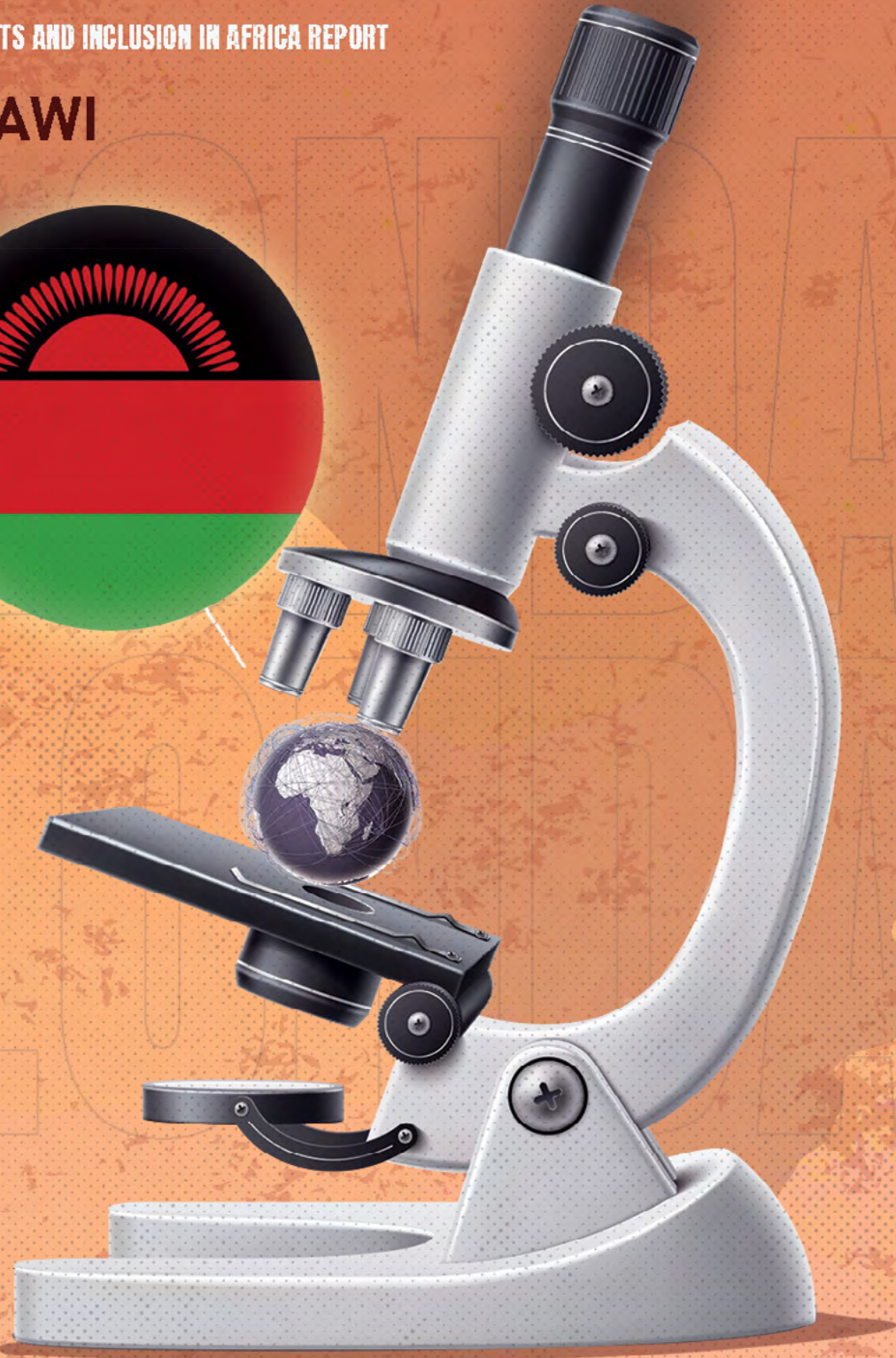
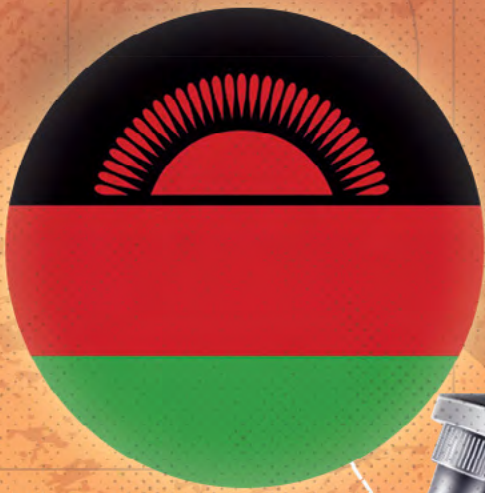


LONDA

DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

MALAWI



2022

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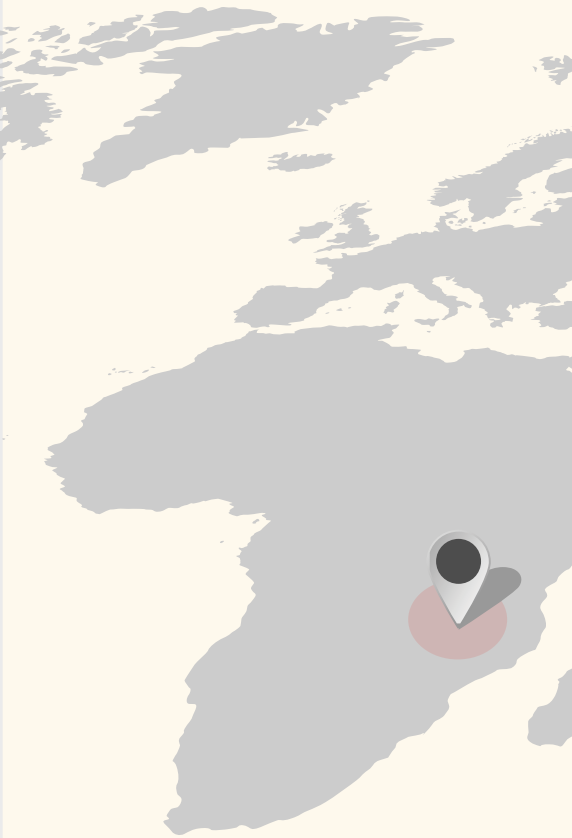
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Malawi

► Executive Summary

This report discusses a ‘mixed bag’ of Malawi’s state of digital rights and inclusion in 2022. Commendably, Malawi registered significant milestones in the ICT and digital space including the establishment of the country’s first ever National Data Centre; licensing of two new mobile companies; lowering of the cost for internet data; and launching of the Universal Service Fund Strategic Plan. The government decriminalised sedition through amendment of sections 50 and 51 of the Penal Code (protected flags, emblems and names), an indelible step in safeguarding and guaranteeing the freedom of expression and media freedoms.

At the same time, 2022 presented a difficult climate for the respect of human rights as the State intensified criminalisation of online speech, arresting several individuals; and stifling media freedoms marked by massive closure of media houses. Further, the enactment of the Data Protection Bill into law remained a pipedream as the government took no significant steps. The digital divide also remained wide with a majority of the citizens, particularly the historically marginalised groups such as the poor, the rural, women and persons with disability, having no access to internet and mobile services.

Pursuant to the gaps, opportunities and recent developments in the ICT sector in Malawi, this report makes actionable recommendations to the government, civil society, media, and development partners. Among others, the report calls on the government to remove barriers to internet and mobile services access; refrain from criminalisation of freedom of expression and guarantee media freedoms; repeal criminal defamation laws in the Penal Code, and step up investigation of digital rights violations. Similarly, civil society is implored to invest in digital literacy programs for rural masses; establish protection mechanisms for victims of digital rights violations; support capacity strengthening of law enforcement agencies in digital rights; and strengthen digital rights coalitions and networks to bolster civil society agency in digital rights advocacy. Equally, development partners, including donors, in Malawi are urged to increase support to civil society and government initiatives on digital rights, freedom of expression and access to information, and intentionally leverage the diplomatic avenues to engage government authorities on key human rights concerns.



Introduction

With a population of 17.5 million people, Malawi is located in Southern Africa, sharing its borders with Mozambique, Zambia and Tanzania. It ranks 174/189 on the 2019 Human Development Index, with poverty stubbornly reigning high, trapping 51.7 per cent of the population below the poverty line and 25 per cent in extreme poverty.¹

Inequality also ravages high with a Gini Coefficient of 0.6.² The country's development is heavily donor- and credit-dependent with public debt stock standing around MK6.38 trillion (about US\$6.5 billion), as at September 2022. Affected by poor infrastructure, only 12.7 per cent of the country's population has electricity, and internet penetration is only 14.6 per cent. According to the World Bank, poverty in Malawi is driven by low productivity in the agriculture sector, limited opportunities in non-farm activities, volatile economic growth, rapid population growth, limited coverage of safety net programs and targeting challenges, among others, posing a threat to the socio-economic development of the country.³ In a region that is growing fast, unless there is significant intervention, Malawi is in danger of being left behind.

In a bid to reverse its development misfortune, in January 2021, the Government launched the Malawi 2063 (MW2063) plan, a long-term national development vision that aims to transform Malawi into a wealthy and self-reliant industrialised upper middle-income country by the year 2063. MW2063 recognises technological innovation as a central feature in propelling the country's economic revolution.

Crucially, Malawi has a relatively strong international normative framework for human rights in relation to freedom of expression (FoE) and access to information (ATI). It has ratified various international human rights instruments in relation to FoE and ATI. These instruments include the African Charter on Human and Peoples Rights; Universal Declaration on Human Rights (UNDHR); International Covenant on Civil and Political Rights (ICCPR); the African Union Convention on Preventing and Combating Corruption; the African Charter on the Rights and Welfare of the Child; African Youth Charter; African Charter on Statistics; African Charter on Democracy, Elections and Governance; the African Charter on Values and Principles of Public Service and Administration; and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women. Critically, the 1994 Constitution entrenched a Bill of Rights which substantially reflects the normative framework set by the international human rights instruments cited above. However, Malawi has neither signed nor ratified the African Union Convention on Cyber Security and Personal Data Protection.⁴

¹ International Monetary Fund 'Country Report No. 17/184' (2017) <file:///C:/Users/User/Downloads/cr17184.pdf> (accessed on December 17, 2022).

² National Planning Commission 'Malawi 2063'.

³ Sosten Gwengwe, Minister of Finance speaking at the National Youth Conference on State of Governance and Youth Development in Lilongwe on September 21, 2022.

⁴ African Union, African Union Convention on Cyber Security and Personal Data Protection, Status List, <https://au.int/sites/default/files/treaties/29560-sl-AFRICAN%20UNION%20CONVENTION%20ON%20CYBER%20SECURITY%20AND%20PERSONAL%20DATA%20PROTECTION.pdf> (accessed December 10, 2022).

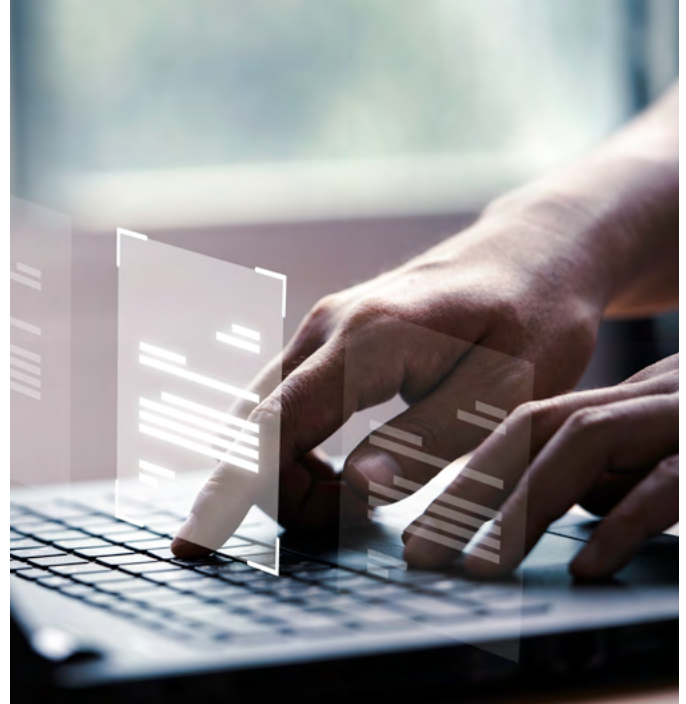
Country Analysis

INTERNET ACCESS AND DISRUPTIONS

The 32nd Session of the United Nations Human Rights Council (2016) affirmed that the same rights enjoyed offline must also be protected online. Similarly, Principle 37(2) of the ACHPR Declaration is authoritative that “States shall recognise that universal, equitable, affordable and meaningful access to the internet is necessary for the realisation of freedom of expression, access to information and the exercise of other human rights”. Thus, access to the internet must be universal and affordable for all citizens.

Domestically, the Malawi Communications Regulatory Authority (MACRA) is mandated to ensure that: “...so far as it is practicable, every citizen in Malawi should have access to sufficient, reliable and affordable communication services”.⁵ The government is thus under legal obligation to provide telecommunication services including internet to all citizens including the historically marginalised groups such as the rural-based, the poor, women and persons with disability.

In response to the public outcry on prohibitive cost of internet, Malawi’s two dominant mobile internet providers, TNM and Airtel Malawi, introduced more affordable internet packages called *Pamtsetse* and *Mofaya* respectively on promotion basis. Paradoxically, however, in August 2022, TNM introduced a 20-per cent tariff hike on the average effective rate for both voice and data services.⁶ TNM attributed the tariff hike to a government-induced 25 per cent devaluation of the Malawi kwacha (MWK)



and inflationary pressures. As of December 2022, a monthly 10 GB data bundle cost 15,500 kwacha (\$15) with both Airtel Malawi⁷ and TNM in addition to a 17.5 per cent value-added tax (VAT) on mobile phones and services, a 16.5 per cent VAT on internet services, and an additional 10 per cent excise duty on mobile phone text messages and internet data transfers. Consequently, this has exacerbated the prohibitive cost of internet, further deepening the digital divide for a country with already one of the lowest internet penetration and worst earning income, with minimum wage pegged around \$50. Worse still, despite MACRA’s announcement in November 2020 to introduce regulations removing expiration dates for internet bundles, as of December 2022, no such regulation was in force.⁸

⁵ Section 4(1) of Communications Act, 1998.

⁶ Comms Update, “Currency devaluation, inflation force TNM to hike tariffs by 20%” (17 August 2022) <https://www.commsupdate.com/articles/2022/08/17/currency-devaluation-inflation-force-tnm-to-hike-tariffs-by-20/> (accessed December 27, 2022)

⁷ Airtel Malawi [Bundle Purchase \(airtel.mw\)](https://airtel.mw)

⁸ M Malakata, “Malawi fast-tracks regulation to halt expiry dates on data bundles” (November 19, 2020) <https://itweb.africa/content/mYZRX79aIA87OgA8> (accessed on December 21, 2022).

Despite some gains, the digital divide remained perennial as the penetration and utilization of ICTs remained significantly low.⁹ Only 14.6 per cent of the population had access to internet, 9.3 per cent of whom are in rural areas as compared to 40.7 per cent of urban areas.¹⁰

Digital illiteracy also remained high according to a recent survey by the country regulator Malawi Telecommunications Regulatory Authority (MACRA), showing that 46 per cent of Malawians indicated they don't use the internet because they don't know what it is, and 2.4 per cent expressed that they don't use it because it is too expensive.¹¹ Further, while radio broadcasting is almost universal in Malawi with a coverage of above 95 per cent, after the digital transition, television coverage is only 55 per cent, leaving most parts of the country without coverage, especially in the Northern region.¹²

There is also violent digital exclusion along gender lines. According to the National Statistical Survey, 15.4 per cent men use the internet in Malawi, as compared to 12.4 per cent women.¹³

Malawi's low investment in ICT has serious economic implications. According to the World Bank Malawi Economic Monitor (MEM), low ICT penetration in Malawi hinders "a potential of \$189 million in additional GDP and \$33 million in tax revenues per year".¹⁴ Power challenges adversely affect the delivery of ICT services and the economy at large.

Critically, there were no connectivity disruptions in the year. The last known restriction was reported in May 2019 during the country's tripartite elections, shortly after polling stations had closed. However, under Article 24 of the Electronic Transactions and

Cyber Security Act, 2017, the government can restrict online public communications deemed necessary to "protect public order and national security", which could be interpreted to permit network shutdowns or blocking of social media platforms. In terms of Principle 38(2) of the ACHPR Declaration, States shall not disrupt access to the Internet and other digital technologies for segments of the public or an entire population.

FREE SPEECH AND MEDIA FREEDOMS

Malawi's internet freedom in 2022 dropped from position 57 in 2021 to 66 out of 100 countries on Freedom on the Net ranking (by Freedom House's), as the State sustained



crackdown against journalists and citizens critical of the government for their online content.¹⁵

9 Freedom House 'Freedom on the Net 2021' (2021)

10 National Statistics Office (2020) 'National Survey on Access and Use of Information and Communication Technologies by Households and Individuals in Malawi 2019'.

11 As above

12 MACRA, Universal Service Fund Strategic Plan 2022 – 2027 (2022)

13 National Statistics Office, "National Survey on Access and use of Information and Communications Technologies by Households and Individuals in Malawi 2019" March 1, 2021, http://www.nsomalawi.mw/images/stories/data_on_line/economics/ICT/ICT%2...

14 World Bank 'Malawi Economic Monitor: Investing in Digital Transformation' (December 23, 2022).

15 Freedom House 2022 <https://freedomhouse.org/country/malawi/freedom-net/2022>

In April 2022, Police detained Gregory Gondwe, the chief executive officer of an online investigative platform, *Platform for Investigative Journalism* (PIJ), following a series of critical stories exposing corruption in the government. Police tried to force Gondwe to reveal his sources on one of the government corruption stories. During the raid, police also seized PIJ's equipment including a computer and Gondwe's phone, before the PIJ's website was hacked a few days later.¹⁶ Following public pressure, including from diplomats, Gondwe was released without any charge, and later, the Attorney General apologised for the unlawful arrest.¹⁷ The State's action was clearly a violation of both the national and international law. Section 50 (1) of the ATI Act of 2016 guarantees the protection of whistle-blowers. Similarly, Principle 20 of the African Commission's Declaration on Access to Information and Freedom of Expression (ACHPR Declaration)¹⁸ authoritatively provides that journalists and other media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes except where disclosure has been ordered by a court after a full and fair public hearing; and further calls on States to take measures to prevent attacks on journalists and other media practitioners, including, arbitrary arrest and detention, enforced disappearance, kidnapping, intimidation, threats and unlawful surveillance undertaken by State and non-State actors.

In January 2022, police arrested Joshua Chisa Mbele for sharing a list of government officials allegedly implicated in a corruption scandal linked to a business tycoon Zunneth Sattar on

his Facebook account. He later deleted the post claiming that he had fallen for misinformation.¹⁹ His arrest followed a complaint by the Army General of the Malawi Defence Force (MDF) who was among the listed individuals in Mbele's Facebook post. He was charged with criminal libel under the Penal Code and publication of offensive communication under the Electronic Transactions and Cyber Security Act. The matter is still in court as at December 2022.

Again, in September 2022, Mbele was summoned by a Supreme Court Judge for making comments on Facebook that allegedly referred to female judges as ugly. He appeared before the Supreme Court justice for cautioning.²⁰ This could be seen as a form of intimidation and a threat to freedom of expression. Principle 23(3) of the Declaration is also instructive that States shall not prohibit speech that merely lacks civility or which offends or disturbs.

In March 2022, a 39-year-old man, Joseph Matthews, was arrested in Lilongwe City for posting on Facebook an allegation that a Member of Parliament diverted maize meant for his constituency.²¹ He was charged with cyberstalking under the Electronic Transactions and Cyber Security Act. Police later dropped the charges against Mathews on the instructions of the accused Member of Parliament.

In January 2022, police issued a warrant of arrest against a political activist, Bon Kalindo, for allegedly insulting President Lazarus Chakwera. The warrant was later withdrawn after public outcry.

16 L Masina 'Malawi Police Accused of Hacking Website of Investigative Media Group' (April 17, 2022) <https://www.voanews.com/a/malawi-police-accused-of-hacking-website-of-i...> (accessed on December 9, 2022)

17 L Masina 'Malawi Government Apologizes Over Police Detention of Journalist' (April 7, 2022) <https://www.voanews.com/a/malawi-government-apologies-over-police-detention-of-journalist/6519449.html> (accessed on December 15, 2022).

18 African Commission on Human and People's Rights (ACHPR) Declaration on Freedom of Expression and Access to Information (the Declaration) <https://www.achpr.org/legalinstruments/detail?id=69> (accessed on December 20, 2022).

19 Malawi 24 'Malawi Police arrest social media activist' <https://malawi24.com/2022/01/11/malawi-police-arrest-social-media-activist/> (accessed on December 9, 2022).

20 The Daily Times (September 8, 2022) https://web.facebook.com/118423691576650/posts/times360newsthe-supreme-court-of-appeal-sitting-in-blantyre-has-adjourned-to-thu/5411743648911268/?_rdc=1&_rdr (accessed December 9, 2022).

21 Nyasa Times 'Facebook Post lands man in trouble' <https://www.nyasatimes.com/facebook-post-lands-man-in-trouble/> (accessed on December 9, 2022).

Previously, police had arrested various journalists and individuals for their content online. On April 6, 2021, a freelance journalist, Watipaso Mzungu was summoned to national police headquarters in Lilongwe over an online story he published on *Nyasa Times* which was deemed critical of the president.²² Similarly, in February 2021, Police arrested a community journalist, Raymond Siyaya, on allegations of reporting “fake news” on his Facebook page. Police accused Siyaya of making false allegations that senior security officials had mismanaged Covid-19 relief funds.²³ He was charged under Section 60 of the penal code which prohibits “publication of false news likely to cause breach of peace”. However, the police dropped the charges against him.²⁴

In June 2021, the senior magistrate court in the capital city Lilongwe convicted and sentenced Ignatius Kamwanje to a K200,000 (\$270) fine or serve 18 months in jail in default, over a Facebook post in which he alleged that employees of the National Bank of Malawi were defrauding customers.²⁵ Kamwanje was convicted for the offence of “spamming” under Section 91 of the Electronic Transactions and Cyber Security Act of 2016.²⁶

In addition, in May 2021, a woman, Irene Chisulo Majiga, was convicted for allegedly publishing a WhatsApp voice note alleging that a suspect detained on rape charges was released from police custody under questionable circumstances.²⁷ She was charged under Section 60 of the penal code which criminalises ‘publication of false news likely to cause breach of peace’. She pleaded

guilty and was sentenced to a fine of 50,000 kwacha (\$64) or in default serve a one-month jail term.

Media freedoms were under siege in the year as the regulator, Malawi’s Communications Regulatory Authority shut down about 20 radio stations and three TV stations due to delayed payment of annual licence fees. Several other media houses were facing similar threats. By the end of the year, up to 30 broadcasting outlets are expected to close as a result of that decision.

According to Media Institute for Southern Africa (MISA), Malawi Chapter, on August 24, 2022, “Over 250 full-time and part-time media practitioners and support staff have lost jobs at the stations whose licences have been revoked; *Rainbow Television* (70), *Ufulu FM* (34), *Joy Radio* (40), *Capital Radio* (45) and others coming from *Sapitwa FM*, *Galaxy* and *Angaliba*”.²⁸ This is disastrous for an emerging media ecosystem and a country facing serious unemployment crisis. MISA attributed the no-compliance largely to the economic crisis facing the country in view of the Covid-19 pandemic which did not spare the media.

Crucially, the annual fees, costing the equivalent of US\$5,000, were prohibitively exorbitant for most media operators particularly community radios. According to MISA, these annual fees were 10 times more expensive than costs for the high-end hotels and admission to private hospitals. MISA argued that “The revocation of licenses is too drastic and can be construed as a systematic violation of freedom of expression

22 S Chitete ‘Police chief justifies journalists’ questioning’ <https://www.mwnation.com/police-chief-justifies-journalists-questioning/> (accessed on December 9, 2022).

23 R Kondowe ‘Journalist Arrested Over Fake News’ <https://malawi24.com/2021/02/27/journalist-arrested-over-fake-news/> (accessed on December 11, 2022).

24 Freedom House ‘Freedom on the Net 2021’ (2021).

25 C Chinoko ‘Court convicts Facebook user over malicious post’ [The Nation Online \(mwnation.com\)](https://www.mwnation.com/court-convicts-facebook-user-over-malicious-post-the-nation-online/) (accessed on December 11, 2022).

26 Section 91 of the Electronic Transactions and Cyber Security Act of 2016 provides that “Any person who transmits any unsolicited electronic information to another person for the purposes of illegal trade or commerce, or other illegal activity, commits an offence and shall, upon conviction, be liable to a fine of K2,000,000 and to imprisonment for five years”.

27 *The Malawi Post* ‘Be warned! Malawi Court fines woman over fake viral voice note’ <https://www.maravipost.com/be-warned-malawi-court-fines-woman-over-fake-viral-voice-note/> (accessed on January 14, 2022).

28 MISA Malawi’s Press Statement ‘Shrinking of broadcasting space in Malawi threatens democracy, essential rights’ (August 24, 2022).

in the country".²⁹

In some cases, which could be deemed politically motivated, some media operators were still shut down despite paying the annual fees after revocation of their licences. The now defunct *Rainbow Television*, a critical outlet on governance, managed to pay its fees a few days after the notice's due date, and their attempts to negotiate with the regulatory body to avoid closure proved futile. At the time of closure, various government departments owed the TV station huge sums in advertisements on Covid-19 health measures, consequently affecting their revenue.³⁰

This pattern of crackdown on online dissent and climate of intimidation may prompt a degree of self-censorship, especially among media practitioners and social media users.³¹ Section 36 of the Malawi Constitution guarantees freedom of the press. In addition, Principle 20(1) of the ACHPR Declaration calls on states to guarantee the safety of journalists and media practitioners including freedom from intimidation. Further, Principle 22(2) of the ACHPR Declaration provides that states must repeal laws that criminalise sedition, insult and publication of false news.³²

MISINFORMATION AND HATE SPEECH

Laudably, on November 21, 2022, Malawi Parliament repealed the sedition laws in the Penal Code.³³ The amendment of sections 50, 51, 52 and 53 of the Penal Code of Malawi which provide for seditious intention, seditious offences, forfeiture and prohibition of publication and legal proceedings on sedition

decriminalises sedition and other related offences. Section 50 describes seditious intention as, among other things, 'to bring into hatred or contempt or to excite disaffection against the person of the President, or the Government'.

All successive governments in Malawi have used sedition charges to restrict freedoms of expression and opinion; and silence critical voices. The amendment is a huge victory for human rights and media freedom campaigners as it bolsters the enjoyment of freedom of expression. According to MISA Malawi, "The amendment is a significant step towards protection and realisation of fundamental rights provided for in the Malawi Constitution... the move will open up the civic space and ensure unhindered participation of every Malawian in the democratic discourse."³⁴

However, Malawi did not make any progress in repealing criminal libel laws in its Penal Code. Defamation is criminalised under section 200(1) of the Penal Code. Similarly, sections 61 of the penal code imposes criminal sanctions against the defamation of foreign dignitaries. In addition, Section 60 of the penal code prohibits "publication of false news likely to cause breach of peace". Such provisions on defamation and sedition are outdated and subject to arbitrary interpretation and application. Principle 22(2) of the ACHPR Declaration provides that states must "repeal laws that criminalise sedition, insult and publication of false news."³⁵ In *Lohé Issa Konaté vs The Republic of Burkina Faso*, the African Court on Human and Peoples Rights (African Court) found that "criminalisation of defamation is not justified" as it is in conflict with freedom of expression.³⁶

29 C Pensulo 'Closure of TV and radio stations in Malawi threatens recent gains in press freedom' (November 9, 2022) <https://ijnet.org/en/story/closure-tv-and-radio-stations-malawi-threatens-recent-gains-press-freedom> (accessed on December 12, 2022).

30 As above.

31 The Malawi Post 'Be warned! Malawi Court fines woman over fake viral voice note' (May 10, 2021) <https://www.maravipost.com/be-warned-malawi-court-fines-woman-over-fake-viral-voice-note/> (accessed on December 12, 2022).

32 African Commission on Human and People's Rights (ACHPR) Declaration on Freedom of Expression and Access to Information <https://www.achpr.org/legalinstruments/detail?id=69> (accessed on December 12, 2022).

33 MISA Malawi 'Members of Parliament in Malawi remove sedition as criminal offence' <https://malawi.misa.org/2022/11/22/members-of-parliament-in-malawi-remove-sedition-as-criminal-offence/> (accessed on December 15, 2022).

34 As above.

35 African Commission Declaration of Principles on Freedom of Expression and Access to Information in Africa.

36 *Lohé Issa Konaté vs The Republic of Burkina Faso* 004/2013 <https://www.african-court.org/en/images/Cases/Judgment/Judgment%20Appl.004-2013%20Lohe%20Issa%20Konate%20v%20Burkina%20Faso%20-English.pdf> (accessed December 15, 2022).

Misinformation remained a huge challenge, affecting critical services including the polio vaccination program which aims to vaccinate 2.9 million children nationwide. According to World Health Organisation, at some point, polio vaccination refusal was at 50 per cent, with families fearing that the polio vaccine was a drinkable vaccine against Covid-19. Ms Mercy Uledi, a trained polio vaccinator succinctly shares her experience: "I found families refusing to get their children vaccinated against polio for several reasons, and the main one was the confusion driven by the Covid-19 pandemic and the misinformation around it."³⁷

There were also a lot of fake articles and documents circulating on social media which are misinformation or hate speech. Information pollution was widely shared via social media platforms including WhatsApp audio and Facebook posts, affecting the citizens' capacity to make informed decisions.

There were also isolated cases of hate speech. In April 2022, police in Lilongwe City arrested a 51-year-old man, Dauka Manondo, over alleged cyber harassment. Manondo posted a photo of Minister of Labour Hon Vera Kamtukule, in a WhatsApp group, along with insulting words suggesting she was exchanging sex with appointing authorities for political favours.³⁸

PRIVACY AND SURVEILLANCE

Section 21 of the Malawi Constitution guarantees the right to privacy. In the reporting period, various stakeholders bemoaned State surveillance in social media platforms leading to arrests of individuals over content. In November 2022, police arrested a 39-year-old nurse, Chidawawa Mainje, for insulting President Lazarus Chakwera during a WhatsApp debate on governance. He was charged with cyber harassment under section 86 of the Electronic Transactions and Cyber Security Act

2016, which attracts up to five years in prison and a fine of \$2,500.

Human rights and media groups expressed concern over intensified State surveillance and the use of cyber security laws noting that politicians used the measure to silence dissenting views. In a joint statement, the groups observed the chilling effect of State surveillance and a climate of intimidation on freedom of expression and active citizen participation in critical governance issues affecting Malawi, arguing that it may prompt a degree of self-censorship, especially among media practitioners and social media users.



"WhatsApp is a private social media platform protected by encryption for a reason, to safeguard the privacy of communications,"³⁹ they observed. Moreover, Principle 38(1) of the ACHPR Declaration clearly prohibits State's interference with the right of individuals to seek, receive and impart information through

³⁷ World Health Organisation 'Malawi fights misinformation around the current polio vaccination in the midst of COVID-19 and cholera emergencies' (30 March 2022) <https://www.afro.who.int/photo-story/malawi-fights-misinformation-around-current-polio-vaccination-midst-covid-19-and> (accessed on December 15, 2022).

³⁸ Z Nanguwo (April 28, 2022) https://web.facebook.com/zbsnews/photos/a.913387262040571/5242538582458729/?paipv=0&eav=AfZ03bHf2Qv9aeLO7LgwSd7ZNaiy1JJacAKYrqlK1pxga9RREW9epEtoTPTeZzucJQ&_rdc=1&_rdr (accessed on December 15, 2022).

³⁹ A Joint statement of CSOs on Concerns over rising incidents of Police surveillance, interception of private conversations, and crackdown on freedoms of expression and the Press in Malawi (May 2, 2022).

any means of communication and digital technologies, through measures such as the removal, blocking or filtering of content, unless such interference is justifiable and compatible with international human rights law and standards.

DATA GOVERNANCE

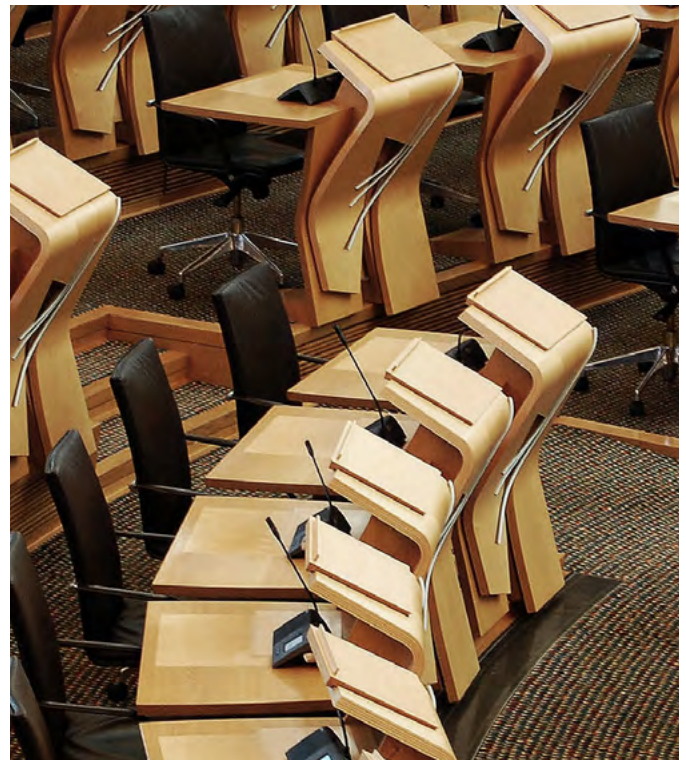
DATA PROTECTION

Despite developing the Data Protection Bill in 2021, Malawi does not have the data protection law. There was no significant movement on the Bill as it was still with the Ministry of Justice. If passed into law, the legislation will protect the right to privacy of the individual in line with Malawi's obligations under international human rights law.⁴⁰ Stakeholders have however already raised concerns over the Bill. According to the Collaboration on International ICT Policy for East and Southern Africa (CIPESA), while the Bill contains various positives including core principles on the protection of personal data, it has some serious deficits that need redress if it is to serve its full purpose. For example, CIPESA observes that the establishment of the Data Protection Office (DPO) under the Malawi Communications Regulatory Authority (MACRA) as prescribed under Section 4 of the Communications Act, 2016⁴¹, may significantly undermine and limit the financial, decisional and institutional independence of the DPO.⁴²

In 2022, the Government proactively took steps to develop the regulations for the pending Data Protection Act, a move cautioned by civil society arguing that the regulations should have waited for the enactment of the Bill, as a standard practice.⁴³

In July 2022, the Government of Malawi

launched the first ever National Data Centre in the commercial city of Blantyre. "We have launched the country's first ever National Data Centre, a digital infrastructure that raises our stakes in delivering data-driven, seamless and timely services to you fellow citizens," said Malawian President, Lazarus Chakwera.⁴⁴ Government has stated that the integrated infrastructure will allow interoperability between government systems, third party and private systems. Interlinkages with the private sector will be enhanced. According to Huawei Southern Africa Region President, Leo Chen: "Malawi places ICT as an enabler for economic growth as highlighted in the Malawi 2063 (MW2063), that the country shall have robust



ICT infrastructure with cross country coverage of reliable and affordable services fostering technological adoption and digital access."⁴⁵

40 CIPESA 'Analysis of the Malawi Draft Data Protection Bill, 2021' (May 2021) <file:///C:/Users/User/Downloads/Analysis-of-the-Malawi-Draft-Data-Protection-Bill-2021.pdf> (accessed on December 15, 2022).

41 Communications Act, 2016 of the Republic of Malawi <https://macra.mw/wp-content/uploads/2021/04/COMMUNICATIONS-ACT-2016.pdf> (accessed on December 15, 2022).

42 CIPESA 'Analysis of the Malawi Draft Data Protection Bill, 2021' (May 2021) <file:///C:/Users/User/Downloads/Analysis-of-the-Malawi-Draft-Data-Protection-Bill-2021.pdf> (accessed on December 15, 2022).

43 Proceedings of the multi-stakeholder meeting on Data Protection Bill organised by Youth and Society in Lilongwe, Malawi on November 15, 2022.

44 DCD 'Malawi launches national data centre' (July 28, 2022) <https://www.datacenterdynamics.com/en/news/malawi-launches-national-data-center/> (accessed on December 24, 2022).

45 As above.

Vincent Kumwenda, a Technology Engineer, lauded the Data Centre arguing it will lead to improved delivery of digital services to citizens because the current setup is that data hosting and management is very fragmented with some Ministries, Departments and Agencies having own servers while some are hosting in foreign cloud servers. He argues that "The lack of a proper data hosting facility and the limited capacity of the Government Wide Area Network has led to multiple issues such as servers burning due to inappropriate cooling, systems not being accessible for longer periods and challenges with harmonized data sharing across departments. There have also been instances where government websites have been compromised because of how and where they are hosted."⁴⁶ Kumwenda also argues that the Data Centre will ensure that important and critical systems that the government is implementing like IFMIS, the Malawi Traffic Information System (MaTIS), the digitalised Affordable Input Program (AIP) and the National ID will have a proper home where all the data will be stored and managed. The new Huawei-built facility will host all government-wide systems. However, in the absence of data protection law, there no guarantee of the safety of the data.

Digital IDs

The National Registration Bureau (NRB) continued to roll out the National ID Program. The National ID remained central in accessing essential services including banking, telecommunication and social protection programs. In addition, mandatory registration of SIM cards as prescribed by the Communications Act, 2016 was also in full force. Use of unregistered SIM cards is punishable under Section 93(3) of the Communications Act with a fine of five million kwacha (\$6,400) and five years' imprisonment.

While mandatory SIM card registration is viewed as a critical mechanism of tackling

cybercrime including monetary extortions and online child abuses; it also undermines citizens' ability to communicate anonymously via mobile phones, and perpetuates digital exclusion as individuals without official IDs are unable to register.⁴⁷ Further, in the absence of data protection law, the mass personal data collection has increased the possibility of State surveillance.⁴⁸

REVIEW OF THE UNIVERSAL SERVICE FUND (USF)

Section 157 of the Communications Act of 2016, establishes the Universal Service Fund (USF) mandated to promote Universal Access and Services in under-served areas across Malawi. USF is hosted by MACRA and supports the regulator's mandate of ensuring that as far as it is practicable, dependable, and affordable communications services are provided throughout the Republic of Malawi and are sufficient to meet the demand for such services.⁴⁹ Specifically, USF seeks to provide resources for the provision of communications services comprising telecommunications, broadcasting, and postal services.

The Communications Act under Section 155 sets service priorities of USF which include access to the public fixed-line and mobile telephone network; access to the Internet; public payphone; directory services; free emergency services; access to essential postal services and basic financial services; access to broadcasting services; and any other services that the MACRA may determine, subject to the prior written approval of the Minister. MACRA is mandated to identify the rural or underserved communities in Malawi and then define, plan and coordinate the implementation of Universal service programs through identified operators.

In section 162 of the Communications Act, MACRA is required to develop rules to guide

⁴⁶ Interview with Vincent Kumwenda, a Technology Engineer, December 1, 2022.

⁴⁷ C Handforth & M Wilson "Digital Identity Country Report: Malawi" (2019) https://www.macra.org.mw/?page_id=9582 (accessed on 24 December 2022).

⁴⁸ J Kainja 'Are Malawians Sleepwalking into a Surveillance State?' (August 12, 2019) <https://mwnation.com/are-malawians-sleep-walking-into-a-surveillance-st> (accessed on December 24, 2022).

⁴⁹ See Section 4(1) of Communications Act, 1998.



the functioning of the USF. Further, Section 159 mandates the Authority to appoint a committee to oversee the implementation of USF activities. In 2019, MACRA developed the USF Rules whose scope includes the design and implementation of universal access and service in Malawi. USF is financed through levies collected from licensees in the communications sector, among others. As at December 2022, USF had around \$5 million, accumulated since 2017. However, the entire management of USF has been shrouded in secrecy, with very limited transparency by MACRA.

In a bid to bolster the efficiency of USF, in May 2022, MACRA launched a five-year USF Strategic Plan (2022-2027). The Plan seeks to support the regulator's legal mandate to establish and manage the USF. The Strategic Plan outlines the mandate, strategic focus, and priorities to be pursued over the next five years to achieve the fund's objectives. Critically, the strategic plan envisions "Digital inclusion for

all and its mission is "to facilitate provision and access of ICT services to bridge the digital divide."⁵⁰

Some of the key outcomes of the strategy include ensuring communication services are made available, accessible, and affordable to the citizenry of Malawi; creating an environment that edifies fostering development and innovation using digital platforms; improving stakeholder engagement and management; improving institutional capacity; improving stakeholder engagement and management; strengthening financial management; and strengthening the supply chain management process.

DEVELOPMENTS IN ICT AND EMERGING TECHNOLOGIES

In addition to the launch of the National Data Centre (see Data Governance section above), Malawi registered some other notable developments in the digital sector. In October 2022, MACRA officially licenced Malcel, a new telecommunication company, to provide mobile services throughout the country. This is also hoped to break the 20-year duo-monopoly of the telecommunication sector dominated by Airtel Malawi and Telekom Networks Malawi (TNM), and bring competition. As at March 2022, Airtel Malawi had a market share of 55.4 per cent, ahead of TNM which had 44.6 per cent.⁵¹ The new operator will install mobile phone towers, and provide mobile, ICT and broadband services beginning October 2023. The plan is to invest \$280 million in the next five years, targeting 1,300 sites in both urban and rural areas.⁵² According to the Minister of Information and Digitisation, "...this will induce competition in the telecommunications industry which will level the playing field and yield effective communication services for the ICT consumer".⁵³

50 MACRA, USF Strategic Plan - 2022-2027 <https://macra.mw/news/macra-launches-universal-service-fund-usf-strategic-plan-2022-2027/> (accessed on December 24, 2022).

51 Coms Update 'Malcel officially awarded mobile licence, plans to launch within twelve months' (26 October 2022) <https://www.commsupdate.com/articles/2022/10/26/malcel-officially-awarded-mobile-licence-plans-to-launch-within-twelve-months/> (accessed on December 24, 2022).

52 Total Telecom 'Newcomer Malcel Set To Break Mobile Duopoly In Malawi' (26 October 2022) <https://totaltele.com/newcomer-malcel-set-to-break-mobile-duopoly-in-malawi/> (accessed on December 24, 2022).

53 Coms Update 'Newcomer Malcel Set to Break Mobile Duopoly in Malawi' (October 26, 2022)

In a related development, in October 2022, MACRA also awarded an operating licence to SpaceX's low Earth orbit (LEO), a satellite subsidiary to Starlink to operate high speed, low latency satellite broadband services. This is hoped to boost access by majority of the rural population considering that Starlink's low-orbit satellites are designed to offer high speed, low latency broadband internet in remote and rural locations across the globe.⁵⁴ When rolled out, Malawi will be one of the first African nations to give the LEO satellite service the green light. Other countries include Nigeria and Mozambique.

There were no notable Artificial Intelligence (AI) developments during the reporting period. There were no known efforts by the government to have legislation and national strategy on AI. ACHPR Resolution 473 calls on State Parties to develop comprehensive legal and ethical governance framework for AI technologies so as to ensure compliance with human rights standards. In addition, AI literacy levels among Malawians and various stakeholders remain low.

GENDER AND ICT

The 2022 Global Gender Gap Index ranks Malawi on position 132 out of 146 countries, a significant drop from position 115 in 2021.⁵⁵ The gender divide in ICT access and usage remained persistent. According to the World Bank, 44.9 per cent of men own mobile phones as compared to 37.7 per cent of women.⁵⁶ In terms of usage, 68 per cent of men use a mobile phone, compared to just 56.2 per cent of women. Similarly, internet use also remains higher among men at 15.4 per cent relative to 12.4 per cent among women. Thus, it is critical for the government to implement interventions to increase ICT access and use among women.

<https://www.commsupdate.com/articles/2022/10/26/Malcel-Officially-Awarded-Mobile-Licence-Plans-To-Launch-Within-Twelve-Months/> (accessed on December 24, 2022).

54 ComsUpdate 'MACRA licenses Starlink to provide satellite broadband in Malawi' (October 25, 2022) <https://www.commsupdate.com/articles/2022/10/25/macra-licenses-starlink-to-provide-satellite-broadband-in-malawi/> (accessed on December 24, 2022).

55 World Economic Forum 'Global Gender Gap Index' (July 2022) https://www3.weforum.org/docs/WEF_GGGR_2022.pdf (accessed on December 27, 2022).

56 World Bank 'Malawi Economic Monitor: Investing in Digital Transformation' (June 23, 2021)

Conclusion and Recommendations

This report has demonstrated that the state of digital rights and inclusion in 2022 for Malawi was a huge mixed bag. On one hand, the State intensified criminalisation of freedom of expression online – arresting journalist and citizens’ critical of government; stifled media freedoms through massive closure of media houses; and failed to enact the Data Protection Bill into law. Digital divide remained wide as access to Internet and mobile services by majority citizens particularly the historically marginalised groups such as the poor, the rural, women and persons with disability remained a major deficit. On the other hand, Malawi registered significant milestones in the ICT and digital space.

The establishment of the National Data Centre; licensing of two new mobile companies; lowering of Internet data cost; and launching of the USF Strategic Plan by MACRA should be commended as notable steps taken by the Government of Malawi and digital actors towards Government’s obligations of providing universal ICT services to its citizens. Crucially, the Government decriminalised sedition from the Penal through amendment of section 50 and 51 of the penal code (protected flags, emblems and names), a critical towards guaranteeing freedom of expression.

Pursuant to the existing gaps, opportunities and recent developments in the ICT sector, the following recommendations are made:

GOVERNMENT	PRIVATE SECTOR	CIVIL SOCIETY
<p>To the Government</p> <ul style="list-style-type: none"> Intensify implementation of the Malawi Digital Economy Strategy to ensure accelerated universal access to Internet and mobile services. Remove barriers to internet and mobile services access particularly prohibitive taxes on internet and mobile services, poor ICT infrastructure, and duomonopoly of the telecommunication industry in order to ensure that access to the internet and mobile services is universal and affordable for all citizens, particularly the 	<p><i>To mobile network operators</i></p> <ul style="list-style-type: none"> Collaborate with non-state actors in advocating for conducive policy and legislative environment for digital rights and ICT actors. Proactively partner with the government in bridging the digital divide including joint investment in ICT infrastructure targeting rural communities and provision of affordable data tariffs and mobile services. 	<p>To the Civil Society</p> <ul style="list-style-type: none"> Challenge criminalisation of freedom of expression by the State through litigation and law reform advocacy. Step up advocacy on enactment of the Data Protection Bill into law. Intensify advocacy for Malawi’s ratification of the African Union Convention on Cyber Security and Personal Data Protection. Monitor the implementation of Malawi’s five-year Digital Economy Strategy (2021-2026). Invest in digital literacy

GOVERNMENT	MEDIA & DONORS	CIVIL SOCIETY
<p>historically marginalised groups including rural populations, the poor, women and persons with disability.</p> <ul style="list-style-type: none"> • Refrain from criminalisation of freedom of expression and guarantee media freedoms. • Refrain from all forms of surveillance in citizens' private social media conversations. • Repeal criminal defamation laws in the Penal Code, and amend sections 24(1) provisions (e) and (f) of the Electronic Transactions and CyberSecurity Act of 2016. • Ratify the African Union Convention on Cyber Security and Personal Data Protection. • Expedite enactment of the Data Protection Bill into law to provide for protection of personal data. • MACRA should ensure transparent and effective management of the Universal Access Fund (USF), as well as account for the expenditure of the funds realised from the facility since its establishment in 2016. • Malawi Human Rights Commission to step-up investigations of digital rights violations in accordance with its Constitutional human rights mandate. 	<p>To the Media</p> <ul style="list-style-type: none"> • Ensure compliance with regulatory laws and policies to pre-empt State encroachment of media space. • Uphold professional ethics in reporting to avoid misinformation and disinformation. • Bolster advocacy in defending freedom of expression, media freedoms and access to information <p>To the donor and development community</p> <ul style="list-style-type: none"> • Support civil society and government initiatives on digital rights, freedom of expression and access to information. • Intentionally leverage the diplomatic avenues to engage Malawi Government authorities on public concerns regarding freedom of expression and digital rights violations 	<p>programs for the rural masses.</p> <ul style="list-style-type: none"> • Establish protection mechanisms for victims of digital rights violations. • Support capacity strengthening of law enforcement agencies in digital rights. • Strengthen digital rights coalitions and networks to bolster civil society agency in digital rights advocacy.



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