governed by the NGO Act (2001). There exists a Congress for Non-Governmental Organizations in Malawi (CONGOMA) charged with the monitoring of civil society groups activities. It registers and ban civil society groups. All NGOs are obligated under the NGO Act to join CONGOMA.</i>
17. <i>What specific roles do CSOs play in the electoral process?</i>
<i>Since 1994 civil society groups including the church play a determining role in the electoral process. They are involved in monitoring the media during elections by ensuring that the Communication Act and the Parliamentary and Presidential Elections Act (PPEA) which provide for equal treatment of all political parties during elections are implemented correctly. Civil society groups are also involved in voter education. In the 2004 elections the voter education was negatively affected by late disbursement of funds by the electoral commission and foreign donors.</i>
18. <i>What legal/political constraints restrain the CSOs before and during elections?</i>
<i>Legal: The Power given to CONGOMA through the NGO Act to sanction NGOs is an obstacle to the functioning of NGOs.</i> <i>Political: The politicization of civil society to some degree limits.</i>
19. <i>Are CSOs aware of the SADC Principles governing democratic elections?</i>
<i>Yes, but are not discussing them. They are mostly focussed on the internal politics following the conflict that has occurred in the UDF.</i>
20. <i>If so, what is their attitude towards the principles?</i>
<i>Very difficult to assess. There is no real debate.</i>

21. <i>How have CSOs promoted the implementation of the SADC principles?</i>
<i>This has not happened. The Presidential saga might have taken civil society attention away from the debate on the SADC principles.</i>
22. <i>Are CSOs engaged in civic and voters education?</i>
<i>Yes. NGOs and CSOs play a direct role in the electoral process.</i>
Media
23. <i>What economical/legal/political constraints restrain the media in general?</i>
<i>Economic: Poverty(lack of resource)</i>
<i>Political: Government interference(lack of independence of the public broadcaster)</i>
24. <i>Is there an independent media council?</i>
25. <i>Are the state media independent?</i>
No
26. <i>Do the state media perform the role of a public service broadcaster?</i>
<i>The PPEA. 63 (1) clearly states that every political party shall have the right to have the substance of its campaign propaganda reported on radio news broadcasts of the Malawi Broadcasting Corporation and in any newspaper in circulation in Malawi. But, the state media, especially radio is criticised for promoting government propaganda with little time for opposition during election. The only provider of televised media, Television Malawi Ltd, is state owned and it too promoted the UDF during the last election.</i>
27. <i>Is there a self-regulatory body of the media?</i>
<i>Yes, the Malawi Communications Authority. It is said to be inefficient at regulating in order to ensure free access and diversity of opinion on the broadcast media. As a result, radio and television are widely perceived to be government controlled, and to deny the broadcasting of opposition or dissenting views.</i>
28. <i>Is there a media monitoring project?</i>
<i>Yes, the Malawi Communications Regulatory Authority (MACRA).</i>
29. <i>Do the media have a general code of conduct and ethics?</i>
<i>The media is governed by the Communications Act (1998). It provides a framework for political equality in the electoral process.</i>
30. <i>How is this enforced?</i>
<i>The Malawi Communication Regulation Authority (MACRA) is supposed to enforce the regulation. But it has been ineffective because of political interference.</i>
31. <i>What specific role do the media play in the electoral process?</i>
<i>The role of the media during election is to cover the election process and provide information to citizens.</i>
32. <i>Is there a specific code of conduct for election reporting?</i>
No.
33. <i>How is this enforced?</i>
N/A.
34. <i>What are the three challenges facing the media during elections</i>
<ul style="list-style-type: none"> • <i>A weak financial base;</i> • <i>Inadequate infrastructure;</i> • <i>Up to date communication technology.</i>
35. <i>Is the media generally aware of the SADC principles governing democratic elections?</i>
Yes.
36. <i>If so, what has been/is its role in promoting the principles?</i>

<i>No debate. The media is more concentrated on the Presidential saga.</i>
[III] Principles for Conducting Democratic Elections (Section 2 of the SADC Principles)
37. <i>What legislation provides for citizen participation in the political process, especially in elections?</i>
<i>The PPEA (1993), the Political Parties (registration and Regulation) Act (1993) and the Constitution of Malawi (1995) provide the legal framework for elections. This legal framework opens up political space for all eligible political parties and Malawians to run for public office and to participate in the electoral process through campaigning and voting.</i>
38. <i>In what concrete ways does citizen participation in the political process (especially before and during elections) take place?</i>
<i>Citizens are obliged to register and follow political parties' campaign and vote on the day of election.</i>
39. <i>What legislation provide for political freedoms including freedom of association, political movement and freedom of speech?</i>
<i>Article 40 of the Constitution of Malawi.</i>
40. <i>Are these freedoms and political tolerance allowed by political actors during electioneering?</i>
<i>Section 56 (2) of PPEA stipulates that every political party and any representative, member or supporter shall, either alone or in common with others, enjoy complete and unhindered freedom of peaceful assembly in campaigning in any election.</i>
41. <i>What is the frequency and regularity of elections in the country (consider both national and local government elections please)?</i>
<i>Presidential and National Assembly elections (5 years) since 1994; Local elections (5 years).</i>
42. <i>Are there the dates of elections specifically predetermined by a relevant constitutional or legislative provision?</i>
<i>No.</i>
43. <i>To what extent is access to public resources (i.e. funding for campaigning and access to the public media) by political parties during elections equitable?</i>
<i>It is not equitable.</i>
44. <i>What is the exact role of the judiciary in the electoral process?</i>
<i>The Judiciary arbitrates election related conflicts and disagreements.</i>
45. <i>Does the judiciary exhibit impartiality in handling electoral matters?</i>
<i>Yes.</i>
46. <i>Which Electoral Management Bodies (EMBs) have the responsibility to run elections?</i>
<i>The Malawi Electoral Commission.</i>
47. <i>What is the exact role of these Electoral Management Bodies (EMBs) in the electoral process?</i>
<i>To run the election process from planning to voting and announcement of the election results.</i>
48. <i>How independent and impartial are these EMBs in discharging their electoral mandates?</i>
<i>In the last election, its independence was contested, especially around the bad shape in the voters' roll. Some observers thought it was a deliberate attempt to confuse the electoral process.</i>
49. <i>Which institutions are responsible for conducting voter education?</i>
<i>The Electoral Commission, civil society groups and faith based organization.</i>
50. <i>In what ways do these institutions coordinate their efforts in undertaking voter education?</i>
<i>Through the MEC. But in the last elections, there was very little coordination.</i>
51. <i>Is there a political culture of acceptance and respect of election results by political parties? What explains this trend?</i>

Yes.
52. <i>If not, why not</i>
N/A.
53. <i>What the legal provisions exist for the management for election-related disputes?</i>
Constitution (as amended) - PPEA N031, 1993.
54. <i>What institutional and regulatory mechanisms are in place for the constructive resolution of election-related disputes?</i>
The Judiciary and the MEC.
[III] Guidelines for Observation of Elections (Section 4 of the SADC Principles)
55. <i>What legislation guarantees the rights and freedoms of the citizens?</i>
The Constitution (as amended).
56. <i>Does the political culture and practice protect and promote citizens' freedoms?</i>
The Freedom House index gives Malawi a '4' for Political Rights. (1-Most Free; 7-Least Free)
57. <i>What possibilities do citizens have to complain (independent human rights commission/ombudsman?)</i>
<ul style="list-style-type: none"> • The Ombudsman; • MEC; • Human Rights Commission.
58. <i>To what extent is the election environment free, fair and peaceful?</i>
Beside the bad state in which the voters roll was in during the last elections and the biased media reporting in favour of the UDF, election in Malawi are organised in a relatively free and peaceful manner but not fair.
59. <i>How is voter registration conducted and by whom?</i>
By the MEC. All citizens wishing to register must have their national identity cards.
60. <i>Is voter registration conducted periodically around elections or continuously?</i>
Periodically.
61. <i>Is the process of voter registration satisfactory and acceptable to all stakeholders?</i>
No. In the last elections voter registration was marred by irregularities
62. <i>How is the voters' roll prepared and by whom?</i>
The voters roll is prepared the MEC.
63. <i>How is the voters' roll maintained and regularly updated and by whom?</i>
The voters roll is maintained and updated by the MEC. But the voter's roll is in a very bad shape.
64. <i>To what extent is the voter's roll easily accessible and non-discriminatory?</i>
It is accessible but not user friendly.
65. <i>Is the process of preparation and maintenance of the voters' roll satisfactory and acceptable to all stakeholders?</i>
No. In fact in 2004 a legal action by opposition parties against the MEC was launched to stop the election from taking place until a verification of the voters roll takes place.
66. <i>Is there a culture of announcement of the date of elections timeously to allow all contestants to prepare for the contest?</i>
The President has the prerogative to announce the elections. Most of the time the announcement of the date is criticised by opposition parties.
67. <i>What legal provisions regulate private and public funding for political parties?</i>
Political parties have access to public funding through parliament. But there is no regulation to account for this funding. Private funding is not regulated.
68. <i>How transparent are the mechanisms for private and public funding of political parties?</i>

<i>There is no transparency in either public or private funding.</i>
69. <i>To what extent are the mechanisms for private and public funding to political parties satisfactory and acceptable to all stakeholders?</i>
<i>The lack of adequate funding hampers party institutionalisation.</i>
70. <i>To what extent does the location of polling stations compromise the integrity of the electoral process and its outcome?</i>
<i>The location of polling stations does not in any way compromise the integrity of the process.</i>
71. <i>Where does counting of votes take place?</i>
<i>Counting takes place at the polling station.</i>
72. <i>In what way(s) does the location of the counting of votes affect the integrity of the poll?</i>
<i>Location of counting does not affect the integrity of the poll.</i>
73. <i>What legal provisions regulate election monitoring and observation?</i>
<i>The PPEA, 1993.</i>
74. <i>Which institutions are responsible for facilitating election monitoring and observation?</i>
<i>The MEC.</i>
75. <i>Who is allowed to monitor and observe elections? Why?</i>
<i>Local monitors and international observers from the region and beyond.</i>
76. <i>Do monitors and observers get accorded adequate time to be able to monitor and observe all the three stages of the electoral process?</i>
<i>Yes.</i>
77. <i>Do observers get deployed two (2) weeks before the voting day?</i>
<i>There is no legal impediment.</i>
[IV] Responsibilities of Member States Holding Elections (Section 7 of the SADC Principles)
78. <i>What are the legislated qualifications for voting?</i>
<i>The Constitution of Malawi, Section 77 gives criteria for eligibility to register. These include:</i> <ul style="list-style-type: none"> • <i>Malawi citizens;</i> • <i>A voting age of 18.</i>
79. <i>What are the legislated disqualifications from voting?</i>
<ul style="list-style-type: none"> • <i>Non Malawi citizens;</i> • <i>citizens below 18 years;</i> • <i>Impersonation of an eligible voter;</i> • <i>Voting in a district in which the voter did not register.</i>
80. <i>Are these legal provisions for qualification and disqualification applied fairly during elections?</i>
<i>Yes.</i>
81. <i>Is the practical application of the qualifications and disqualifications satisfactory and acceptable to all stakeholders?</i>
<i>Yes. A person who is disqualified from voting can lodge an appeal with the Registration Supervisor. A challenger should complete a specific legal document (MEC 001) and sign when lodging the appeal.</i>
82. <i>Is the political environment generally conducive for all political parties to campaign freely without undue hindrance?</i>
<i>The Freedom House Index rates Malawi as a '3'*. In Malawi campaigning is free and competitive but not fair. One area of great concern is the uneven playing field when it comes to access to the media and use of state resource. The ruling party is accused of monopolising the state media and using state resource during campaign. (1-Most Free;7-Least Free).</i>
83. <i>Is there a code of conduct for political parties and to what extent do parties adhere to it?</i>

<i>The PPEA, 1993.</i>
84. <i>To what extent are the EMBs competent, effective and well resourced in carrying out their mandate?</i>
<i>The Constitution of Malawi (1994) section 75(I) established the MEC with all its powers, mandate and functional scope. The activities of MEC are funded by the state. Since the state itself depends on external funding, the MEC also relies to a large extent on foreign funding to carry its activities. Foreign donors in most cases dictate terms on the use of the money and late disbursement. This sometimes undermines the work of the MEC. In 2004, the MEC was seen as biased in favour of the ruling party in carrying its activities. Consequently, the MEC has often failed to exercise its full mandate and powers to level the playing field, as stipulated under the PPEA, 1993.</i>
85. <i>To what extent are the courts competent, effective and well resourced in dealing with electoral matters?</i>
<i>The independence of the courts is not in question. It has acted as an independent institution in dealing with electoral disputes.</i>
86. <i>What legal guarantees and institutional mechanisms exist to prevent electoral fraud, vote-rigging and other illegal election practices?</i>
<ul style="list-style-type: none"> • <i>The constitution;</i> • <i>The Judiciary;</i> • <i>The MEC.</i>
87. <i>What cases of electoral fraud and vote rigging have been brought to the fore and how have these been dealt with?</i>
<i>None.</i>
88. <i>What common irregularities tend to become characteristic feature of elections and how have these been dealt with?</i>
<i>Unsatisfactory voters roll. This has been resolved.</i>
89. <i>Are there measures which restrict the freedom of movement of the citizenry or election observer missions?</i>
<i>No.</i>
90. <i>Are candidates and/or their agents allowed to monitor the whole electoral process without undue restrictions?</i>
<i>Yes.</i>
91. <i>What is the nature of the participation of women, youth and people with disabilities in the electoral process? Is it high or is it low and why?</i>
<i>Most political parties in Malawi have no gender quotas for women and affirmative policies in this regards. In 2004, out of a total of 1,098 candidates who competed in elections only 154 were women. This figure is well short of the SADC Declaration on Gender 1997.</i>
<i>Most political parties have youth leagues, which conduct youth programs.</i>
<i>There is no information at present regarding people with disabilities.</i>
92. <i>Do observers get invited ninety (90) days before the voting day?</i>
<i>No. The MEC will approach this condition in future elections.</i>
93. <i>Do observers get accorded free movement throughout the country and room to communicate with all political parties and candidates, EMBs, media, CSOs and voters without undue hindrance?</i>
<i>Yes. Observers attend party's campaigns and meet with political candidates at their liking. They also meet with the MEC and take part in its briefing and invite them to their own briefings.</i>

94. <i>Is the process of invitation and accreditation of observers efficient and non-discriminatory?</i>
Yes.
95. <i>Are observers allowed access to all relevant national laws and regulations?</i>
Yes.
96. <i>Are observers allowed access to relevant election materials such as constituency delimitation report, voters' Roll etc?</i>
Yes.
97. <i>Do observers have an unimpeded and unrestricted access to all polling stations and counting centres?</i>
Yes, observers are allowed to visit polling station unrestricted. They are also allowed to observe counting.