

CONSTITUTIONAL PROVISIONS AND EXECUTIVE SUCCESSION: MALAWI'S 2012 TRANSITION IN COMPARATIVE PERSPECTIVE

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ABSTRACT

Four African leaders died in 2012. This article explores the constellation of factors that together led to a constitutional succession after President Bingu wa Mutharika's death in Malawi, despite plotting by the late President's allies to circumvent the constitution and install their own candidate over Vice-President Joyce Banda. We present data on executive deaths in office since 1961 and executive transfers of power 2010–12 in order to situate the Malawi transition within the broader African context, and draw especially on comparisons to executive successions that followed the death-in-office of presidents in Nigeria (2010) and Zambia (2008). We assert from these cases that constitutional provisions on executive succession are necessary in precipitating peaceful transitions, but also argue that periods of delay indicate that such provisions are insufficient on their own. We contend that presidential death is more likely to lead to transition than presidential incapacity. The Malawian case in particular illustrates how a constitutional transition requires support from key actors, particularly the Cabinet, military leaders, judiciary, civil society, and the independent media. Public rejection of military or authoritarian rule, and the growing precedent for constitutional succession in Africa, are additional drivers of peaceful transitions.

ON 5 APRIL 2012, MALAWI PRESIDENT BINGU WA MUTHARIKA died suddenly following a fatal heart attack at his presidential palace in the capital, Lilongwe. Two days later, Mutharika's Vice-President, Joyce Banda, was sworn in as Malawi's fourth President at the National Assembly in Lilongwe. The intervening 48 hours – a time of secrecy, suspicion, and uncertainty – embody the continuing challenges facing democracy in Africa,

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especially during periods of transition. On the eve of Banda's inauguration, it was unclear whether Malawi's succession would follow the constitution or be manipulated to serve the interests of the dead President's allies.

In this article, we offer a first description of the constellation of factors that together led to the constitutional succession after Mutharika's death and try to assess what it means for the consolidation of democracy. Following a detailed account of the context preceding the President's demise, we analyse the events surrounding the subsequent transition. Then we look more broadly at succession, examining data on all transitions in Africa during the previous three years and on successions following deaths in Africa since the independence period. We also draw on comparisons to successions in Nigeria (2010) and Zambia (2008). We conclude with some discussion of Malawi's political future, in which we show that while Malawi's 2012 succession demonstrates that democracy is consolidating in Africa, the transition also highlights how such processes challenge party institutionalization and stability.

Our analysis focuses on the constitutional provisions for succession, the key actors in the succession process, and transition precedents in Africa. We assert that constitutional provisions on executive succession are necessary in precipitating peaceful transitions but argue that periods of delay indicate that such provisions are insufficient on their own. In the cases examined here, presidential death is much more likely to lead to a transition than presidential incapacity. The Malawi case illustrates how a constitutional transition requires support from powerful actors, particularly the Cabinet and leaders in the military, judiciary, civil society, and the independent media. These key actors obstructed those who conspired to circumvent the constitution. Public rejection of military or authoritarian rule, and the institutionalization of political rules in Africa provided a context for the eventual peaceful transition, reflecting a wider trend in which succession processes on the continent are increasingly likely to follow constitutional provisions and transfers of power are increasingly likely to be democratic.

Contemporary Malawi before Mutharika's death

Mutharika was first elected to the presidency in 2004 on the United Democratic Front (UDF) ticket. However, a year into his first term, he left the UDF after falling out with his predecessor, President Bakili Muluzi, over Mutharika's anti-corruption drive. In 2005, Mutharika formed the Democratic Progressive Party (DPP), which became the default ruling party even if at the time it did not have any members in the National Assembly. Despite facing a hostile Parliament, Mutharika's first term was widely acknowledged as an economic success story, underpinned by a popular agricultural subsidy that took Malawi from a 43 percent food

deficit to a 53 percent food surplus nation.¹ During this time, Malawi's economy grew at an average rate of 7 percent per annum.²

It was against this background that Mutharika, who had picked then Foreign Affairs Minister, Joyce Banda, as his running mate, was re-elected to the presidency in 2009 with two-thirds of the popular vote. Meanwhile, the DPP won slightly under 60 percent of the parliamentary seats.³ While Mutharika's first term was characterized by pragmatism in dealing with an opposition-dominated Parliament, his overwhelming win in the 2009 elections led him to act more brazenly in his second term.

Mutharika pledged to support Banda as the DPP's presidential candidate in the 2014 elections,⁴ but promptly reneged and instead began to promote his younger brother, Peter Mutharika,⁵ as his successor. After Banda refused to support the fraternal succession plan, she was removed from the Cabinet and expelled from the DPP towards the end of 2010.⁶ Mutharika and his Cabinet contemplated removing Banda from office, but were prohibited by Malawi's constitution, which stipulates that the Vice-President (like the President) can only be removed by impeachment.⁷ Banda started her own party, the People's Party (PP) and, though she remained in office, she did not have a hand in government.

The period following Mutharika's re-election in 2009 and preceding his death was characterized by a serious decline in economic and political governance.⁸ Local government elections scheduled for 2011 were

1. Glenn Denning, Patrick Kabambe, Pedro Sanchez, Alia Malik, Rafael Flor, Rebbie Harawa, Phelire Nkhoma, Colleen Zamba, Clement Banda, Chrispin Magombo, Michael Keating, Justine Wangila, and Jeffrey Sachs, 'Input subsidies to improve smallholder maize productivity in Malawi: toward an African Green Revolution', *PLOS Biology* 7, 1 (2009), p. e1000023.

2. Bingu wa Mutharika, 'Building national capacity for sustained growth and development', State of the Nation Address to the Malawi Parliament, Lilongwe, 24 May 2010.

3. Cecilia Makupe, 'Electoral results in statistics' in Martin Ott and Fidelis Kanyongolo (eds), *Democracy in Progress: Malawi's 2009 parliamentary and presidential elections* (Kachere Series, Zomba, 2009); Karen Ferree and Jeremy Horowitz, 'Ties that bind? The rise and decline of ethno-regional partisanship in Malawi, 1994–2009', *Democratization* 17, 3 (2010), pp. 534–63; Kimberly Smiddy and Daniel Young, 'Presidential and parliamentary elections in Malawi, May 2009', *Electoral Studies* 28, 4 (2009), pp. 662–6.

4. Thom Chiumia, 'Bingu promised me the presidency', *Nyasa Times*, 4 August 2011, <<http://www.nyasatimes.com/malawi/2011/08/04/bingu-promised-me-the-presidency-%E2%80%9393jb/>> (10 April 2012).

5. In addition to being the President's brother, Peter was a DPP parliamentarian and Minister of Foreign Affairs.

6. Joseph Kayira, 'Joyce Banda: We shall come out of this situation', *The Lamp* 92 (September–October 2011), pp. 14–15.

7. Constitution of the Republic of Malawi (2004), Section 86(1).

8. Diana Cammack, 'Malawi in crisis, 2011–12', *Review of African Political Economy* 39, 132 (2012), pp. 375–88; Daniel Wroe, 'Donors, dependency, and political crisis in Malawi', *African Affairs* 111, 442 (2012), pp. 135–44; Augustine Magolowondo, '2011 and Malawi's democratic recession: any way out?', *The Lamp* 93 (November–December 2011), pp. 4–6; Joseph Kayira, '2011: year of hardships in Malawi', *The Lamp* 93 (November–December 2011), pp. 6–7.

postponed to 2014.⁹ Meanwhile, Mutharika's government and party became increasingly authoritarian and intolerant of criticism. Banda's supporters, including several legislators, were expelled from the DPP. Critics of the President were regularly harassed and victimized. For example, the home of MacDonald Sembereka, chairperson of the Council of Non-Governmental Organizations in Malawi, and the offices of the Institute for Policy Interaction were burnt down after Mutharika made a public speech saying he would 'smoke out' his critics. Other government critics were arrested on politically motivated charges, including the chairperson of the Malawi Human Rights Commission, John Kapito, lawyer Ralph Kasambara, and UDF presidential aspirant, Atupele Muluzi.

Mutharika's government used its legislative majority to pass laws curtailing rights and freedoms. These included a law eliminating the courts' ability to grant injunctions against the government, reducing the ability of the courts to check the executive branch; a law empowering the Information Minister to ban media publications deemed not to be in the public interest; and a law giving police wide-ranging powers to search citizens and premises without a warrant.¹⁰ Mutharika also ordered organizers of public demonstrations to pay a deposit fee of K2 million (about \$13,000 at 2011 exchange rates).¹¹

International donors criticized the declining governance situation and scaled back support. In February 2011, representatives of Britain, France, Germany, Iceland, Japan, Norway, and the United States issued a statement expressing concern over poor governance in Malawi. Relations soured in particular with the UK. In April 2011, a leaked telegram from the British High Commissioner in Malawi, Fergus Cochrane-Dyet, highlighted Mutharika's increasing authoritarianism. Mutharika responded by expelling Cochrane-Dyet.¹² Britain reciprocated by expelling Malawi's Acting High Commissioner to the UK and freezing all new aid to Malawi.¹³

Malawi's economic governance declined as well. Mutharika refused demands from the International Monetary Fund (IMF) to devalue

9. Malawi Electoral Commission, Press Release, 2011, <<http://www.mec.org.mw/LinkClick.aspx?fileticket=m1tyYvCY4%3d&tabid=36&mid=433>> (26 May 2011).

10. Theresa Chapulapula, 'Government acts on bad laws', *Malawi News*, 5 May 2012.

11. 'Malawi: Police teargas protesting students, make arrests in Malawi', *Africa News*, 9 March 2011, <<http://www.afriquejet.com/news/africa-news/malawi-police-teargas-protesting-students,-make-arrests-in-malawi-201103094149.html>> (2 June 2012).

12. BBC News, 'UK and Malawi in tit-for-tat diplomatic expulsions', 27 April 2011, <<http://www.bbc.co.uk/news/world-africa-13205729>> (10 April 2012).

13. Mark Tran, 'Britain suspends aid to Malawi', *The Guardian*, 14 July 2011, <<http://www.guardian.co.uk/global-development/2011/jul/14/britain-suspends-aid-to-malawi>> (10 April 2012).

Malawi's currency, the kwacha. The kwacha's overvaluation led to shortages of foreign currency in the formal sector as transactions moved to the parallel market, where the US dollar fetched more than double the official rate. Foreign currency shortages led to fuel shortages, creating a domino effect of increased transport costs, reduced transport services, decreased availability of consumer goods, and delayed construction projects.¹⁴ The market for tobacco, Malawi's main export, collapsed completely,¹⁵ exacerbating Malawi's foreign exchange scarcity. Government responded by tabling a 'zero-deficit budget' in June 2011, introducing new value-added taxes on basic goods such as milk, salt, and bread.¹⁶ The IMF mission in Malawi quashed government's growth forecasts of 6.9 percent in 2011 and 6.6 percent for 2012 and identified a number of structural constraints contributing to reduced productivity.¹⁷

Ordinary Malawians struggled with the economic decline. Medical supplies, including life-saving antiretroviral treatment for HIV patients, were often out of stock, prompting Malawi's international partners to intervene by directly importing medicines into the country.¹⁸ Just before Mutharika's death, Malawians were queuing for sugar, a crop grown and refined in Malawi.

Disgruntled Malawian citizens began organizing protests in response to the decline. In February 2011, protesters raising the issue of fuel shortages organized in Lilongwe, but heavily armed police arrested many of them before the protest began. In the same month, University of Malawi (UNIMA) political science lecturer, Blessings Chinsinga, was questioned by police, accused of inciting protest because he discussed North African protests in a lecture. The subsequent dismissal of Chinsinga and three other members of the Academic Staff Union prompted demonstrations by students and faculty on university campuses. Lecturers at UNIMA's Chancellor College and Malawi Polytechnic went on strike, calling for the dismissed lecturers' reinstatement and assurance of academic freedom. The agitation for academic freedom continued in fits and spurts until late October 2011, when President Mutharika directed the four lecturers' reinstatement.

Malawians demonstrated over declining democratic and economic governance in major cities and towns on 20 July 2011. Some protests turned violent and 19 protesters were killed by police while many others were

14. Cammack, 'Malawi in crisis'.

15. *Ibid.*

16. Wroe, 'Donors, dependency, and political crisis in Malawi'.

17. Kayira, '2011: Year of economic hardships in Malawi'.

18. Rebecca Chimjeka, 'Donors save Malawi on drug shortage', *Africa Business*, 8 January 2012, <<http://africabusiness.com/2012/01/08/donors-save-malawi-on-drug-shortage>> (1 June 2012).

injured.¹⁹ During the protests, organizers submitted a list of demands, including calls for Mutharika to explain funds used to develop a plush farm in his home district.²⁰ Subsequent demonstrations were planned for 17 August and 21 September, but organizers cancelled these at the last minute, citing fears that demonstrators would be harmed by ruling party operatives or heavy-handed police.

In sum, the fragile and peculiar political and economic context, underpinned by President Mutharika's quest to install his brother as his successor, raised doubt as to whether the constitutional provisions for succession would take precedence when Mutharika died.

Malawi's transition: the constitution vs the cabinet

President Mutharika suffered a heart attack on the morning of 5 April 2012. He was rushed to the Intensive Care Unit of Kamuzu Central Hospital (KCH), the largest public hospital in Lilongwe. He was dead on arrival and efforts to resuscitate him failed.²¹

The Information Ministry and government-run Malawi Broadcasting Corporation (MBC) were silent on Mutharika's illness or death. However, Malawi's private, online, and social media began to report that the President was dead. Private media house Zodiak Broadcasting Services (ZBS) aired live commentary of developments at KCH when news broke of Mutharika's hospitalization. Online publications, a number of bloggers, and Facebook or Twitter posters offered regular updates, while the *Malawi Democrat* announced Mutharika's death two days before any public statement was issued.²² Government officials tried to control reporting on Mutharika's condition and death, but coverage in the private and social media made it increasingly impossible for them to do so. By nightfall on 5 April, State House released a statement through MBC stating only that Mutharika was ill and would be flown to South Africa for treatment.

Malawi's constitution has provisions for succession related to both presidential incapacity and death. In the case of incapacity, the constitution states the Vice-President will lead the country until the President is able to resume office.²³ This process requires a written declaration,

19. Malawi Human Rights Commission, 'MHRC report on July 20 demonstrations', August 2011, <<http://www.osisa.org/sites/default/files/article/files/MHRC%20report%20on%2020%20July%20demonstrations.pdf>> (23 August 2012).

20. Civil Society Organizations, 'Poor economic and democratic governance in Malawi: uniting to resist poor economic and democratic governance', 20 July 2011.

21. Mabvuto Banda, 'Malawi's President Mutharika dead', *Reuters*, 6 April 2012, <<http://www.reuters.com/article/2012/04/06/us-malawi-president-idUSBRE83504E20120406>> (10 April 2012).

22. 'Bingu wa Mutharika is dead', *Malawi Democrat*, 5 April 2012, <<http://www.malawidemocrat.com/politics/bingu-wa-mutharika-is-dead>> (10 April 2012).

23. Constitution of the Republic of Malawi (2004), Section 87.

certified by a board of independent medical practitioners, that the President is unable to perform his duties. The Vice-President and a majority of the Cabinet must sign this declaration before submission to the Speaker of the National Assembly. The Vice-President can then begin to act as President. In the case of the President's death, the constitution calls for the Vice-President to immediately take office. It states:

Whenever there is a vacancy in the office of President, the First Vice-President shall assume that office for the remainder of the term and shall appoint another person to serve as First Vice-President for the remainder of the term.²⁴

With the government still controlling MBC, Joyce Banda addressed the nation on ZBS in the evening of 6 April. She informed the public of Mutharika's heart attack and said she was getting regular updates on his condition from the South African government. Though Banda was not explicit about taking charge, she spoke of constitutional language concerning presidential incapacitation. But later that same night, six Cabinet ministers²⁵ held a press conference on MBC declaring Banda could not succeed the President because she had formed an opposition party. The ministers remained silent on Mutharika's condition, saying only that information would 'be made available to the public in due course'.²⁶

Only on the morning of 7 April did the Office of the President and Cabinet announce Mutharika's death and declare the succession would follow the constitution. Joyce Banda addressed the nation later the same morning to express her condolences for the loss of President Mutharika. That afternoon, Banda was sworn in as Malawi's first female President in the National Assembly, in a ceremony presided over by Chief Justice Lovemore Munlo and attended by local and international dignitaries.

Reports following Banda's inauguration suggest that a faction of the DPP hierarchy, led by the late Mutharika's brother, Peter, delayed informing the public about the President's death as a stalling device while the party prepared its own succession plan. Deputy Minister of Transport and Public Works Catherine Gotani Hara gave an interview to ZBS stating the DPP politburo convened three times after Mutharika's death to discuss appointing his brother as President. Consistent with the Cabinet press briefing on the night of 6 April, those supportive of a Peter Mutharika succession plotted to use the courts and argue Banda was ineligible to succeed because she had 'left' the DPP. To this end, Chief

24. Constitution of the Republic of Malawi (2004), Section 83 (3).

25. Dubbed the Midnight Six, the six ministers who participated in the press conference were: Patricia Kaliati (Information), Jean Kalirani (Health), Simon Vuwa Kaunda (Sports), Henry Mussa (Local Government), Nicholas Dausi (Deputy Minister, President's Office), and Kondwani Nankhumwa (Deputy, Foreign Affairs).

26. A video of the press statement is available at <<http://youtu.be/egpt7JywR-U>> (17 August 2012).

Justice Munlo, a Mutharika appointee, was recalled from an official trip to Tanzania and asked to rule Joyce Banda as ineligible, which would have cleared the way for Peter Mutharika's appointment as President.²⁷

The DPP politburo's motivations seem obvious. Were Banda to take over, they would lose their positions, be stripped of various resources, and potentially become targets of the new administration. The incumbency advantage in Africa is so strong²⁸ that the DPP had ample incentive to work against the ascension of Joyce Banda, which could keep the DPP from holding the presidency – potentially until 2022, when Banda would be constitutionally termed out of office.

Key actors in Malawi's transition

Key actors supported Joyce Banda's ascension in ways that ultimately helped ensure a constitutional succession. These included members of the late Mutharika's Cabinet and senior government officials who broke ranks with the plotters. Among those opposed to Peter Mutharika's succession were Attorney General Maxon Mbendera, Minister of Justice Ephraim Chiume, and Army Commander General Henry Odillo. According to media reports, Mbendera and Chiume advised the plotters against circumventing the constitution and offered to resign.²⁹

Banda herself spoke in detail about the uncertainty of the transition and what transpired in the period preceding her inauguration in an interview with *The Guardian*.³⁰ According to this interview, DPP Cabinet ministers and parliamentarians were summoned to Peter Mutharika's house and informed that the party had asked the courts to declare Banda ineligible for the presidency. While the plotters waited for the court order, Joyce Banda gathered her own team to make their succession plans.

The main turning point in the succession battle involved the role of the Malawi army, led by General Odillo. Both the Banda and Mutharika camps reached out to Odillo to request the army's support. On the afternoon of 6 April, Banda called Odillo and requested he declare his and the army's loyalty to her. The Mutharika camp responded by urging Odillo and other senior army officers to take over power themselves.³¹ In the

27. Charles Mpaka, 'Munlo should resign', *Sunday Times* [Malawi], 6 May 2012.

28. Nic Cheeseman, 'African elections as vehicles for change', *Journal of Democracy* 21, 4 (2010), pp. 139–53.

29. Idriss Ali Nassah, 'The boys who saved Malawi', *Sunday Times* [Malawi], 6 May 2012.

30. David Smith, 'Malawi's Joyce Banda puts women's rights at centre of new presidency', *The Guardian*, 29 April 2012, <<http://www.guardian.co.uk/world/2012/apr/29/malawi-president-joyce-banda-women-rights>> (1 May 2012).

31. Madalitso Musa, 'JB exposes "coup" plot', *Daily Times* [Malawi], 1 May 2012, <<http://www.bnltimes.com/index.php/daily-times/headlines/national/6157-jb-exposescoup-plot>> (15 October 2012).

end, Odillo pledged his and the army's loyalty to Banda and subsequently deployed army officers to guard the Vice-President's house in Lilongwe. Odillo's decision to side with Banda shifted the balance of power from the Mutharika camp to Banda.

A key question is why the Malawi army under Odillo not only refused to support Peter Mutharika, but also refused to fill the power vacuum by taking over the presidency when offered by the DPP. Odillo has not spoken, but we suggest two reasons: the certainty of job security afforded by supporting the Vice-President (who had the constitution to back her claim to power) and the rejection of military rule by Malawians.

There was very little personal gain for Odillo in supporting an unconstitutional succession. He had already risen to the highest rank in the army. Supporting an unconstitutional succession was a riskier option given the legal uncertainty surrounding a dynastic succession. Even if Peter Mutharika had managed to accede to the presidency, there was no guarantee he would go on to win a full term in the 2014 elections, given the tenuous political situation preceding his brother's death. At best, the rewards for Odillo and the army from supporting Mutharika were short-term in nature. Supporting Banda, in contrast, gave Odillo longer job security, and had the added benefit of positioning him as a champion of the constitution.

The army might also have been reluctant to support an unconstitutional transition because doing so would have put them at odds with precedent and prevailing public opinion. Throughout its history, the Malawi army has cultivated a reputation for non-interference in political affairs and Malawi is one of only six African countries where the state has established a measure of 'systematic legitimacy that discourages praetorian assaults from the armed forces'.³² Malawians also consistently express dislike of military rule (see Figure 1), and so any attempt by the army to support an unconstitutional transition, whether siding with Mutharika or taking over power themselves, would have put them at odds with the views of most citizens.

As the DPP politburo plotted to install Peter Mutharika as President, several individuals and organizations spoke in favour of a constitutional succession transferring power to Vice-President Banda. Among these was the Malawi Law Society, who warned that any attempt to install Mutharika as President would amount to treason.³³ Civil society organizations (CSOs), the Episcopal Conference of Malawi, former President

32. Samuel Decalo, *The Stable Minority: Civilian rule in Africa* (Florida Academic Press, Gainesville, 1998), p. 39.

33. Dickson Kashoti, 'Peter Mutharika deserted', *Daily Times* [Malawi], 8 April 2012, <<http://www.bnlimes.com/index.php/sunday-times/headlines/national/5709-peter-mutharika-deserted>> (8 May 2012).

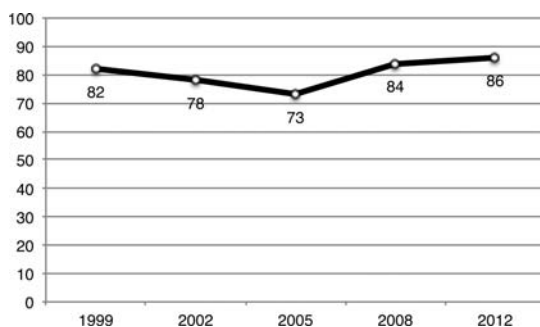


Figure 1. Rejection of military rule in Malawi, 1999–2012 (%). Source: Afrobarometer Malawi, Rounds 1–5, 1999–2012 (see <www.afrobarometer.org>). (Question wording: ‘There are many ways to govern a country. Would you disapprove or approve of the army coming in to govern the country?’ The figures are for respondents saying ‘Strongly disapprove’ or ‘Disapprove’.)

Bakili Muluzi, and opposition political parties also called for constitutional adherence.³⁴

The media advocated for a constitutional transition. The social media community – including bloggers, Facebook and Twitter users, and posters on discussion forums such as NyasaNet and MalawiTalk – was active, echoing calls for an orderly and constitutional transition.³⁵ Reporting by the private, online, and social media deprived the DPP politburo of secrecy and space to secure Mutharika’s installation as President, and pressured the plotters to honour the constitution.³⁶ This combined pressure led to divisions within the DPP hierarchy, ultimately resulting in the defection of 15 ministers who pledged loyalty to Banda.³⁷

Judicial actors indirectly helped halt attempts at extra-constitutional succession. Malawian judges have consistently demonstrated a capacity to be ‘relatively fearless’, rendering decisions on solid legal considerations

34. Ali Nassah, ‘The boys who saved Malawi’; Charles Mkula, ‘Diplomatic heads visit Malawi Vice President Joyce Banda as the rightful successor to the late President Bingu Wa Mutharika’, *Newstime Africa*, 7 April 2012, <<http://www.newstimeafrica.com/archives/25020>> (8 May 2012).

35. Paul Tiyambe Zeleza, ‘The death of a dictator: Malawi’s tortured political transition’, *Zeleza Post*, 6 April 2012, <<http://www.zeleza.com/blogging/african-affairs/death-dictator-malawi-s-tortured-political-transition-0>> (10 April 2012).

36. Green Muheya, ‘Joyce Banda next Malawi president’, *Nyasa Times*, 6 April 2012, <<http://www.nyasatimes.com/malawi/2012/04/06/joyce-banda-next-malawi-leader-muluzi-and-law-society-say/>> (10 April 2012); Kondwani Munthali, ‘Peter, DPP new president, let Joyce Banda take over’, 6 April 2012, <<http://munthalikondwani.blogspot.com/2012/04/peter-dpp-new-president-let-joyce-banda.html>> (10 April 2012).

37. Kashoti, ‘Peter Mutharika deserted’.

rather than ruling in favour of those in power.³⁸ Between 2004 and Mutharika's death in 2012, Malawi judges repeatedly asserted this independence by delivering rulings that often went against the executive power. The Constitutional Court's June 2006 ruling against the dismissal of Mutharika's then Vice-President, Cassim Chilumpha,³⁹ is particularly relevant, as it provided some precedent for constitutional safeguards for the office of the Vice-President. In November 2006, the High Court ruled against Mutharika's request to declare unconstitutional a clause in the constitution that prohibits floor crossing by MPs. The Malawi Supreme Court of Appeal upheld this ruling in 2007 in a decision delivered by Chief Justice Munlo.⁴⁰ Although the DPP politburo's tenuous legal strategy relied on Chief Justice Munlo to declare that Banda was ineligible for office without a hearing and subsequently to swear in the President's brother, these previous actions by the judiciary and Munlo, in particular, raise considerable doubt that judicial actors would have upheld, let alone supported, Mutharika's installation as President. Like Odillo, Munlo had risen to the apex of his profession and thus had little to gain personally by supporting the plotters.

Donors also weighed in to express support for following the constitution. The US Department of State issued a statement urging adherence to the constitution and expressing concern about the delayed transition. The statement concluded: 'We trust that the Vice-President who is next in line will be sworn in shortly.'⁴¹ The British Foreign Minister echoed the US position, issuing a statement the morning of April 7 urging Malawians 'to remain calm and (hope) that a peaceful handover takes place as provided for under Malawi's constitution'.⁴² South African President Jacob Zuma also called for 'democratic institutions [to be respected to] ensure a peaceful and orderly transition'.⁴³ In a demonstration of support for Banda, representatives of various foreign governments,

38. Peter VonDoepp, 'Political and judicial assertiveness in emerging democracies: high court behavior in Malawi and Zambia', *Political Studies Quarterly* 120, 2 (2005), pp. 275–301.

39. Henry Chilobwe, 'Court rules in favour of Chilumpha', *The Nation*, 29 June 2006, p. 1.

40. Malawi Supreme Court of Appeal, 'Presidential Reference Appeal No. 44 of 2006', mimeo.

41. 'Malawi: Statement by US Assistant Secretary of State Johnnie Carson on Death of President Mutharika', 6 April 2012, <<http://allafrica.com/stories/201204061096.html>> (10 April 2012); Reuters, 'Malawi leader dies; US alarmed at delay in swearing in new one', 6 April 2012, <http://www.msnbc.msn.com/id/46981012/ns/world_news-africa/t/malawi-leader-dies-us-alarmed-delay-swearing-new-one/#.UDr1pt1SV9> (10 April 2012).

42. BBC News, 'Malawi's VP takes over after President's death', 7 April 2012, <<http://www.thisdaylive.com/articles/malawi-vp-takes-over-after-president-s-death/113207/>> (10 April 2012).

43. News 24, 'Malawi: Zuma seeks peaceful transition', 7 April 2012, <<http://www.news24.com/SouthAfrica/Politics/Malawi-Zuma-seeks-peaceful-transition-20120407>> (10 April 2012).

including US, Chinese, and Zimbabwean ambassadors as well as European Union and United Nations representatives to Malawi, visited Banda's home on the morning of 7 April, while the DPP hierarchy was still plotting to install Mutharika as President.⁴⁴

Despite the uncertainty in the two days following Mutharika's death, the eventual transition proceeded peacefully and according to the constitution. Just days before Banda's ascension, Malawi was on the brink of reverting to authoritarianism, was in economic crisis, and had an executive and ruling party that disregarded democratic institutions. The military, media, CSOs, the judiciary and the international community were key to upholding constitutional provisions for succession, even if transition was temporarily delayed. We now look to other succession processes in Africa as precedents for comparative evidence of the requirements for peaceful, lawful transitions following presidential death.

Executive succession in Africa

Executive succession following death in Africa is remarkably different in the current democratic era when compared to the period prior to the third wave of democratization. The post-independence period was marked by personal rule, where constitutions were not institutionalized; thus, there was great uncertainty surrounding whether constitutional provisions or power politics would determine executive succession.⁴⁵ The death of a personal ruler often generates crisis:

When he loses his ability to rule or passes from the political scene, his regime is jeopardized ... It affects the power and privileges of individuals and groups as a result of changes in the membership of ruling bodies such as cabinets, party executives, and military ruling councils, especially at the political and senior administrative levels. Succession or its prospect can therefore provoke a climate of apprehension and even crisis.⁴⁶

Violent transitions outnumbered peaceful transfers of power in the pre-1990 period.⁴⁷ However, even personalist regimes had peaceful leadership changes.⁴⁸ Peaceful transitions during a period dominated by personal rule provided some precedent for the current period, which also

44. Mkula, 'Diplomatic heads visit Malawi Vice President Joyce Banda'.

45. Robert Jackson and Carl Rosberg, *Personal Rule in Black Africa* (University of California Press, Berkeley, CA, 1982).

46. *Ibid.*, p. 67.

47. The decade following independence was particularly violent, where nearly 32 percent of successions 'involved a high level of violence'. See Ladun Anise, 'Trends in leadership succession and regime change in African politics since independence', *African Studies Review* 17, 3 (1974), pp. 507–24.

48. Arnold Hughes and Roy May, 'The politics of succession in black Africa', *Third World Quarterly* 10, 1 (1988), pp. 1–22; for examples of peaceful, constitutional successions in the pre-1990 period, see also Robert Jackson and Carl Rosberg, 'Personal rule: theory and practice in Africa', *Comparative Politics* 16, 4 (1984), pp. 421–42, p. 436.

benefits from institutionalized constitutions. In the contemporary period, the formal rules over executive tenure in Africa such as elections and term limits, have grown more relevant, displacing violence as the primary constraint.⁴⁹

Table 1 lists all executive deaths in Africa since the independence period and the respective succession processes (such as military appointment, coup d'état, or constitutional). There were 51 deaths in total, 26 in the period from 1960 to 1990 and 25 in the period since 1990. Only a third (35 percent) of the successions associated with an incumbent's death in the pre-1990 period were constitutional. By contrast, over half (56 percent) of the death-in-office successions after 1990 followed constitutional processes. Coups d'état were three times as likely to be associated with an executive's death in the pre-1990 period (23 percent) than in the post-1990 period (8 percent).

Between January 2010 and September 2012, there were 25 executive transitions in Africa (see Table 2). More than two-thirds (17) were democratic, the majority of which (11) followed elections. Like Malawi, four other nations experienced a 'constitutional' succession following an executive's death during this period. Deputy Prime Minister Hailemariam Desalegn was inaugurated as Ethiopia's new Prime Minister on 21 September 2012, succeeding Meles Zenawi who died in office on 20 August 2012. In Ghana, Vice-President John Dramani Mahama became President on 24 July 2012 following the death in office of John Atta Mills. Vice-President Raimundo Pereira became President of Guinea-Bissau on 9 January 2012 following the death in office of Malam Bacai Sanhá.⁵⁰ The day after the death of President Umaru Yar'Adua in Nigeria on 5 May 2010, Vice-President Goodluck Jonathan was sworn in as President.

The few non-democratic transfers of power did not occur as a result of the death of the incumbent, but instead were triggered by military coups in West Africa (3) and revolutions in North Africa (3). The remainder (2) were peaceful transitions: one in South Sudan when it seceded from Sudan in July 2011 following a referendum on separation and the other a transfer of rule from the military government to a civilian government in Mali in April 2012.⁵¹ Only one of the 13 democratic transitions was followed shortly thereafter by another (non-democratic) transition.

49. Daniel Posner and Daniel Young, 'The institutionalization of political power in Africa', *Journal of Democracy* 18, 3 (2007), pp. 126–40.

50. Though the succession immediately following Sanhá's death was constitutional, it was followed shortly thereafter by a military coup, which was foreshadowed by a failed coup attempt in 2011, when then-President Sanhá was seeking medical treatment in France.

51. Though we characterize the April 2012 succession in Mali as peaceful, it was preceded by a military coup in March 2012.

Table 1. Deaths and successions in Africa since independence

Country	Year	Succession type	Former ruler	New ruler
Morocco	1961	Monarch	Mohammed V	Hassan II
Togo	1963	Coup d'état	Sylvanus Epiphanio Olympio	Emmanuel Bodjollé
Gabon	1967	Constitutional	Gabriel Léon M'ba	Omar Bongo Ondimba
Somalia	1969	Constitutional	Abdirashid Ali Shermarke	Mukhtar Mohamed Hussein
Liberia	1971	Constitutional	William Tubman	William Richard Tolbert, Jr
Mauritius	1972	British appointment	Arthur Leonard Williams	Abdool Raman Mahomed Osman
Ethiopia	1974	Coup d'état	Aman Mikael Andom	Mengistu Haile Mariam
Chad	1975	Coup d'état	François Tombalbaye	Félix Malloum
Madagascar	1975	Military appointment	Richard Ratsimandrava	Gilles Andriamahazo
Nigeria	1976	Military appointment	Murtala Mohammed	Olusegun Obasanjo
Ethiopia	1977	Coup d'état	Tafari Benti	Mengistu Haile Mariam
Republic of Congo	1977	Military appointment	Marien Ngouabi	Joachim Yhombi Opango
Algeria	1978	Military appointment	Houari Boumedienne	Rabah Bitat
Kenya	1978	Constitutional	Jomo Kenyatta	Daniel arap Moi
South Africa	1978	Constitutional	Nicolaas Diederichs	Marais Viljoen
Angola	1979	Party succession	António Agostinho Neto	José Eduardo dos Santos
Botswana	1980	Constitutional	Seretse Khama	Quett Ketumile Masire
Liberia	1980	Coup d'état	William Richard Tolbert, Jr	Samuel Doe
Egypt	1981	Constitutional	Anwar El Sadat	Sufi Abu Taleb
Swaziland	1982	Monarch	Sobhuza II	Mswati III
Guinea	1984	Constitutional	Ahmed Sékou Touré	Louis Lansana Beavogui
Mauritius	1985	British appointment	Seewoosagur Ramgoolam	Cassam Ismael Moollan
Mozambique	1986	Party succession	Samora Machel	Joaquim Chissano
Burkina Faso	1987	Coup d'état	Thomas Sankara	Blaise Compaoré
Niger	1987	Military appointment	Seyni Kountché	Ali Saibou
Comoros	1989	Constitutional	Ahmed Abdallah	Haribon Chebani
Liberia	1990	General election	Samuel Doe	Charles Taylor
Algeria	1992	Military appointment	Mohamed Boudiaf	Ali Hussain Kafi

Burundi	1993	Military appointment	Melchior Ndadaye	François Ngeze
Côte d'Ivoire	1993	Constitutional	Félix Houphouët-Boigny	Henri Konan Bédié
Burundi	1994	Constitutional	Cyprien Ntaryamira	Sylvestre Ntibantunganya
Rwanda	1994	Military appointment	Juvénal Habyarimana	Théodore Sindikubwabo
Lesotho	1996	Constitutional	Moshoeshe II	Letsie III
Somalia	1996	Party succession	Mohamed Farrah Hassan Aidid	Hussein Mohamed Farrah Aidid
Comoros	1998	Constitutional	Mohamed Taki Abdoukarim	Tadjidine Ben Said Massounde
Nigeria	1998	Military appointment	Sani Abacha	Abdulsalami Abubakar
Morocco	1999	Constitutional	Hassan II	Mohammad VI
Niger	1999	Coup d'état	Ibrahim Baré Maïnassara	Daouda Malam Wanké
Democratic Republic of the Congo	2001	Cabinet appointment	Laurent-Désiré Kabila	Joseph Kabila
Togo	2005	Military appointment	Gnassingbé Eyadéma	Faure Gnassingbé
Guinea	2008	Coup d'état	Lansana Conté	Moussa Dadis Camara
Zambia	2008	Constitutional	Levy Mwanawasa	Rupiah Banda
Gabon	2009	Constitutional	Omar Bongo Ondimba	Rose Francine Rogombé
Guinea-Bissau	2009	Constitutional	João Bernardo Vieira	Raimundo Pereira
Egypt	2010	Constitutional	Gamal Abdel Nasser	Anwar Sadat
Nigeria	2010	Constitutional	Umaru Yar'Adua	Goodluck Jonathan
Libya	2011	Revolution	Muammar Gaddafi	Mustafa Abdul Jalil
Guinea-Bissau	2012	Constitutional ^a	Malam Bacai Sanhá	Raimundo Pereira
Malawi	2012	Constitutional	Bingu wa Mutharika	Joyce Banda
Ghana	2012	Constitutional	John Atta Mills	John Dramani Mahama
Ethiopia	2012	Constitutional	Meles Zenawi	Hailemariam Desalegn

^a Though the immediate transition in Guinea-Bissau in 2012 following Sanha's death followed procedures outlined in the constitution, three months later, the military staged a successful coup.

Table 2. Executive transitions in Africa, January 2010–September 2012

Year	Country	Succession type	Former ruler (party)	New ruler (party)
2010	Côte d'Ivoire	Democratic (by election) ^a	Laurent Gbagbo (Front Populaire Ivoirien)	Alassane Dramane Ouattara (Rassemblement des Républicains)
	Guinea	Democratic (by election)	Sékouba Konaté (military)	Alpha Condé (Rassemblement du Peuple Guinéen)
	Niger	Military coup	Mamadou Tandja (Mouvement National pour la Société du Développement)	Salou Djibo (military)
	Nigeria	Democratic (by constitution)	Umaru Yar'Adua (People's Democratic Party)	Goodluck Jonathan (People's Democratic Party)
2011	Cape Verde	Democratic (by election)	Pedro Pires (Partido Africano da Independência de Cabo Verde)	Jorge Carlos Fonseca (Movimento para a Democracia)
	Libya	Revolution	Muammar Gaddafi (N/A)	Mustafa Abdul Jalil (N/A)
	Comoros	Democratic (by election)	Ahmed Abdallah Mohamed Sambi (Independent)	Ikililou Dhoinine (Baobab Coalition)
	Egypt	Revolution	Hosni Mubarak (National Democratic Party)	Mohamed Hussein Tantawi Soliman (military)
	Niger	Democratic (by election)	Salou Djibo (military)	Mahamadou Issoufou (Parti Nigerien pour la Democratie et le Socialisme-Tarayya)
	São Tomé and Príncipe	Democratic (by election)	Fradique de Menezes (Movimento Democrático das Forças da Mudança-Partido Liberal)	Manuel Pinto da Costa (Independent)
	South Sudan	Secession after referendum	Omar al-Bashir (National Congress Party)	Salva Kiir Mayardit (Sudan People's Liberation Movement)
	Tunisia	Revolution	Zine El Abidine Ben Ali (Rassemblement constitutionnel démocratique)	Fouad Mebazaa (Independent)
	Tunisia	Democratic (by election)	Fouad Mebazaa (Independent)	Moncef Marzouki (Al Mottamar)
	Zambia	Democratic (by election)	Rupiah Banda (Movement for Multi-Party Democracy)	Michael Sata (Patriotic Front)

2012	Ethiopia	Democratic (by constitution)	Meles Zenawi (Ethiopian People's Revolutionary Democratic Front)	Hailemariam Desalegne (Southern Ethiopian People's Democratic Movement, part of EPRDF)
	Ghana	Democratic (by constitution)	John Atta Mills (National Democratic Congress)	John Dramani Mahama (National Democratic Congress)
	Guinea- Bissau	Democratic (by constitution) ^b	Malam Bacai Sanhá (Partido Africano da Independência da Guiné e Cabo Verde)	Raimundo Pereira (Partido Africano da Independência da Guiné e Cabo Verde)
	Guinea- Bissau	Military coup	Raimundo Pereira (Partido Africano da Independência da Guiné e Cabo Verde)	Mamadu Ture Kuruma (military)
	Malawi	Democratic (by constitution)	Bingu wa Mutharika (Democratic Progressive Party)	Joyce Banda (People's Party)
	Mali	Military coup	Amadou Toumani Touré (independent)	Amadou Haya Sanogo (military)
	Mali	Transition to civilian government	Amadou Haya Sanogo (military)	Dioncounda Traoré (Alliance pour la Démocratie en Mali-Parti Pan-Africain pour la Liberté, la Solidarité et la Justice)
	Mauritius	Democratic (by constitution)	Anerood Jugnauth (Independent)	Monique Ohsan Bellepeau (Labour Party)
	Mauritius	Democratic (by election)	Monique Ohsan Bellepeau (Labour Party)	Kailash Purryag (Labour Party)
	Senegal	Democratic (by election)	Abdoulaye Wade (Parti Démocratique Sénégalais)	Macky Sall (Alliance pour la République)
	Somalia	Democratic (by election)	Mohamed Osman Jawari (Independent)	Hassan Sheikh Mohamud (Xisbada Nabadda Iyo Horumarka)

Notes: Transitions were identified using <www.rulers.org>. We coded classification of succession type using the African Elections Database, media accounts, monthly reports from the Economist Intelligence Unit, and review of the respective country's constitution. Democratic successions were either characterized by elections or a constitutional transition, the latter of which typically followed an executive's resignation or death. To qualify as a constitutional succession required that the country's constitution stipulated the new ruler was the person to take over following the former ruler's departure from office.

^a Though Côte d'Ivoire's eventual transition was consistent with electoral results, Gbagbo's refusal to accept the electoral outcome led to a period of violence that escalated into full-scale military conflict, delaying Ouattara's taking office until six months after the election.

^b The initial transition in Guinea-Bissau following Sanhá's death was constitutional, but was followed shortly thereafter by a military coup, which was foreshadowed by a failed coup attempt in 2011.

Though some democratic transitions in the past three years were delayed (Côte d'Ivoire in 2010), survey data suggest conditions in many African countries are not ripe for a reversion to authoritarian rule.⁵² The transition from Bingu wa Mutharika to Joyce Banda in Malawi has to be seen within this broader African context, where there is growing precedent for constitutional successions and very little public appetite for authoritarian or military rule. At a time when unconstitutional transitions are becoming a rarity on the continent, the efforts by the DPP hierarchy to install Peter Mutharika as President over Joyce Banda would probably have resulted in isolation and condemnation from international and regional bodies in addition to rejection by the Malawian public.

Comparative cases: Nigeria (2010) and Zambia (2008)

President Umaru Yar'Adua was Nigeria's first democratically elected President to die in office. Yar'Adua suffered from kidney and heart problems and sought emergency treatment in Saudi Arabia in November 2009 without transferring power to his Vice-President, Goodluck Jonathan. The dearth of information on Yar'Adua's condition called into question whether he was capable of running the country. His aides argued his ailments did not amount to 'permanent incapacity', and thus challenged calls for Jonathan to assume presidential responsibilities in an acting capacity.⁵³ Nigeria's constitution states that the Vice-President takes over responsibility from an incapacitated President.⁵⁴ The determination of incapacity requires that a medical panel certify a resolution passed by two-thirds of the Cabinet and signed by the President of the Senate and the Speaker of the House.⁵⁵ Despite these constitutional provisions on presidential incapacity, it was not until 9 February 2010 that Nigeria's Senate voted to delegate the presidential responsibilities to Goodluck Jonathan as Acting President. During the interregnum, uncertainty and fear of a military coup threatened to derail Nigeria's fledgling democracy.⁵⁶ The legality of Jonathan's acting role was still somewhat

52. Michael Bratton and Robert Mattes, 'Neither consolidating nor fully democratic: the evolution of African political regimes, 1999–2008' (Afrobarometer Briefing Paper No. 67, 2009), <<http://www.afrobarometer.org/publications/afrobarometer-briefing-papers/261-bp-67>> (20 September 2012).

53. Chesa Chesa and Rotimi Akinwum, 'Nigeria: Yar'Adua splits FEC into North, South divide – Cabinet sends six-man delegation to Saudi Arabia', *AllAfrica News*, 17 February 2010, <<http://allafrica.com/stories/201002180654.html>> (24 August 2012).

54. Nigerian Constitution (1999), Section 146.

55. Nigerian Constitution (1999), Section 144.

56. *The Guardian*, 'US embassy cables: Nigeria's Acting President – "Everyone's confused about who is in charge"', 8 December 2010, <<http://www.guardian.co.uk/world/us-embassy-cables-documents/251113>> (22 August 2012).

tenuous until Yar'Adua died on 5 May 2010; Jonathan was sworn in the following day.

Malawi's eastern neighbour, Zambia, also experienced a delayed succession process during President Levy Mwanawasa's term. Mwanawasa suffered a stroke in June 2008 that eventually led to his death on 19 August 2008. In the intervening period, internal wrangling over succession prevented the Cabinet from instructing Zambia's Chief Justice to request a board of doctors to investigate the President's capacity to carry out his responsibilities, as required by stipulations in the constitution similar to procedures in Malawi and Nigeria.⁵⁷ If the board deemed Mwanawasa incapacitated, the constitution required a two-thirds vote by the National Assembly endorsing the Vice-President to assume the presidency and call a presidential election within 90 days.⁵⁸

Unlike Malawi and Nigeria, Zambia's constitution stipulates that once an incumbent is declared incapacitated, transfer of power to the Vice-President cannot be reversed. This wording might have contributed to the hesitancy by the Zambian Cabinet to declare Mwanawasa incapacitated, as that would have precluded the possibility of his resuming power had he recovered. Although it was very unlikely that Mwanawasa would have returned to office, officials of his Movement for Multiparty Democracy (MMD) party were reluctant to openly discuss the President's health, as doing so would have exposed a power struggle.⁵⁹ An exception was when Deputy Works and Supply Minister Ben Tetamashimba suggested MMD look for a successor following Mwanawasa's stroke; MMD leaders and Mwanawasa's family condemned Tetamashimba's remarks and he faced disciplinary measures in the party.⁶⁰

Presidential incapacity in these cases proved to be insufficient, at least temporarily, to precipitate a lawful transfer of power, even though all three countries' constitutions stipulate procedures for handling presidential incapacity. In Nigeria, it took 78 days for Jonathan to assume presidential responsibilities. In Zambia, the Cabinet refused to declare Mwanawasa incapacitated for the 52 days he was hospitalized, until his death. There was no hesitation in Nigeria, however, following Yar'Adua's death, over installing Jonathan as President. Likewise, after Mwanawasa's death, Vice-President Rupiah Banda became Acting

57. Zambia Constitution (1996), Section IV, Article 36.

58. Zambia Constitution (1996), Section IV, Article 38.

59. Nic Cheeseman and Marja Hinfelaar, 'Parties, platforms, and political mobilization: the Zambian presidential election of 2008', *African Affairs* 109, 434 (2009), pp. 51–76.

60. Economist Intelligence Unit, 'Country Report: Zambia' (London, July 2008), p. 9; *Africa Confidential*, 'Zambia: A sick man's contest', 49, 16 (1 August 2008), p. 3.

President and an election was scheduled within 90 days.⁶¹ Had Malawi's Mutharika not died but merely been incapacitated, or if the DPP politburo had managed to conceal his death successfully, it is unclear whether a constitutional transfer of power to Banda would have prevailed.

Since April 2012, two other African leaders have died in circumstances very similar to those preceding the deaths of Mwanawasa, Yar'Adua, and Mutharika. Ghana's John Atta Mills died on 24 July 2012 after a long battle with throat cancer, an illness revealed only after his death. On 21 August 2012, Ethiopian Prime Minister Meles Zenawi died from an undisclosed illness after 21 years in power. Despite his being absent for more than two months, Ethiopian officials had insisted Zenawi was 'in good condition [and still] in charge of government affairs'.⁶² As in the cases of Malawi, Nigeria, and Zambia, constitutional provisions on incapacity were not triggered prior to the deaths of Mills and Zenawi. These five cases demonstrate that constitutional provisions on succession are insufficient; in particular, presidential incapacity is less likely to precipitate a lawful transfer of power, especially as compared to presidential death.

Like the Malawi 2012 succession, powerful actors influenced the delays as well as the eventual transitions in Nigeria and Zambia. Following Yar'Adua's hospitalization in Saudi Arabia, his aides dispelled suggestions that he was incapacitated.⁶³ Given that his health deteriorated until his death a few months later, the actions of his aides and his wife are suggestive of the influence of key actors in shepherding (or in this case, delaying) a constitutional transfer of power. Analysts speculated that the delay stemmed from the reluctance of powerful northerners to see power shift to a southerner, and that some influential southern politicians who had clashed with fellow southerner Jonathan were blocking his ascension.⁶⁴ Nigeria's history with military rule raised concerns that the uncertainty surrounding Yar'Adua's condition would precipitate a military coup. However, on 25 January 2010, the army chief of staff reassured the public that the army would remain neutral and was committed to democracy.⁶⁵ Legal activists also played a key, though not immediate, role in Jonathan's ascension by bringing lawsuits seeking to force the government to swear him in as Acting President.⁶⁶ Other civil society activists and the business community⁶⁷ called for

61. Banda narrowly won the subsequent special election, which extended his hold on the presidency for the remainder of Mwanawasa's term. Cheeseman and Hinfelaar, 'Parties, platforms, and political mobilization'.

62. *BBC News*, 'Ethiopian leader Zenawi "in hospital"', 18 July 2012, <<http://www.bbc.co.uk/news/world-africa-18882674>> (1 August 2012).

63. Economist Intelligence Unit, 'Country Report: Nigeria' (London, December 2009).

64. Economist Intelligence Unit, 'Country Report: Nigeria' (London, January 2010).

65. Economist Intelligence Unit, 'Country Report: Nigeria' (London, February 2010).

66. Economist Intelligence Unit, 'Country Report: Nigeria' (London, January 2010).

67. *Africa Confidential*, 'The nearly man', 51, 2 (22 January 2010), p. 2.

Yar'Adua to resign or for the constitutional transfer of power to Jonathan. Nigeria's outspoken Information Minister, Dora Akunyili, urged her colleagues in early February to accept that Yar'Adua was unfit to govern. A day later, governors of Nigeria's 36 states registered their support of a resolution recognizing Jonathan as Acting President.⁶⁸

In Zambia, despite the seriousness of Mwanawasa's illness, very few players called for action regarding succession. Two exceptions reported in the media were: the political opposition pressing for details on Mwanawasa's health, which the government finally released in early August;⁶⁹ and Minister Tetamashimba suggesting the ruling party look for a successor following Mwanawasa's stroke. The lack of pressure by key actors and the inaction of Cabinet in Zambia are consistent with our expectation; no lawful transition occurred in the absence of action by major players. Unlike the Nigerian case, where presidential incapacity coupled with agitation for a power transfer by key actors led to Jonathan becoming Acting President, in Zambia, there was no official transfer of power until after Mwanawasa's death.

The recent presidential deaths and failed attempts to bypass succession rules in Malawi, Nigeria, and Zambia suggest there is little room for extra-constitutional succession. Factoring in recent events in Ghana and Ethiopia, the five cases provide additional evidence that formal institutions are becoming a major constraint against unconstitutional transitions in contemporary Africa.⁷⁰

The Malawi, Nigeria, and Zambia cases also highlight the potential for uncertainty and non-democratic succession in the case of presidential incapacity. The constitutional language of succession relies a great deal on the initiative of the President's Cabinet in declaring incapacity. When declaring presidential incapacity threatens the positions of those who are supposed to make the declaration, the process can be stalled, sometimes for lengthy periods, as was the case in Nigeria and Zambia.

The cases point to a fundamental problem in Africa: even if constitutions are unambiguous about the transfer of power during incapacitation, in most African cultures it is taboo to speculate that someone is on their deathbed – and a declaration of incapacitation has just that effect. The Vice-Presidents went through the charade of supporting claims that the incumbents were still in control. In Malawi, conspirators used the interim period to seek ways of sustaining their power; in Nigeria, close family members of Yar'Adua pretended all was well and used state resources; in

68. Economist Intelligence Unit, 'Country Report: Nigeria' (London, February 2010).

69. Economist Intelligence Unit, 'Country Report: Zambia' (London, August 2008).

70. Posner and Young, 'The institutionalization of political power in Africa'.

Zambia, ruling party elites used the opportunity to raise their salaries and coordinate on a candidate.

The delayed successions in Malawi, Nigeria, and Zambia further highlight the extent to which deaths of incumbent presidents increase prospects of leadership struggles that can threaten party unity and degenerate into political crisis.⁷¹ Just after Yar'Adua's hospitalization in Saudi Arabia, PDP state governors began to jostle for the PDP presidential nomination in an election scheduled a year later.⁷² After Mwanawasa fell ill and following his death, the MMD went through a highly divisive campaign to choose a new leader, threatening its prospects of winning the subsequent presidential elections.⁷³ The failed plot to install Mutharika as Malawi's new President after his brother's death caused splits within the DPP.⁷⁴

Developments since Malawi's transition and the implications for democratic stability

Banda's ascension to the presidency precipitated immediate changes in Malawi's political landscape. Three days after Mutharika's burial, Joyce Banda unveiled a 32-member Cabinet, drawing members from six political parties.⁷⁵ Malawian analysts assessed Banda's Cabinet as not veering far from those of her two immediate predecessors (18 members of Banda's Cabinet served in the Mutharika administration and eight in Muluzi's). A principal difference, however, is how much of the new Cabinet is from outside the President's party. Because Banda's PP did not contest in the 2009 elections, she did not have the necessary numbers in the National Assembly to pass legislation without encountering the same hostility Mutharika faced during his first term.

Banda used her quick rise to power to build the PP from a fringe party into a national brand. Meanwhile, Mutharika's DPP has been relegated to an opposition role, bereft of the trappings of power. Although Malawi's constitution bars legislators from joining other parties already represented in Parliament,⁷⁶ numerous MPs have crossed the floor to

71. Cheeseman, 'African elections as vehicles for change'.

72. Economist Intelligence Unit, 'Country Report: Nigeria' (London, December 2009).

73. Nebert Mulenga, 'Just how democratic is MMD succession debate?' *Times of Zambia*, 4 September 2008, <<http://allafrica.com/stories/200809040277.html>> (8 September 2012).

74. Frank Namangale, 'Bombshell hits DPP', *The Nation* [Malawi], 16 August 2012, <<http://mwntation.com/national-news-the-nation/8902-bombshell-hits-dpp>> (8 September 2012).

75. Aubrey Mchulu, 'New Cabinet: Banda unveils inclusive team', *The Nation* [Malawi], 27 April 2012, <<http://www.mwnation.com/national-news-the-nation/4379-malawi-president-unveils-new-cabinet>> (8 May 2012).

76. Constitution of the Republic of Malawi (2004), Section 65.

join the PP.⁷⁷ The fickle nature of partisan loyalty in Malawi extends beyond party elites: a new Afrobarometer survey conducted two months after Mutharika's death found that the PP had become Malawi's most supported party.⁷⁸ The PP has engineered its constitution to overcome Malawi's history of regionalized politics.⁷⁹ At the party's first-ever convention in August 2012, delegates elected a bloated executive that was deliberately designed to accommodate members from all of Malawi's political regions.⁸⁰

Seeking to win public and donor confidence, the Banda government has reversed controversial laws passed in Mutharika's second term. These include: repealing the power of the Minister of Information to ban publications on the grounds of public interest; repealing the civil procedures amendment that banned *ex parte* injunctions against government; and reinstating the independence flag. Responding directly to donor concerns about suppression of minority rights, Banda signalled that her government will repeal colonial-era laws that criminalize homosexuality.⁸¹ However, it is not yet clear if she will follow through on this promise.

Key allies and donors have responded to these initiatives by pledging support for Banda. Following a strained relationship with Mutharika, Mozambique President Armando Guebuza pledged to normalize relations and joined other regional leaders in attending Mutharika's funeral. This was followed by a three-day visit by Banda to Mozambique, where she signed an agreement for Malawi to obtain electricity from the Mozambican national grid and a joint feasibility study on river navigation to provide landlocked Malawi with access to the sea.⁸² Neighbouring Zambia and regional hegemon South Africa gave Malawi fuel and funding for fuel respectively shortly after Mutharika's death to ease

77. *Maravi Post*, 'Turncoats Zikhale, Mwenefumbo beat themselves up as they join PP', 16 August 2012, <http://www.maravipost.com/malawi-news/malawi-political/1526-turncoats-zikhale,-mwenefumbo-beat-themselves-as-they-join-pp.html#_UFuZQY1ISV8> (8 September 2012).

78. Party identification with PP is not geographically limited, but is substantial across Malawi's three regions. Boniface Dulani and Maxton Tsoka, 'Attitudes toward civil society, women, and party politics' (Afrobarometer Media Briefing, Michigan State University, East Lansing, 2012), <http://afrobarometer.org/files/documents/media_briefing/mlw_r5_presentation1.pdf> (8 September 2012).

79. Though Malawi's first three elections following multiparty reform in 1993 demonstrated ethnoregional partisanship and voting patterns, the 2009 election and time series public opinion data from 1999–2009 show a decline in ethnoregional partisanship. Maxton Tsoka, 'A country turning blue? Political party support and the end of regionalism in Malawi' (Afrobarometer Briefing Paper No. 75, 2009), <<http://www.afrobarometer.org/publications/afrobarometer-briefing-papers/270-bp-75>> (11 July 2012); Ferree and Horowitz, 'Ties that bind'.

80. Madalitso Mussa and Simeon Maganga, 'PP Convention: founders lose positions', *Daily Times* [Malawi], 28 August 2012, <<http://www.bnlimes.com/index.php/daily-times/headlines/national/11400-pp-convention-founders-lose-positions>> (8 September 2012).

81. Joyce Banda, 2012, 'State of the Nation Address', delivered in the Malawi National Assembly, 18 May 2012.

82. *Ibid.*

difficulties associated with the shortages. Within a week of Banda's inauguration, the World Bank registered its support of the new administration and committed to revisiting stalled programmes in Malawi. The African Development Bank pledged \$45 million to support Malawi's budget. The British government announced a resumption of diplomatic ties in late April and announced the release of £30 million of previously withheld aid to Malawi in early May.⁸³ The transition also led to a reopening of the US Millennium Challenge Corporation (MCC) Malawi office and a previously suspended \$350 million MCC grant was restored on 21 June 2012.

Closely tied to Malawi's renewed donor relations was Banda's decision to liberalize the foreign exchange market. By the end of May, the kwacha was trading at MK270 to the dollar, 64 percent down from the previous fixed exchange rate regime of MK164 to the dollar. The IMF sent a team to Malawi in mid-May to devise a new programme to encourage economic growth after earlier programmes had lapsed following disagreements over Mutharika's handling of Malawi's struggling economy. In early June 2012, the IMF announced a resumption of its work in Malawi with a new three-year programme worth \$157 million.⁸⁴

Malawi's economic situation will take time to stabilize, but there are already changes of importance to ordinary Malawians. Fuel supplies have improved and the liberalization of the foreign exchange market has increased foreign currency availability. The period following Mutharika's burial also coincided with the start of a new sugar production period that led to normalization of supplies and eliminated sugar queues and rationing.⁸⁵ Prices for tobacco, Malawi's leading export crop, have rebounded after the new government invited back the regional manager of Universal Leaf (one of the major buyers of Malawi tobacco), who had been deported under Mutharika's rule.⁸⁶

The Malawi transition demonstrates that the death of a powerful patron removes protections enjoyed by his coterie of clients. The new Minister of Justice has signalled government will prosecute those who plotted to install Mutharika and charge them with treason.⁸⁷ Additionally, former

83. *Malawi Democrat*, 'Britain provides Malawi with £30 million aid', 12 May 2012, <<http://www.malawidemocrat.com/politics/britain-provides-malawi-with-30m-aid/>> (8 June 2012).

84. Gabriel Kamlomo, 'IMF, Malawi agree \$157 million relief', *Daily Times* [Malawi], 7 June 2012, <<http://www.bnltimes.com/index.php/daily-times/headlines/national/6825-imf-mw-agree-157m-relief>> (8 June 2012).

85. Caroline Kandiero, 'Sugar supply normalises', *Daily Times* [Malawi], 27 April 2012, <<http://www.bnltimes.com/index.php/daily-times/headlines/business/6102-sugar-supply-normalises->> (8 June 2012).

86. *Ibid.*

87. *Nyasatimes*, 'Kasambara fires warning shot to "coup plotters"', 1 May 2012, <<http://www.nyasatimes.com/malawi/2012/05/01/kasambara-fires-warning-shot-to-coup-plotters/>> (8 June 2012).

Cabinet ministers Goodall Gondwe and Patricia Kaliati will be prosecuted for corruption.⁸⁸ There are also indications that police officers who shot protesters during July 2011 demonstrations will be prosecuted.⁸⁹ Loyalists hired by Mutharika to head the Malawi Revenue Authority, the Treasury Department, MBC, and the Agricultural Development and Marketing Corporation have since been replaced with professionals.

Beyond these immediate changes, however, the transition's broader impact on Malawi's party system signals caution rather than celebration. The pledges of loyalty to Banda and defections to the PP have put her government in a strong position to pass legislation with ease, but come at the cost of creating a weak opposition and reducing checks on the new government. While the political party wielding the most power has changed, party loyalty remains fickle and suggests real inter-party competition and tangible differences between parties are unlikely in the current period.

The mass defections to the PP further highlight the lingering importance of patronage in Malawi politics and limited party institutionalization.⁹⁰ Banda's opportunistic use of incumbency to build her PP into a national party demonstrates that personalization of power was not buried with Mutharika. Instead, the death of a personal ruler opens up an opportunity for a new leader to rise to the top of the patronage chain and use the advantages of incumbency to build a new patronage network that can be used to blunt multi-party competition.⁹¹ This confirms the fears that drove the DPP to plot against Joyce Banda, as the DPP has borne the major political and economic costs of the transition.

Mutharika's death and the subsequent defections of his supporters further demonstrate that personalization of power extends beyond the official government arena to the partisan one. Thus when a personal ruler dies, this signals the likely demise of his party.⁹² If parties are the 'intermediaries between the political system and citizens' and will 'be decisive in shaping the outcomes of democratic experiments in Africa',⁹³ then the

88. Hudson Mphande, 'Goodall, Kaliati, Manyungwa, to face prosecution', *Nyasa Times*, 7 June 2012, <<http://www.nyasatimes.com/malawi/2012/06/07/goodall-kaliati-manyungwa-face-prosecution/>> (8 June 2012).

89. Wanga Gwede, 'July 20 killers should be caged-Chihana', *Nyasa Times*, 7 June 2012, <<http://www.nyasatimes.com/malawi/2012/06/07/july-20-killers-should-be-caged-chihana/>> (8 June 2012).

90. Lars Svåsand, 'Democratization in Malawi: moving forward, stuck in transition or backsliding?', *Forum for Development Studies* 38, 1 (2011), pp. 1–24.

91. See Cheeseman, 'African elections as vehicles for change', pp. 143–5.

92. Even preceding Mutharika's death, Malawi's party system was growing increasingly fragmented and parties suffered from 'leadership fixation'. Lars Svåsand, 'Political parties and democratic consolidation in Malawi', unpublished manuscript, University of Bergen (2011).

93. Carrie Manning, 'Assessing African party systems after the Third Wave', *Party Politics* 11, 6 (2005), pp. 707–27.

party defections following Malawi's transition temper any optimistic assumption that the trend towards increasingly personal rule in Malawi would be reversed with Mutharika's death.

Conclusion

We have examined the recent transition in Malawi and identified the conditions that led to a peaceful succession. The constitution's clarity in delineating succession rules following the President's death was a necessary but insufficient condition. Were constitutional rules on succession enough, Joyce Banda should have become President immediately after Bingu wa Mutharika's death. The two-day delay points to the necessary condition that key actors shepherd the process to follow constitutional provisions. In the case of Malawi in 2012, the military leadership, civil society, the independent media, and legal/judicial actors were integral. We also cannot overlook the importance of context: public opinion data suggest that ordinary Malawians would have rejected alternatives to the eventual succession. Additionally, though Malawi had not previously experienced a presidential death, other African cases in the present and past set a precedent for peaceful, constitutional succession, particularly in the post-1990 period.

The cases of Nigeria and Zambia reinforce our findings on the role of key actors in facilitating or delaying transitions. Concerted pressure from civil society, the media, and opposition parties trumped resistance from a stricken President's allies and facilitated a transition in Nigeria, even if this was delayed. In Zambia, on the other hand, the absence of pressure from the wider society meant that the transfer of power could only occur after the incumbent had died.

Lanciné Sylla claimed that 'no transfer of power is likely to succeed unless it is sanctioned by the prevailing form of authority'.⁹⁴ Research on succession, then, provides insights on the form of authority. The analysis here suggests constitutions are a prevailing form of authority in contemporary Africa, albeit with the support of key actors and public opinion. Future research should examine systematically the factors influencing succession across Africa to further our understanding of prevailing forms of authority. Our focus has been on the Malawi succession, supported by evidence from recent experiences in Nigeria and Zambia, supplemented by a cursory review of succession and transition in Africa more generally. The latter method of investigation, however, deserves more scrutiny, as much of the cross-national research on succession in Africa relies on data from the period preceding the third wave of democratization, and is thus

94. Lanciné Sylla, 'Succession of the charismatic leader: the Gordian knot of African politics', *Daedalus* 111, 2 (1982), pp. 11–28.

ripe for updating. One key area for future research is a closer examination of the conditions under which presidential incapacity precipitates a timely constitutional transfer of power. The cases examined here suggest such transfers of power are unlikely, but a broader review of presidential health in Africa and its potential impact on democracy is needed.