

MALAWI'S 2004 ELECTIONS

A Challenge for Democracy

By
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ABSTRACT

There is a growing academic interest in the connection between elections and democratic governance in Southern Africa, and Africa as a whole (see, for example, Asmal and De Ville 1994; Hyden 1997; Harris and Reilly 1998; Brito 2003; Darga 2004; Makoa 2004 and 2005; Matlosa 2003a, 2003b, and 2005). Scholars agree unanimously that regular elections are an important measure of democratic governance, though they do not necessarily constitute democracy per se (see Nzongola-Ntalaja 1997).¹ Periodic elections directly shape the nature of political representation by determining which groups and parties are included in political decision-making structures and institutions, and which are not.² They are a means of popular intervention and participation in the political process, hence they contribute to the entrenchment of democracy (Makoa 2005), while, at the same time, influencing 'fair' or 'unfair' representation of political groups in representative bodies. Elections are a key mechanism through which the public can influence the political process and keep public office holders in regular and periodic check. They provide opportunities for the electorate to make a retrospective assessment of government's (as well as the opposition's) performance, and exercise some degree of control over their representatives (Dulani 2005). The holding of periodic elections therefore provides a link between democratic politics and the public interest by ensuring that politicians, who claim to represent and speak for the public, are ultimately judged by the same public (Schumpeter 1942). However, it must be emphasised that elections, on their own, do not constitute democracy. They are

1 For a slightly different view, see Bratton and Van de Walle 1997.

2 For details on these see Bakken 2005.

simply among the major hallmarks of democratic politics (Przeworski et al 1996). Reducing democracy to elections would amount to what Larry Diamond (1996) calls the 'fallacy of electoralism'. This paper discusses elections and democratic governance in Malawi. It joins Robin Luckham and others (2003) who argue that although there have been numerous benefits of democratic transition there are, at the same time, some major 'democratic deficits' (see also Matlosa 2005). The paper argues that one of these deficits relates to the management of the electoral process, and others to the effects of the electoral event on democratic governance. The Malawi case is an example of these deficits.

INTRODUCTION

Malawi adopted multi-party democracy in 1993 after holding a referendum. Since then, there have been three presidential and parliamentary elections, in 1994, 1999, and 2004, and one set of local government elections, in 1999. Drawing evidence from the 2004 general elections, this paper argues that there have been some major democratic deficits in Malawi in relation to the management of the electoral process, the delivery of democratic outcomes, and the effects of the electoral event on democratic governance.

ELECTION MANAGEMENT

The institution responsible for managing elections in Malawi is the Malawi Electoral Commission (MEC) set up under Chapter VII ss 75-77 of the Republic of Malawi Constitution. In addition to the Constitution, the Presidential and Parliamentary Elections Act and the Local Government Act define the mandate, powers, and functions of the Electoral Commission.

Key electoral functions of the commission include management of the voters' roll, provision of voter education, provision of electoral personnel and voting materials, supervision of the polls, and the announcement of results. It also has administrative functions that include determining constituency boundaries, reviewing existing constituency boundaries and determining electoral petitions and complaints. As Dulani (2005) has rightly observed, given the centrality and importance of elections to democratic governance, the impartial and professional management and administration of the electoral process is as important as the outcome of the electoral event itself. The account below indicates that the management of the 2004 Malawi general elections created major deficiencies in the country's democratic governance. In the first place, it compromised the constitutional provisions on the franchise. In s 77 the Malawi Constitution states that all persons shall be eligible to vote in any general election, by-election, presidential election, local government election or referendum provided they are qualified to register as voters. The qualifications for registration are citizenship or continued residence in the country for a period of not less than seven years; an age

of 18 years or older and residence, birth, employment or operation of a business enterprise in the constituency where one wants to vote.

The management of the electoral process compromised the franchise in a variety of ways. To begin with, the voter registration process was marred by irregularities and logistical problems ranging from shortages of registration forms and equipment such as films, cameras, and batteries to transportation of materials to registration centres. The registration period was continually changed and extended because of logistical problems. According to the commission's calendar registration was initially scheduled for the period from 5 to 18 January 2004 but continued into February both for logistical reasons and as a response to civil society observations that the registration period was too short.

However, the extension of the registration period was not followed by the provision of adequate resources, thereby rendering it almost meaningless. As a result, in some constituencies, especially in the northern districts, some qualified potential voters did not register (*The Nation* 9 January 2004; *The Daily Times* 20 January 2004).

It is worth noting that the logistical problems and resultant mismanagement of the registration process were not unique to the 2004 elections. The 1999 elections suffered from similar problems (see Patel 2000 and Kadzamira 2000). This suggests a deep-rooted weakness in the management of Malawi's democratic elections. Dulani (2005) observes that the fact that the problems encountered in the 2004 registration exercise were identical to those experienced in 1999 suggests not only poor planning on the part of the MEC but also an abject failure to learn from past mistakes and to rectify them. This, in turn, not only undermines public confidence in the electoral body, but also has the potential to undermine confidence in the elections and their outcomes.

On its part, the commission argued that most of the logistical problems arose from poor funding and delayed and inadequate technical and financial support from donors. This argument, in itself, is a tacit admission of poor planning. It also demonstrates the extent to which democratic elections have not been institutionalised in the country. Had they been institutionalised they would have been a major component of the country's standard budget. Given that the Malawi Constitution clearly states that elections will be conducted every five years, issues of inadequate funding and delayed technical and financial support should not arise because the planning process should be institutionalised.

The franchise was also compromised by the mismanagement of the voters' roll. During the second week of April 2004, the MEC announced that 6,5 million voters had registered for the 18 May presidential and parliamentary elections.³ Opposition political parties and other institutions in the country challenged this figure. Most critical was the National Statistical Office (NSO), which described the

3 Some records show a figure of 6,7 million registered at this time.

figure as 'bogus' because it did not conform to the country's natural demographic trends. 'It defies all logic,' observed the *Weekend Nation*, one of the country's leading weekly papers. A mathematician and statistician at the Polytechnic, one of the constituent colleges of the University of Malawi, who was also Director of Publicity for the opposition National Democratic Alliance (NDA), described the figure as 'absurd and a pointer to [election] rigging'.

In 2003, with assistance from the United States Bureau of Census (USBC), the United States Agency for International Development (USAID) and the United Nations Population Fund (UNPF), the Malawi National Statistical Office (NSO) projected that in 2004 5,5 million of the country's projected population of 12 million would be over 18 years old and thus qualified to vote. 'Our projections [based on the last (1998/99) national population census] are [that] the population has grown at an average rate of 3.2 per cent', observed the NSO. [sic]: 'But if you calculate the average rates at which the Commission's figures are based, you will find that they are way above the normal population growth rate,' the NSO argued.

The MEC registered some 5 071 822 voters for the 1999 general elections. The figure for the 2004 elections suggested an increase of 1 million, despite the fact that some 106 086 registered voters were reported to have died in the previous five years and had, it was claimed, been removed from the voters' roll. To some analysts, including the NSO, these figures just did not make sense, especially if they were broken down regionally. Malawi has three administrative regions: north, centre and south. Slightly more than 50 per cent of the country's population live in the southern region, and just about 12 per cent in the northern region, with about 38 per cent in the central region. The comparative figures for registered voters for the 1999 and the 2004 elections and the NSO population projections for those who would be 18 years and older were as follows:

Table 1
Projected Voter Registration, 2004

Region	Registered Voters		NSO Projections
	1999	2004	2004
North	678 906	924 879	698 094
Centre	1 975 203	2 703 621	2 260 480
South	2 417 713	3 040 339	2 635 507
TOTALS	5 071 822	6 668 839	5 594 081

SOURCE: NSO/MEC/NATION NEWSPAPERS

Why, asked the NSO, 'should the northern region, all of a sudden, have over 200 000 more [voters] registered just in five years? In the south, can they [the MEC] explain how three million people registered when our projected adult population by June this year is only 2.6 million?' The number of registered voters in the northern region was 678 906 in 1999. It had risen to 924 879 in 2004, representing a 36 per cent increase. In the central region, 1 975 203 voters registered in 1999; 2 703 621 registered in 2004 – another 36 per cent increase. In the southern region, 3 040 339 voters registered in 2004, compared to 2 417 713 in 1999 – an increase of 25 per cent.

Many people argue that though an increase was indeed expected, given the natural increase in the country's population, the registration increase was just too high and warranted an explanation. The *Weekend Nation* (17-18 April 2004) commented:

either [the adult] population is unknown or 6.5 million voters are from Mars ... Even if the Commission assumes a 100 per cent registration rate – which is not possible even where people get punished for not registering – the 6.5 million figure cannot be accurate. There simply are not that many adults of 18 years and above in our country.

The management of the voters' roll was further criticised by donors who provided technical and financial support for the elections. The MEC decided to use two parallel voters' rolls: a computerised and a manual one. The donors had recommended that only a computerised system be used. The MEC argued that it did not have the capacity to manage such a roll efficiently. There would also be problems with using a computerised roll in remote rural areas, while the manual roll would be easy to use.

The disputed voters' roll created a crisis of confidence in the management of the electoral process, the elections themselves, and in the MEC as an electoral body. This undermined confidence manifested itself in two ways. The opposition parties interpreted it as an attempt by the governing United Democratic Front (UDF) to rig the elections. 'It shows how the ruling party has orchestrated rigging by inflating figures ...[and] creating polling centres just to increase the number of voters,' they argued. They accused the Electoral Commission of being used by the governing party to manipulate the voters' roll to enhance that party's chances of winning the elections (The *Weekend Nation* 17-18 April 2004; *The Nation* 9 January 2004; *The Daily Times* 20 January 2004; *Tamvuni* 31 January-1 February 2004). The accusations included allegations that the UDF was trying to persuade some of its supporters to register more than once so that they could cast multiple votes in the elections (Dulani 2005).

There were also reports that the ruling party had embarked on a campaign to collect voting certificates in the guise of ascertaining its support base. A leading weekly paper reported: 'two days after the voter registration exercise closed,

irregularities [had] emerged with the ruling party being accused by civil society and opposition parties of offering jobs and money, distributing starter packs⁴ in exchange for voter registration numbers' (*Weekend Nation* 31 Jan, 2004). The opposition parties and civil society organisations argued that the voters who lost their registration certificates in this manner, like those who did not register, were disfranchised. However, voting regulations in Malawi allow a person who has lost his/her voter certificate to vote for as long as he/she can be traced on the voters' roll on polling day, and if the person has authenticated identification or is positively identified by the polling staff and monitors. The issue here was more to do with fear on the part of those who had lost their certificates in this manner and believed that this meant they could not vote. It could also be a result of lack of understanding of the voting regulations.

A critical analyst would argue that if it were at all true that the UDF and the MEC had orchestrated the rigging, the formula used was extremely risky and had the potential to work against them. The increase in the numbers of registered voters was larger (by 36 per cent) in the northern and central regions, two regions generally regarded as opposition strongholds. The 25 per cent increase in the southern region would also work in favour of the opposition parties given that the governing party's candidate and two of the leading contenders in the presidential race were all from the same region. This would cause a spilt in the southern region votes, and the UDF had no guarantee of success in that region. The governing party could no longer bank on the regionalist-cum-ethno-linguistic bloc vote from the southern region.

The second manifestation related to the undermined confidence in the electoral database. Interestingly, in 1999 the NSO was criticised by academics and civil society organisations for 'inflating' the adult population of the southern region. This was interpreted as a move to facilitate the UDF's victory in the elections that year, given that the southern region was viewed as the party's stronghold. In 2004 the NSO used the same arguments against the MEC, either to save its own face or simply because the NSO itself had no confidence in the electoral database in general. It should be noted that the NSO's figures were, themselves, mere projections and were not based on a concrete recent national population census. The last census in Malawi was in 1998. This paper, therefore, contends that at the centre of all these controversies is the integrity of the demographic databases in the country. Whose demographic statistics does one believe: those of the NSO or those of the MEC? The lack of integrity of the NSO's demographic data is, itself, a major cause of lack of integrity of the MEC's voter's roll.

Also questionable was the integrity of the MEC as an election management body. Rocked by accusations and controversies, its professional management of the overall electoral process became somewhat suspect. Civil society organisations

⁴ These are agricultural inputs comprising fertilisers and seeds which are given to smallholder peasant farmers as start-up packages.

attacked it for 'overall inefficiency' and declared that they 'no longer [had] any trust' in it. A few months prior to the elections a number of civil society organisations attempted to have the MEC chair removed from his office for what they referred to as 'inefficiency'. Earlier in the year some opposition parties applied to the High Court to rule that the MEC chair was constitutionally unqualified for the post. The public image of and popular trust in the MEC was further eroded by some malpractice on the part of its top managers. The commission's auditor was being investigated for mishandling fuel coupons worth millions of Malawi Kwacha, while the Chief Elections Officer was suspended from his post following opposition accusations that his wife, who was standing as an independent candidate after losing in the primaries of the governing UDF, was using MEC vehicles for her political campaign.

The eroded confidence in the MEC also arose from debates about its independence. Although s 76(4) of the Constitution states that 'the Electoral Commission shall exercise its powers, functions and duties ... independent of any direction or influence by other authority or any person', the way the commission is appointed makes it susceptible to the influence of the Executive. Its chair is nominated by the Judicial Service Commission, but formally appointed by the President, who also appoints the other members, not fewer than six, in consultation with political parties represented in Parliament. In practice, the parties nominate their own representatives, who are formally appointed by the President. The President also has constitutional powers to remove a member of the commission from office on the recommendation of the Public Appointments Committee of Parliament on grounds of incapacity or incompetence. The dominance of the executive in this arrangement undermines the independence of the MEC. In the eyes of many it creates enough grounds for accusations and suspicions of manipulation by the Executive.

Evidence that the mismanaged registration process and the suspicious voters' roll created a crisis of confidence in the elections comes from the postponement of the voting date from 18 to 20 May 2004. The voting day for parliamentary elections in Malawi is fixed by s 67(1) of the country's Constitution. It falls on the third Tuesday in May in the fifth year after the election of Parliament.⁵ The 2004 elections were postponed by two days in response to mounting criticism over the integrity of the voters' roll. The MEC was forced to carry out a 'cleansing' exercise of the roll to make it credible. A South African company was contracted to undertake the exercise just a few days before the elections and the work could not be completed in time for the voters' roll to be readily available in all the constituencies.

Opposition parties and civil society organisations sought the intervention of the courts to stop the MEC from proceeding with the elections on the appointed

5 The Constitution also provides that where it is not possible for an election to be held on the third Tuesday of May, it should be held within seven days from that Tuesday on a date appointed by the Electoral Commission.

day in order to give voters sufficient time to inspect the roll as required by the Presidential and Parliamentary Elections Act (PPE). The courts ruled in favour of the opposition parties.

The 'cleaning' exercise resulted in a reduction in the number of registered voters from the original 6,5 or 6,7 million to 5,7 million, suggesting that between 0,8 and 1 million 'voters' were indeed bogus or erroneously registered. The figure announced after the 'cleaning' exercise was closer to the NSO projection of 5,5 million by 2004.

Table 2
Voter Registration by Region 1999 and 2004

Region	Year		Difference (Increase)	Difference %
	1999	2004		
North	675639	803874	128235	18,98
Centre	1965249	2325622	360373	18,34
South	2418848	2622532	203684	8,42
National	5059736	5752028	692292	13,68

SOURCES: MALAWI GOVERNMENT GAZETTE 2,758; PATEL 2000; DULANI 2005

Of particular interest is the increase in the numbers of registered voters in the northern and central regions, the areas regarded as opposition strongholds. If these were, indeed, such increases, there is a case for the argument that there was a potential threat to the governing party from the combination of the two regions, particularly in relation to the presidential election. An opposition candidate supported by all the voters from the two regions would win the election. This threat was real, given that at that time the opposition parties were contemplating fielding a joint presidential candidate and if it was perceived as real by the governing party the opposition argument that the original registration figures were an attempt to manipulate the voters' roll by skewing the numbers in favour of the southern region so as to give advantage to the governing party could be true. However, this might simply be a matter of speculation as there was no concrete evidence that such a 'plot' was indeed envisaged either by the governing party or by the MEC.

The courts' decision to order the postponement of the elections was based on the strength of the opposition parties' argument that the MEC had failed to comply with the sections of the PPE that provide for the verification of the voters' roll by the public. Though the MEC complied with the constitutional requirement to hold the postponed elections within the seven-day limit, these developments are a further

indication of its failure to operate within the prescribed electoral rules and regulations. As one analyst has argued, this highlights a critical failure on the part of the MEC to undertake its responsibilities in ways that would ensure a smooth electoral process (Dulani 2005). The fact that the courts had to intervene also suggests that the 2004 electoral process was managed by an electoral body that either did not know the rules that should have guided its operations or knew them but ignored them. This state of affairs only serves to undermine not only the credibility of the MEC itself, but also the election outcomes (see Chirwa 2004).⁶ According to the official statement of the observer mission of the African Union (2004)

the controversy surrounding the voters roll not only exposed the weaknesses of the Malawi Electoral Commission in the management of the elections but affected the morale and conduct of the elections. The voters register is a very important document that determines who may vote in an election. The very fact that there were problems in reconciling the figures of eligible voters, that the voters roll had not been finalised early enough to allow for proper verification and resulting in court action and court order to change the election date, pointed to insufficient capacity of the Malawi Electoral Commission to adequately prepare for the elections.

The credibility of the electoral body was further eroded by its failure, on two counts, to create a level playing field for the electoral process. First, the MEC had no control over the election campaigns, although the law mandates it to do so. The legal requirement is that the election period should run for two months. Campaigning outside the official campaign period is an electoral offence. The official campaign period for the 2004 elections was from 16 March to 16 May. The governing party launched its campaign more than four months prior to the elections and the MEC failed to discipline it, despite many calls from various stakeholders and a court order. Electoral malpractices on the part of the governing party included the use of public resources. It drew resources such as vehicles from parastatal organisations for use in its campaigns.

The second problem was the governing party's monopoly of the public media: state radio and television stations, where it was accorded up to 93 per cent of all positive campaign coverage. The remaining 7 per cent, which was largely negative coverage, was shared between the various opposition parties (Neale 2004). In a statement issued at the beginning of February 2004, Malawi's major donors expressed concern about the fairness of the elections given this monopoly of the public media. 'Regrettably,' observed the donors, 'news broadcasted by MBC and TVM is dominated by reports that explicitly or implicitly favour the parties in

6 (Dulani (2005) makes these arguments strongly and also shows their implications for public confidence in the elections and their outcome.

government (*Weekend Nation* 31 January – 1 February).⁷ The donors, academic analysts, opposition parties and civil society organisations concluded that the failure by the MEC to level the playing fields meant that although the opposition parties were allowed to contest, their chances of winning were significantly reduced in comparison to those of the ruling party. This, in turn, undermined the democratic credibility of the entire electoral process.

The monopoly of the public media by the governing party was not unique to the 2004 election campaign. It was a contentious issue in the 1994 and 1999 elections as well (see Article 19, 2000). A study by Article 19 of media coverage in the 1999 elections shows that there was a deliberate effort by the governing party to create a media disinformation campaign. A team of journalists and reporters was hired from media houses to distort opposition party election information, issue false reports, use inflammatory language, and provide positive coverage for the governing party only. When the party won the elections, the members of the media disinformation campaign team were rewarded with promotions, new jobs, and other material benefits.

VOTER RESPONSE

The irregularities in the registration process and the mismanagement of the voters' roll may have affected the voters' response to the election. There was a much lower voter turnout for the 2004 general elections than there had been for the referendum of 1993 and the general elections of 1994 and 1999. Judging by the results of the presidential election, about 3.1 million voters (54% of registered voters) cast valid votes. Another 4 per cent of the votes were invalidated, making a total percentage poll of 58 per cent. The comparative figures for the other elections are as follows:

Table 3
Voter Turn-out as %

Year	1993	1994	1999	2004
Turn-out	69	80	94	58

SOURCES: GOVERNMENT GAZETTE 16 JUNE 1993; GOVERNMENT GAZETTE 24 JUNE 1994 AND AUGUST 1999

In addition to the mismanaged electoral process, there could be other reasons for the sudden decline in the voter turnout. Kamchedzera (1997, p14) suggests that there is a general disenchantment with politics in Malawi. As a result, enthusiasm for public participation in the electoral process is waning largely because of growing

7 *The Weekend Nation*, January 31-1 February 2004, 'Donors uncertain about fair elections'.

public dissatisfaction and disquiet about the conduct of politicians. He argues that 'political power and influence are viewed merely as a means of access to comfort, wealth, self-aggrandizement and other egoistic pursuits ... Any benefits from politics that may accrue to the majority are merely incidental.' This observation has been made in a number of other studies (Chirwa and Poeschke 1998; Chirwa 2001, 2004a, 2004b, 2004c; Chining 2003).

Such views provide further evidence that elections in Malawi do not necessarily deliver democratic governance. There is also ample evidence suggesting that the political transition to democracy in Malawi has not translated into improved economic gains for the majority of the country's population. Levels of poverty have been on the increase over the last ten years, peasant agricultural incomes have fallen, wage employment opportunities have not increased, educational standards have gone down, and incidents of hunger are common. These have been against a background of a reduction in life expectancy due to the HIV/AIDs pandemic (Chirwa 2004d).

Since many Malawians do not derive material benefits from their political labour, it is not surprising that they choose not to take part in elections. The vote is seen to be of little value beyond putting people into positions where they can advance their own personal interests. It is one thing to use the vote as a means to hold elected representatives accountable to the public, it is another to translate the same vote into material benefits. It is therefore argued that if the outcomes of democratic elections are viewed not to deliver material benefits to the voters, the end result is a deficit in democratic governance.

ELECTIONS AND DEMOCRATIC OUTCOMES

Also questionable are the democratic outcomes of the Malawi elections. The country uses the first-past-the post (FPTP) electoral system. An analysis of the votes in the presidential election illustrates the system's deficiencies in the delivery of democratic outcomes. Five candidates contested the 2004 presidential election. The governing party, the UDF, fielded Bingu wa Mutharika, who also represented that party's electoral partners, the Alliance for Democracy (AFORD), and the New Congress for Democracy (NCD). The Malawi Congress Party (MCP) fielded John Tembo, while a coalition of seven smaller parties fielded Gwanda Chakuamba of the Republican Party (RP) under the Mgwirizano Coalition.⁸ The National Democratic Alliance (NDA) fielded Brown Mpinganjira. There was one independent candidate in the race, Justin Malewezi, former State Vice-President to Bakili Muluzi of the UDF.

8 With the exception of the MDP and NUP the coalition comprised predominantly new parties: the Malawi Forum for Unity and Development (MAFUNDE), the Malawi Democratic Party (MDP), the Movement for Genuine Democracy (MGODE), the National Unity Party (NUP), the People's Transformation Party (PETRA), the People's Progressive Movement (PPM) and the Republican Party (RP).

Table 4
Presidential Election Results

Candidate	Votes Won	Votes Won as % of		
		Registered Voters	Total Votes	Valid Votes
Muthalika	1 195 586	20,79	35,02	35,97
Tembo	937 965	16,31	27,48	28,22
Chakuamba	836 118	14,54	24,49	25,16
Mpinganjira	286 320	4,98	8,39	8,61
Malewezi	67 812	1,18	1,99	2,04

SOURCE: GOVERNMENT GAZETTE 16 JULY 2004

The above figures show a narrow margin of victory between the winner and the first runners-up, and between the latter and the second runners-up. The combined total of votes received by the first and second runners-up is considerably higher than that of the winner of the election. The votes of all four losers combined total nearly twice those received by the winner, making it clear that Malawi has a minority president, who won the election but lost the vote. This outcome not only brings into question the legitimacy of the president, but also shows a discrepancy between the wishes of the majority of the electorate and the outcome of the election. This scenario, argues Dulani (2005), brings into question the effectiveness of the rules used to declare winners, which satisfy some of the cardinal principles of democracy, particularly, that of majoritarian rule (see also Chingaipe 2005).

Victory by candidates with minority support was also a characteristic of the previous presidential elections. For example, in 1994, Bakili Muluzi of the UDF won the presidency with only 47,16 per cent of the votes, against a combined 52,84 per cent for the three losing contestants. Again, in 1999, he won with less than 50 per cent, resulting in a protracted legal challenge by the losing candidates, who argued that the constitutional provision that a candidate should win with 'a majority of the electorate' meant 50 plus 1 per cent of those registered to vote. The courts ruled on the basis of the implications of not declaring a winner, rather than on the technical definition of an electorate. The ruling was that not to declare a winner would result in the extension of the term of office of the incumbent, thus creating a constitutional crisis. The 'majority of the electorate', in this case, was interpreted rather unsophisticatedly, as those who actually turned out to vote.

The problem of candidates losing the vote but winning the election also applied to the parliamentary elections. In 1999, 29 or 193 constituencies went to candidates who lost the vote. In 2004, minority-supported candidates won 103 of the 193 seats in Parliament, with the worst candidate opposed by 78.85 per cent of the voters.

'Consequently,' argues Chingaipe (2005, p 15), 'the concept of majority, which is a fashionable term and an indispensable factor in any definition of democracy, was defeated.'

Equally worrying here is the size of the wasted vote (the vote that goes to a candidate who does not win the election), which results in losers winning votes but no seats. This scenario, argues Chingaipe, 'is tantamount to disenfranchisement. It also entails that votes are not treated equally'. For example, 3 122 637 valid votes were cast in the 185 constituencies contested in the 20 May 2004 parliamentary elections.⁹ The total number of the valid votes that elected the 185 members of Parliament was 1 578 655 while a total of 1 543 982 valid votes were cast for candidates that did not win seats.

This means that the latter votes were wasted. They can also be treated as votes that were cast against the winners of the elections, and therefore could be treated as the votes that rejected the winners. This calls into serious question the idea of representivity. The voters who cast the wasted (or rejection) votes cannot identify with the winners of the election. Given the large number of these votes, it can be argued that the electoral system in Malawi does not adequately address the issue of representivity. The democratic choices of almost half the voters who cast the valid votes are not reflected in the representatives who were elected.

Among the major factors accounting for the split votes and the resultant minority-supported victories was the rise of independent candidates. This was particularly the case in the northern and southern parts of the country. Of the 1 267 candidates contesting parliamentary seats in 2004, 372 were independents. The majority of these were in the southern region, the stronghold of the governing UDF, where they also won the majority of the seats largely as a result of the attempt by that party to manipulate the primary elections. In a number of constituencies the party either imposed candidates from the top, or manipulated the primary election results to suit the candidates supported by the central executive, and particularly by the party president himself.

The rise of independent candidates was a protest against the manipulation and a desire to exercise some freedom. The same applied to some seats in the north, regarded as the AFORD stronghold. The manipulation of the primaries was therefore part of the strategy to secure the regionalist bases of the political parties by exercising stronger control over the choice of candidates. The regionalist support bases of the Malawi political parties give party leaders considerable influence over their supporters, who are drawn predominantly from the regions from which the party leaders come (see Chirwa 1994 and 1998).

9 Eight constituencies held by-elections for reasons ranging from the death of candidates to electoral irregularities, misprinted ballot papers, and court injunctions.

Table 5
Number of Party Candidates Elected and Seats Won by Region, 2004

Party	Candidates	Seats Won By Region				%
	Seats won	North	Centre	South	National	Share
MCP	174	0	57	0	57	29
UDF	164	3	8	39	50	26
RP	110	6	0	9	15	8
NDA	187	1	0	7	8	4
PPM	112	5	1	1	7	4
AFORD	40	6	0	0	6	3
MGODE	22	3	0	0	3	2
CONU	2	0	0	1	1	0.5
PETRA	18	1	0	0	1	0.5
Mafunde	21	0	0	0	0	0
NUP	9	0	0	0	0	0
NCD	23	0	0	0	0	0
Others	3	0	0	0	0	0
Independents	372	6	5	28	39	20
Uncontested ¹⁰	...	2	2	2	6	3
TOTAL	1 257	33	73	87	193	100

SOURCE: GOVERNMENT GAZETTE JULY 16 2004

On a positive note, the independent candidates provided the voters with a broader political choice and an alternative mechanism for holding their parties and party leadership accountable. The election of independent members of Parliament in the areas where the parties had imposed candidates shows the electorate's lack of confidence in imposed leadership. It could also be an indication that the electoral process allows voters to elect individuals who can put the public interest over and above their own or that of their parties. However, on a more serious note, this development raises questions about whether political parties are the appropriate institutions to contest elections. The popularity of the political party as the legitimate election-contesting institution is at stake, if not at serious risk.

¹⁰ These are seats where elections failed for any one of several reasons ranging from the death of a party candidate to misprinted names on ballot papers and court challenges by candidates.

The results of the parliamentary elections also point to some deficiencies in the principle of majoritarian representation. Initially, nine parties won seats.¹¹ The party with the largest presence in the house was the MCP, with 57 seats, representing 29 per cent of the total capacity of Parliament. The UDF's share dropped from 93 seats in 1999 to 50 in 2004, representing 26 per cent of the seats, and making that party the second largest in the house. However, because the UDF won the presidency it was still regarded as the 'governing party' until the President resigned from it after some internal wrangles (Chirwa 2005a). These results indicate no clear majority in Parliament, necessitating the formation of a coalition. An attempt was made to form a coalition government of the UDF, AFORD, RP and MCODE, but when the President resigned and formed an alternative party outside the house, the coalition collapsed. The President's resignation from the minority 'governing' UDF further complicated the structure of Parliament, resulting in a 'hung Parliament' in which there was no clear indication of who had the mandate to govern the country, or who directed the business of the House.

The problem was compounded by the absence of regulations governing the procedures for declaring which party forms the government in Malawi. The conventional interpretation has been that the party that wins the presidential vote also forms the government. In both the 1994 and the 1999 elections this interpretation created no problems because the party that won the presidential elections also had the largest number of parliamentary seats. The results of the 2004 elections have unveiled serious weaknesses in this understanding.

The MCP, with the largest share of seats in Parliament, would have been better placed to form the government than the UDF, which only won the presidency. The current situation creates problems for democratic governance because it allows for weak minority-led governments, led by a president elected by a minority at the expense of parties that might have majority representation in Parliament. The end result has been political tension and legal contestation that pollute the democratic atmosphere.

Analysts have also argued that the results of both the presidential and parliamentary elections have failed to deliver democratic outcomes for Malawi (see Bakken 2005, Chingaipe 2005, Chirwa 2005b, Dulani 2005, Hajat 2005). They maintain that the principle of using a simple majority to declare a winner under the FPTP system has produced a president with a minority share of the vote, leaving him with a weak mandate. It also undermines the president's legitimacy and ability to govern effectively. At the same time, the system has yielded parliamentary results that do not tally with the share of the votes that parties received. The emergence of the MCP and UDF as the biggest and second biggest parties in Parliament illustrates the unrepresentative nature of the FPTP system. Assuming the people who voted for the UDF's presidential candidate also voted for the party's parliamentary

11 Some of the parties dissolved and merged with others, for example, the RP and MCODE merged with the newly formed Democratic People's Party (DPP), the NDA with the UDF.

candidate, a more proportional apportionment of seats would have seen the party and its alliance partners emerging with a corresponding 36 per cent of parliamentary seats (about 67 seats – 11 more than the 56 the UDF and its alliance partners managed to obtain). For its part, the MCP, whose presidential candidate secured 28 per cent of the valid votes, would have become the second biggest party in Parliament, with about 52 seats, five fewer than the 57 it in fact won (Dulani 2004). The unrepresentative outcomes of using the FPTP system have been echoed elsewhere in the Southern African region (see Matlosa 2004 and 2005).

CONCLUSION

The above account demonstrates that Malawi has indeed made impressive progress towards democratic governance. The country has had regular elections in conformity with the national Constitution. There is no doubt that these have, to some degree, enabled Malawians to hold their elected representatives accountable. Representative bodies have been put in place and are functioning, albeit with some deficiencies. Political parties and independent candidates have increasingly contested elections since the adoption of multiparty politics in 1993, an indication that there is popular participation in political activities. Voter turnout, despite a sharp decline in the 2004 elections, is fairly high; more than 55 per cent of registered voters. This paper contends that despite these achievements there are still numerous democratic deficits. These relate, among others, to the mismanagement of the electoral process, deficiencies in the electoral system, and the inconclusiveness of electoral outcomes.

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