



Most Malawians see legal challenge to election results as justified, courts as impartial and trustworthy

Afrobarometer Dispatch No. 340 | Happy Mickson Kayuni

Summary

As Malawians have endlessly debated, challenged, defended, and protested the results of last May's presidential election, all eyes and ears have been on the country's courts.

Citizens followed six months of court hearings broadcast live on radio and the Internet, then braced for this week's Constitutional Court ruling, which struck down the Malawi Electoral Commission's declaration of a narrow election victory for President Peter Mutharika with 38.57% of the vote. His main challengers, Lazarus Chakwera and Saulos Chilima, had asked the court to annul the election, claiming it was rigged.

Given the critical role of courts in dispute resolution and enforcement in high-stakes elections (Gloppen & Kanyongolo, 2004; Patel & Wahman, 2015), the importance of judicial impartiality, popular trust, and general respect of court decisions cannot be over-emphasized (Vondoepp, 2005; Ellett, 2015).

Findings from a national survey by Afrobarometer, conducted last November-December, provide some insight into how Malawians perceive their courts – or how they perceived them as the pivotal legal case advanced in late 2019, since a high-profile ruling like this week's annulment of the election could change some minds. Most citizens were aware of the court case challenging the validity of the presidential election results, and most said the opposition Malawi Congress Party (MCP) and United Transformation Movement (UTM) were justified in filing a legal challenge against the declared victory of the Democratic Progressive Party (DPP) candidate.

Large majorities saw the courts as impartial and trustworthy, and most said the president must always obey the laws and courts, even if he thinks they are wrong. But Malawians were split as to whether the losing side in an election should always have the right to challenge its defeat in court.

Afrobarometer survey

Afrobarometer is a pan-African, non-partisan survey research network that provides reliable data on Africans' experiences and evaluations of quality of life, governance, and democracy. Seven rounds of surveys were conducted in up to 38 countries between 1999 and 2018, and Round 8 surveys are being conducted in 2019/2020. Afrobarometer conducts face-to-face interviews in the language of the respondent's choice with nationally representative samples.

The Afrobarometer team in Malawi, led by the Centre for Social Research at the University of Malawi, interviewed 1,200 adult Malawians in November and December 2019. A sample of this size yields country-level results with a margin of error of +/-3 percentage points at a

95% confidence level. Previous surveys were conducted in Malawi in 1999, 2003, 2005, 2008, 2012, 2014, and 2017.

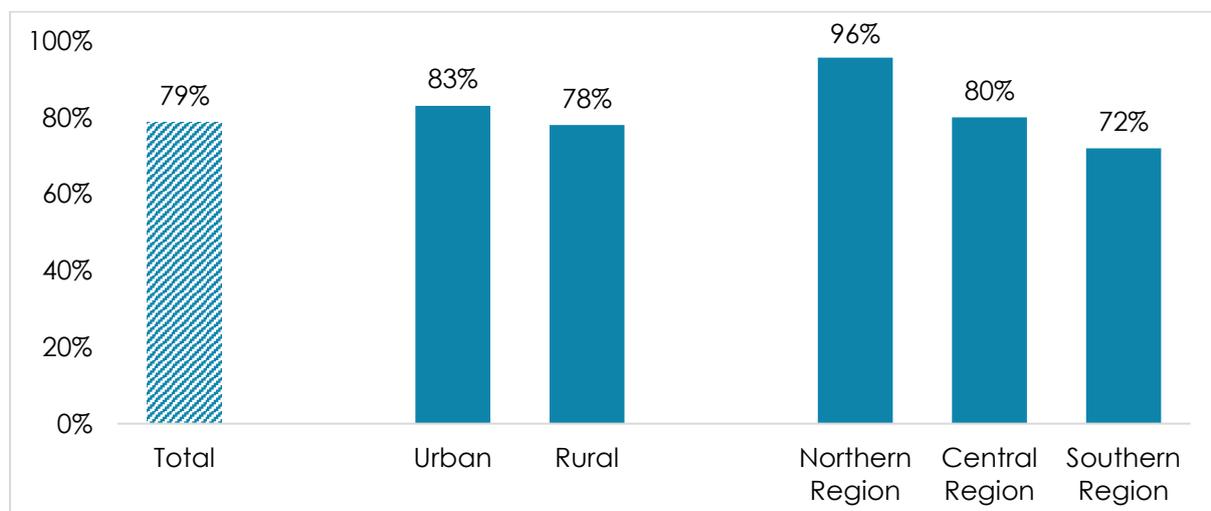
Key findings

- As of late 2019, eight out of 10 Malawians (79%) were aware of the court case challenging the validity of the 2019 presidential election results, and among these citizens, more than two-thirds (68%) believed the opposition parties were justified in filing the case.
- Two-thirds (68%) of Malawians saw the country's courts as neutral bodies "guided only by law." Among key public institutions, the courts were second only to the Malawi Defence Force (78%) in perceived impartiality.
- Similarly, two-thirds (68%) of respondents said they trust the courts at least "somewhat," including half (50%) who said they trust them "a lot."
- Three-quarters (76%) of Malawians said the president must always obey the laws and courts, even if he thinks they are wrong. Opposition supporters were particularly insistent on presidential respect of the law.
- Malawians were divided as to whether the losing side in an election should accept defeat in the interest of peace and development (54%) or should always have the right to challenge the results in court (45%).

Awareness and justification of the presidential election court case

Eight out of 10 Malawians (79%) said they were aware of the court case brought by MCP and UTM officials challenging the validity of the 2019 presidential election results, reflecting the extensive media coverage the case has received. Awareness was particularly high in urban areas (83%) and in the Northern Region (96%), but most people had heard of the case in rural areas (78%) and other regions (72%-80%) as well (Figure 1).

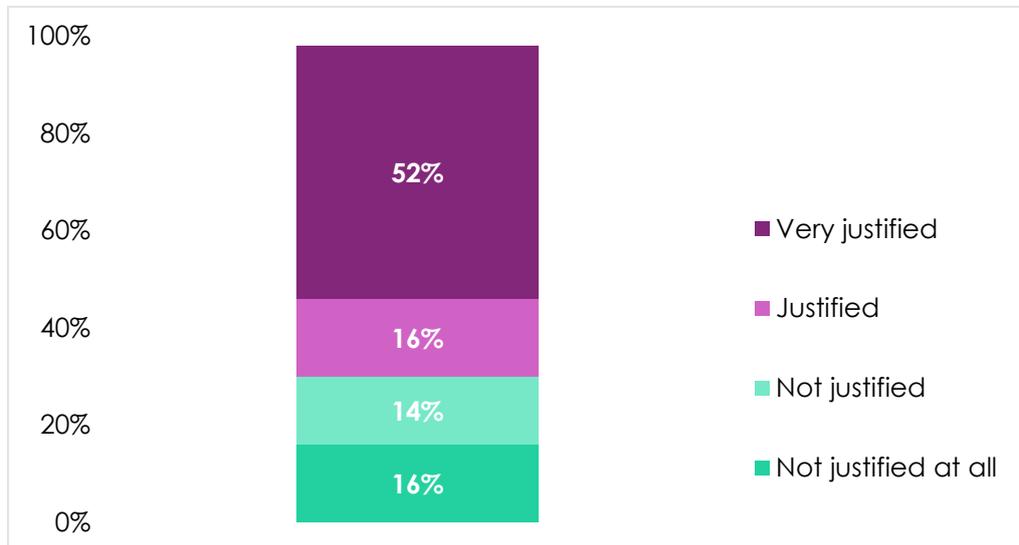
Figure 1: Awareness of the 2019 presidential election court case | by urban-rural residence and region | Malawi | 2019



Respondents were asked: Are you aware of the court case brought by MCP and UTM presidents challenging the validity of the 2019 presidential election results that were announced by the Malawi Electoral Commission? (% who said "yes")

Among Malawians who were aware of the court case, more than two-thirds (68%) said MCP and UTM officials were justified in challenging the election results in court, including a majority (52%) who considered them “very justified” (Figure 2).

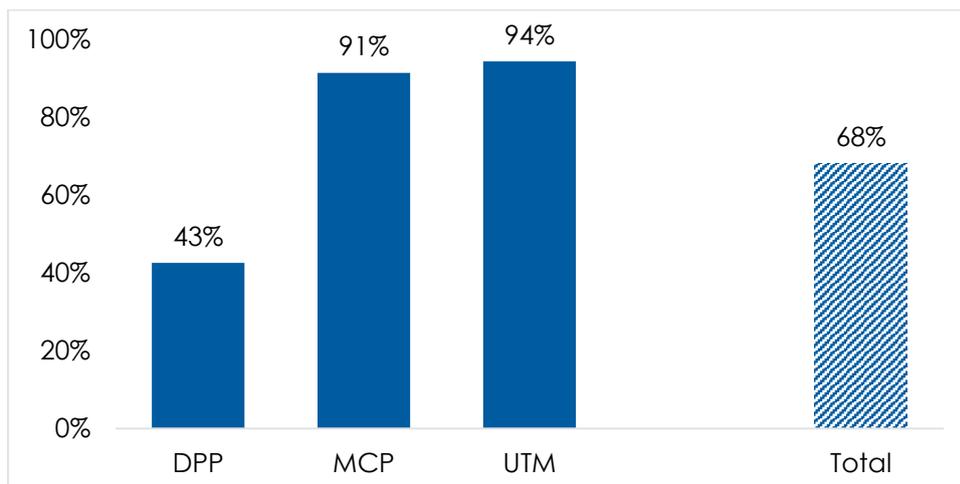
Figure 2: Is the court case justified? | Malawi | 2019



Respondents were asked: In your opinion, would you say that the MCP and UTM presidents are justified or not justified in challenging the election results in court?

As might be expected, supporters of the MCP (91%) and UTM (94%) were more than twice as likely as DPP adherents¹ to consider the opposition leaders justified in challenging the election results in court (Figure 3).

Figure 3: Opposition justified in bringing court case | by party affiliation | Malawi | 2019



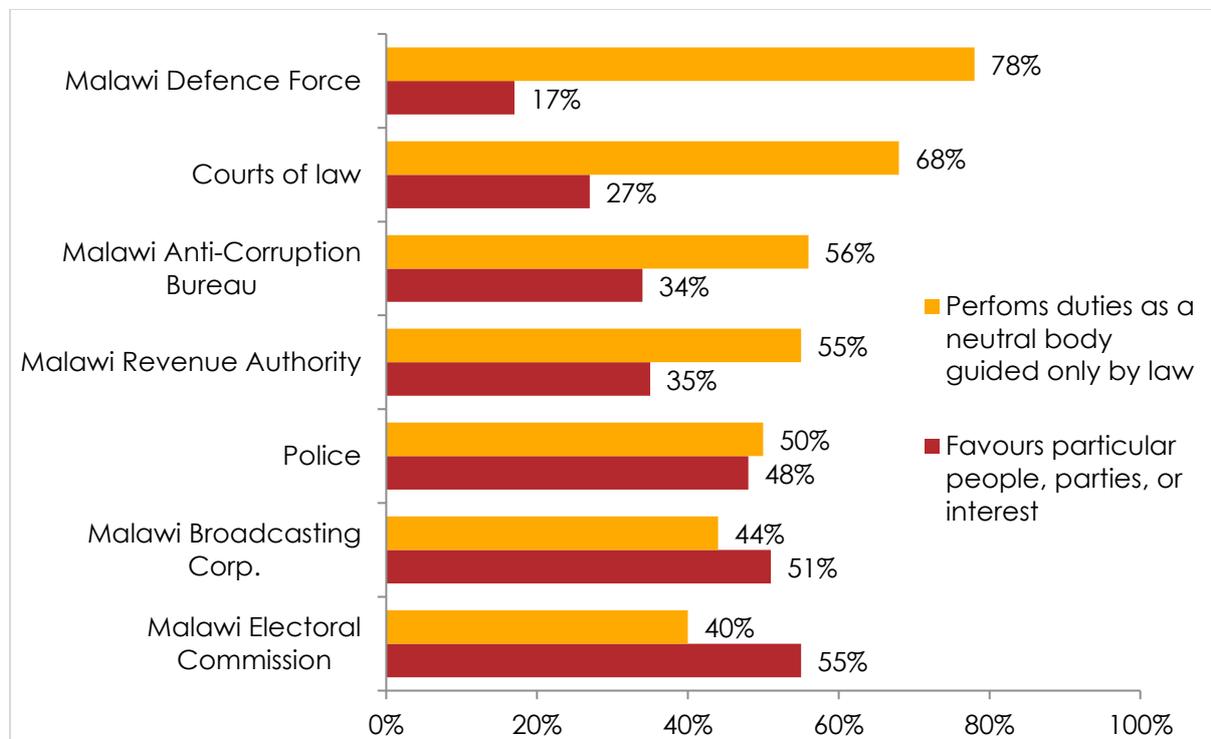
Respondents were asked: In your opinion, would you say that the MCP and UTM presidents are justified or not justified in challenging the election results in court? (% who said “justified” or “very justified”)

¹ Afrobarometer determines political affiliation based on responses to the questions, “Do you feel close to any particular political party?” and, if yes, “Which party is that?”

Perceived neutrality of the courts

An important part of the legal system's legitimacy rests on the perception that the courts are fair and unbiased (Gloppen & Kanyongolo, 2004). In Malawi, two-thirds (68%) of citizens said the country's courts of law "perform their duties as a neutral body, guided only by law," while 27% believed they "make decisions that favour particular people, parties, or interests." This places the courts in second place, behind the Malawi Defence Force (78%), in the perceived impartiality of key public institutions, well ahead of the Malawi Anti-Corruption Bureau (56%) and the Malawi Revenue Authority (55%) (Figure 4). The Malawi Electoral Commission (40%) and Malawi Broadcasting Corporation (44%) bring up the rear in public perceptions of neutrality, perhaps reflecting the numerous public allegations that they are influenced by the party in government.

Figure 4: Neutrality of courts and other key public institutions | Malawi | 2019

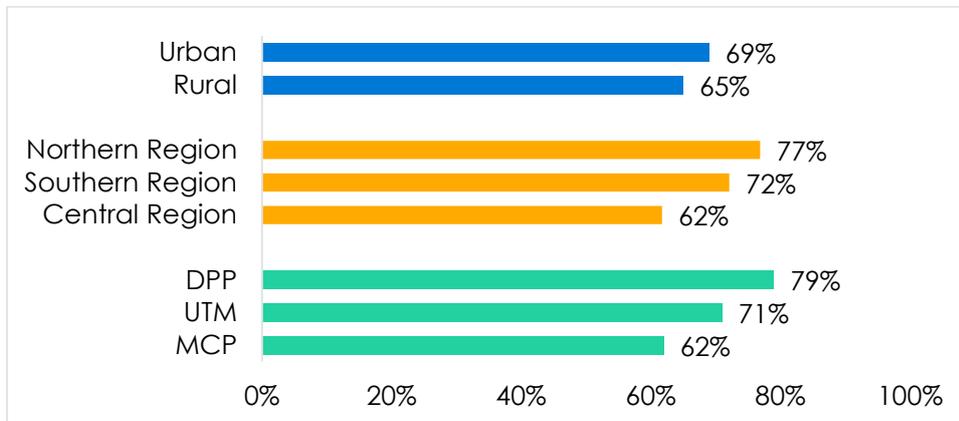


Respondents were asked: For the following organizations, please tell me whether you think they perform their duties as a neutral body, guided only by law, or would you say they make decisions that favour particular people, parties, or interests?

While urban residents were only slightly more likely to see the courts as impartial (69% vs. 65% of rural residents), views differed significantly by respondents' political-party affiliation and region (Figure 5). Supporters of the DPP were more inclined to affirm the neutrality of the courts (79%) than adherents of the two main opposition parties contesting the 2019 election results (71% of UTM supporters, 62% of MCP supporters). The Central Region, historically an MCP stronghold, registered the smallest proportion of respondents who saw the courts as impartial (62%).

This below-average rating of court impartiality by MCP supporters may be related to the party's past challenges – both formal and informal – of election results as well as court rulings in corruption cases involving individuals connected to the DPP. Still, even among MCP supporters, a solid majority had an affirmative perception of impartiality in the courts.

Figure 5: Courts as neutral bodies | by party affiliation, region, and urban-rural residence | Malawi | 2019



Respondents were asked: For the following organizations, please tell me whether you think they perform their duties as a neutral body, guided only by law, or would you say they make decisions that favour particular people, parties, or interests? (% who said “neutral body, guided only by law”)

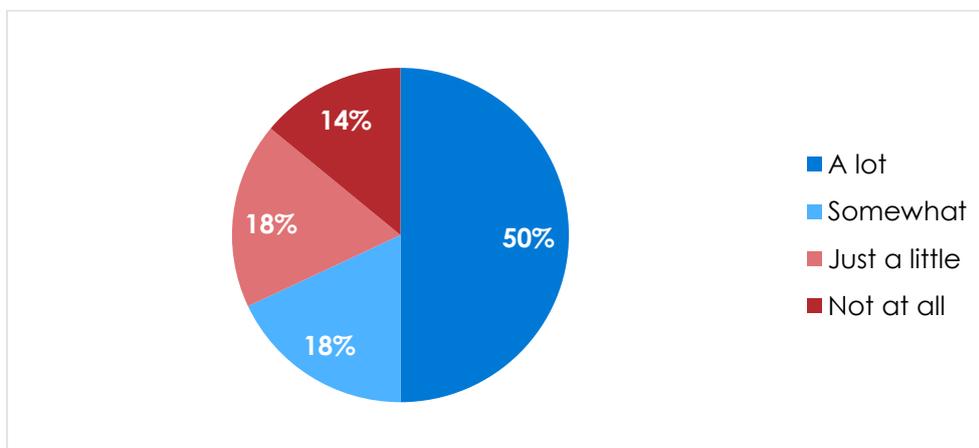
Trust in the courts

Two-thirds (68%) of Malawians said they trust the courts at least “somewhat,” including half (50%) who expressed “a lot” of trust in the legal system. About one-third said they trust the courts “just a little” (18%) or “not at all” (14%) (Figure 6).

Trust in the courts was lower than during the period 2006-2012 (75%-81%) but higher than it was in 1999 (48%), when Afrobarometer surveys began, and in the most recent previous survey (59% in 2017) (Figure 7). Reasons for the precipitous drop (by 22 percentage points) in popular trust in the courts between 2012 and 2017 are not clear, though they may include dissatisfaction with the way the courts were handling politically connected cases, especially related to corruption.

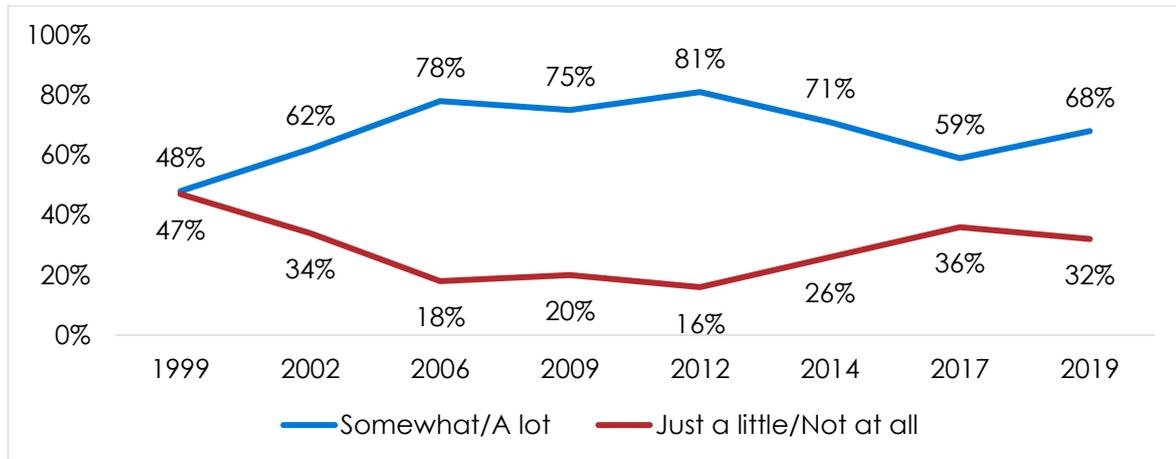
The data do not suggest that the increase in trust since 2017 is related to the way courts have been handling the recent presidential election court case. Respondents who were aware of the presidential court case were just as likely to express trust (or mistrust) in the courts as those who had not heard of the case.

Figure 6: Popular trust in the courts | Malawi | 2019



Respondents were asked: How much do you trust each of the following, or haven't you heard enough about them to say: Courts of law?

Figure 7: Popular trust in the courts | Malawi | 1999-2019



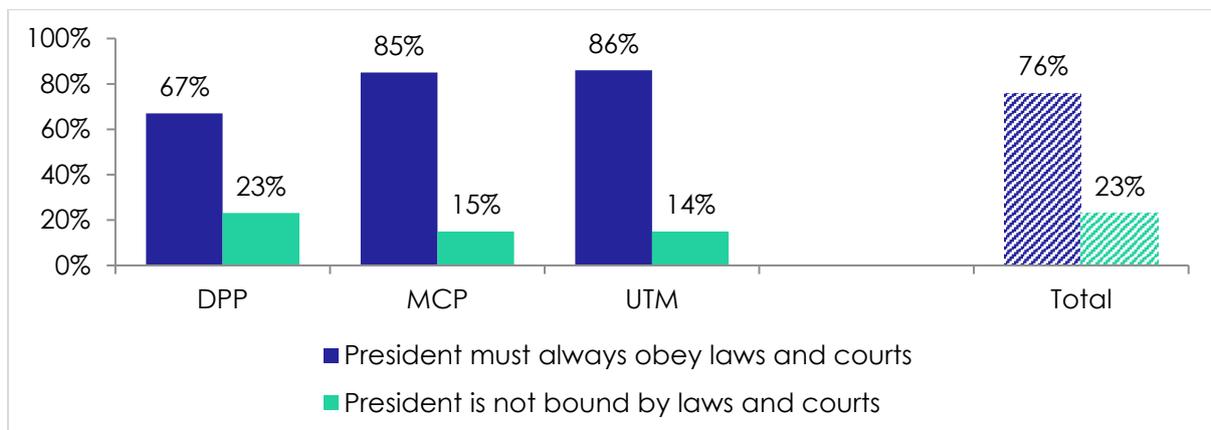
Respondents were asked: How much do you trust each of the following, or haven't you heard enough about them to say: Courts of law?

Respect for court decisions

In addition to trusting the courts and considering them impartial, a strong majority of Malawians endorsed the legitimacy of the courts: Three-fourths (76%) said the president must always obey the laws and the courts, even if he thinks they are wrong (Figure 8).

Supporters of the MCP and UTM were particularly likely (85% and 86%, respectively) to insist that the president obey the laws and courts. A smaller majority of DPP adherents endorsed this view (67%), perhaps because some DPP supporters see previous court challenges to presidential decisions as encroaching on his powers. In a recent example, the president attempted (through an application by the attorney general) to put a stop to protests against the 2019 election results, but courts ruled in favour of individuals and groups who were protesting (Maravipost, 2019).

Figure 8: Must presidents obey laws and courts? | by party affiliation | Malawi | 2019



Respondents were asked: Which of the following statements is closest to your view?

Statement 1: Since the president was elected to lead the country, he should not be bound by laws or court decisions that he thinks are wrong.

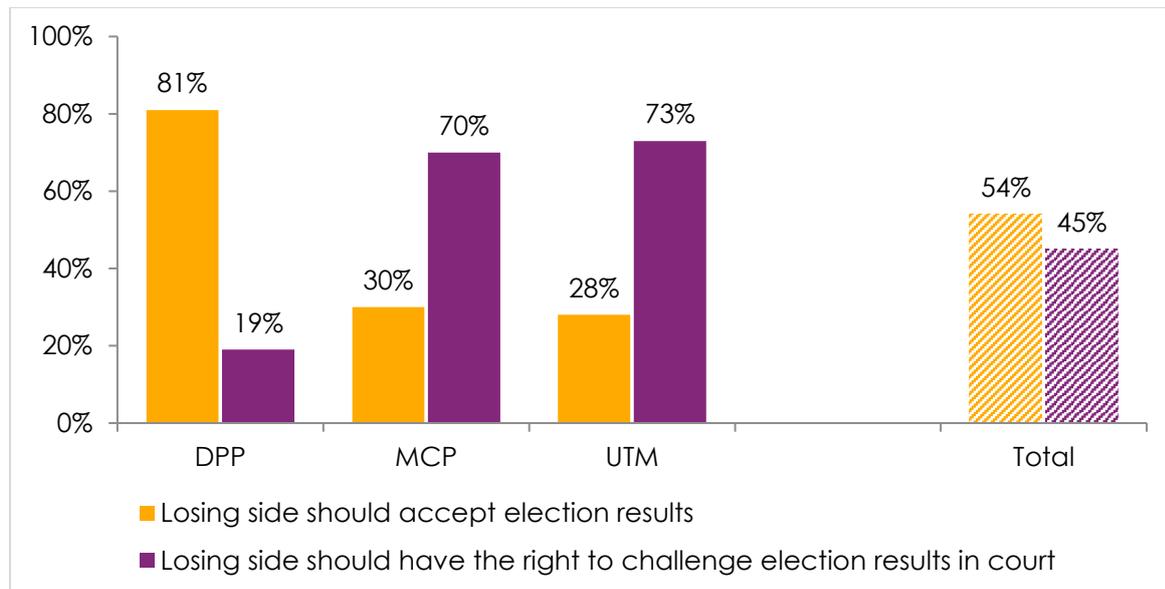
Statement 2: The president must always obey the laws and the courts, even if he thinks they are wrong.

(% who "agreed" or "strongly agreed" with each statement)

Considering that it is common to see legal challenges to election defeats, survey respondents were asked whether losing candidates and parties should accept election results in the interest of peace and development or whether they should always have the right to challenge them in the courts. Malawians were split on this question: More than half (54%) said that once elections are over, the losing side should accept the election results, but 45% disagreed.

As might be expected, DPP supporters overwhelmingly (81%) said that losing candidates and parties should accept the results, while large majorities of MCP (70%) and UTM (73%) adherents defended the right to challenge election results in court (Figure 9).

Figure 9: Should election loser accept results? | by party affiliation | Malawi | 2019



Respondents were asked: Which of the following statements is closest to your view?

Statement 1: Once elections are over, losing candidates and parties should accept the election results in the interest of peace and development.

Statement 2: Losing candidates and parties in elections should always have the right to challenge election results in the courts.

(% who “agreed” or “strongly agreed” with each statement)

Conclusion

As of late 2019, after heavy media coverage, most Malawians were aware of the court case challenging the validity of the 2019 presidential election results. It is good for democracy that citizens follow key national events.

Moreover, most considered the legal challenge justified – even if many might prefer, in general, that the losing side in an election accept defeat in the name of peace and development.

Across regional and party lines, there was a widespread perception of the courts as impartial and trustworthy. Trust in the courts significantly surpassed trust in many other public institutions, such as the Malawi Broadcasting Corporation, the Anti-Corruption Bureau, and the Malawi Revenue Authority. This suggests that the courts are a key institution to sustain democratic values in the country.

Most Malawians also agreed that the president must always obey the laws and the courts, even if he thinks they are wrong – or even if he faces considerable political pressures. This

implies that court decisions, even if not in one's own favour, are supported in principle by Malawians.

Legitimacy is critical for any public institution to effectively perform its duties. These results suggest that the courts, which enjoy significant popular support, have a key role to play in democracy consolidation in Malawi. The courts need courage and support from all key stakeholders to strengthen and protect this public image.

Do your own analysis of Afrobarometer data – on any question,
for any country and survey round. It's easy and free at
www.afrobarometer.org/online-data-analysis.

References

- Ellett, R. (2015). *Politics of judicial independence in Malawi*. Freedom House International.
- Gloppen, S, & Kanyongolo, F. (2004). Judicial independence and judicialization of electoral politics in Malawi and Uganda. In D. Chirwa & L. Nijzink (Eds.), *Accountable Government in Africa*. United Nations University Press.
- Maravipost. (2019). Malawi supreme court denies AG Kaphale application to stop HRDC demos. 20 September.
- Patel, N., & Wahman, M. (2015). Introduction. In N. Patel & M. Wahman (Eds.), *The Malawi 2014 tripartite elections: Is democracy maturing?* National Initiative for Civic Education (NICE).
- Vondoepp, P. (2005). The problem of judicial control in Africa's neopatrimonial democracies: Malawi and Zambia. *Political Science Quarterly*, 120(2), 275-301.

Happy Mickson Kayuni is a professor in the University of Malawi's Political and Administrative Studies Department in Zomba. Email: hkayuni@cc.ac.mw or hkayuni2009@gmail.com.

Afrobarometer, a non-profit corporation with headquarters in Ghana, is a pan-African, non-partisan survey research network. Regional coordination of national partners in about 35 countries is provided by the Ghana Center for Democratic Development (CDD-Ghana), the Institute for Justice and Reconciliation (IJR) in South Africa, and the Institute for Development Studies (IDS) at the University of Nairobi in Kenya. Michigan State University (MSU) and the University of Cape Town (UCT) provide technical support to the network.

Financial support for Afrobarometer Round 8 has been provided by Sweden, the Mo Ibrahim Foundation, the Open Society Foundations, the William and Flora Hewlett Foundation, and the U.S. Agency for International Development (USAID) via the U.S. Institute of Peace.

Donations help the Afrobarometer Project give voice to African citizens. Please consider making a contribution (at www.afrobarometer.org) or contact Bruno van Dyk (bruno.v.dyk@afrobarometer.org) to discuss institutional funding.

For more information, please visit www.afrobarometer.org.

Follow our releases on #VoicesAfrica.



Afrobarometer Dispatch No. 340 | 4 February 2020