



DIGITAL RIGHTS AND INCLUSION IN AFRICA REPORT

MALAWI
COUNTRY REPORT

2024



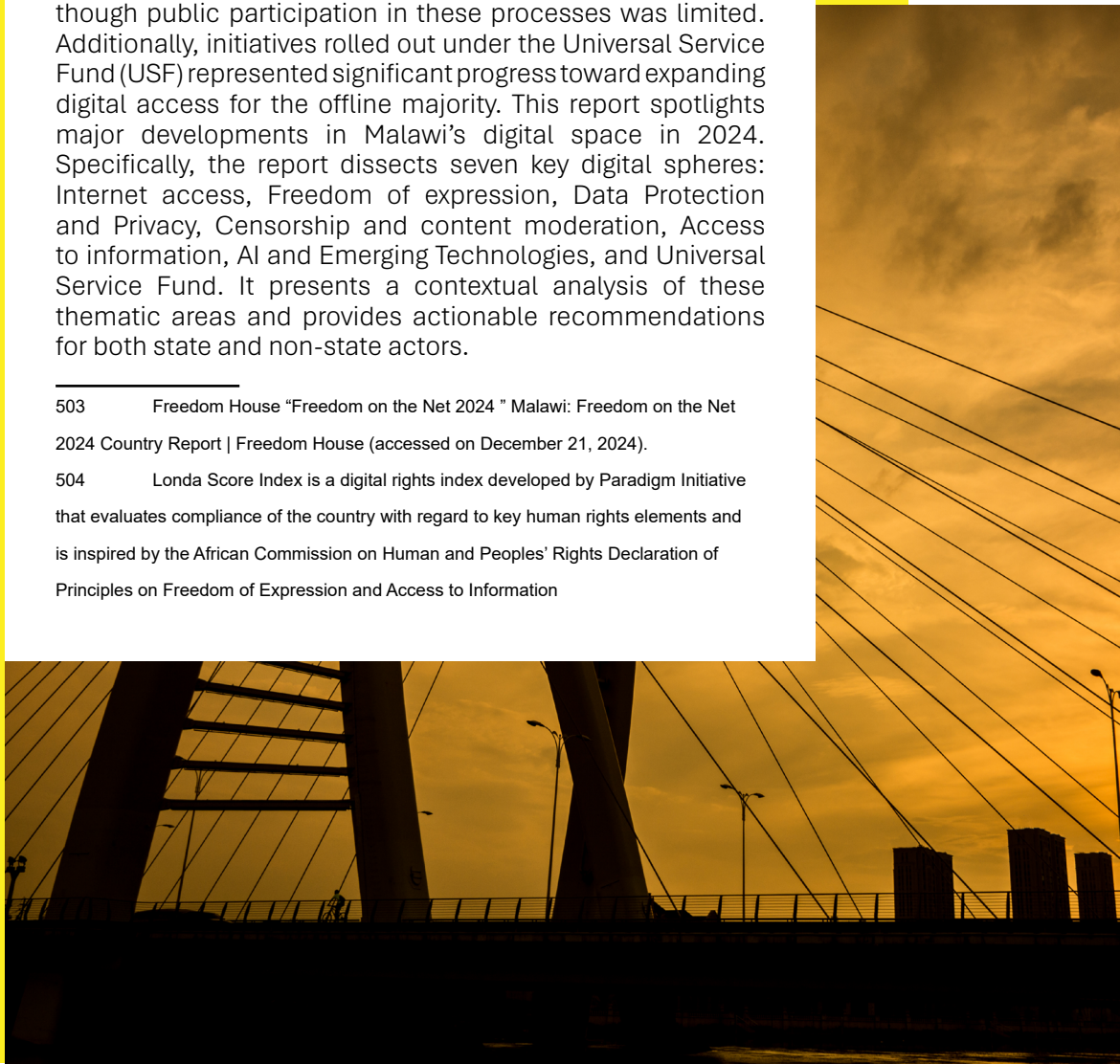
Executive Summary

This report examines the state of digital rights in Malawi, focusing on key achievements and concerning regressions observed in 2024. It provides actionable recommendations for both government and non-state actors, grounded in empirical evidence and desk research. The analysis evaluates quantitative and qualitative aspects of digital rights and governance, offering a comprehensive view of the country's digital landscape. TheScore Index, developed by Paradigm Initiative, was deployed to assess Malawi's compliance with the ACHPR Declaration. The period under review witnessed a decline in internet freedom as authorities intensified crackdowns on online journalists and internet users for critical expression. Strong suspicions of government surveillance of ICT activities further eroded trust in digital platforms.⁵⁰³ The criminalisation of speech remained a significant concern. Malawi's performance on the TheScore *Index*, which assesses country compliance with the African Commission on Human and Peoples' Rights (ACHPR) Declaration of Principles on Freedom of Expression and Access to Information in Africa (the Declaration), was rated as "moderately compliant," with a score of 35 out of 60.⁵⁰⁴

Despite these challenges, there were notable achievements. The enactment of the Data Protection Act, 2024, the launch of the National Digitalisation Policy, and the drafting of four new legislative bills on cybersecurity marked positive strides, though public participation in these processes was limited. Additionally, initiatives rolled out under the Universal Service Fund (USF) represented significant progress toward expanding digital access for the offline majority. This report spotlights major developments in Malawi's digital space in 2024. Specifically, the report dissects seven key digital spheres: Internet access, Freedom of expression, Data Protection and Privacy, Censorship and content moderation, Access to information, AI and Emerging Technologies, and Universal Service Fund. It presents a contextual analysis of these thematic areas and provides actionable recommendations for both state and non-state actors.

⁵⁰³ Freedom House "Freedom on the Net 2024 " Malawi: Freedom on the Net 2024 Country Report | Freedom House (accessed on December 21, 2024).

⁵⁰⁴ Londa Score Index is a digital rights index developed by Paradigm Initiative that evaluates compliance of the country with regard to key human rights elements and is inspired by the African Commission on Human and Peoples' Rights Declaration of Principles on Freedom of Expression and Access to Information



Introduction

3

DIGITAL
RIGHTS
AND
INCLUSION
IN AFRICA
REPORT

LONDA
2024

With an estimated population of 21.2 million people in 2024⁵⁰⁵, Malawi shares its borders with Mozambique, Zambia and Tanzania. Ranked as one of the poorest countries in the world, 81.8% of the population live in rural areas. In 2021, the government launched the Malawi 2063 Vision (MW2063) that aims to transform Malawi into a wealthy, self-reliant, industrialised upper-middle-income country, through a focus on agriculture commercialisation, industrialisation, and urbanisation. To accelerate short and medium term results, the first 10-year implementation plan (MIP-1)⁵⁰⁶ was rolled out to drive the implementation and realisation of the MW2063.

Despite notable strides in ICT, Malawi faces multifaceted challenges, including weak ICT infrastructure and digital exclusion⁵⁰⁷ and a restrictive internet legislative regime. In November 2024, the Malawi government promulgated the National Digitalisation Policy⁵⁰⁸ to provide a roadmap for Malawi's digital transformation. Moreover, in 2021, the government rolled out an ambitious five-year Digital Economy Strategy (2021-2026) which sets new targets for different aspects of the digital economy. Among other areas, such as network access, the government intends to expand internet access from 14.6% to 80% of the population and broadband coverage to 95% by 2026. It also seeks to review internet taxes by, among others, cutting out the 10% excise duty on purchasing data and SMS tariffs, and scrapping the 3.5% revenue tax for telecom providers which are significant drivers of high costs of internet and mobile services in Malawi. Various laws have also been promulgated regulating the digital space including the Data Protection Act, 2024, Electronic Transactions and Cyber Security Act, 2016, and Communications Act, 2016.

505 DataReportal "Digital 2024:Malawi" (23 February 2024) Digital 2024: Malawi — DataReportal – Global Digital Insights(accessed 20 December y 2024)

506 National Planning Commission <https://npc.mw/wp-content/uploads/2021/11/MIP-1-WEb-Version-8-November-2021-Fast-view.pdf> (accessed 20 December y 2024)

507 DataReportal "Digital 2024:Malawi" (23 February 2024) Digital 2024: Malawi — DataReportal – Global Digital Insights(accessed 20 December y 2024)

508 "National Digitisation Strategy 2024" <https://ict.gov.mw/index.php/blog/downloads/policies-and-laws?download=25:national-digitalization-policy-final-11-01-2024> (accessed 23 December 2024)

INTERNET ACCESS

Section 157 of the Communications Act of 2016 provides for Universal Services and Access to Telecommunication. MACRA, as a regulator, is mandated “to ensure that the provision of universal services is made on affordable tariffs that are accessible to all”.⁵⁰⁹ Moreover, in 2021 the government rolled out an ambitious five-year Digital Economy Strategy (2021-2026) which sets new targets including expanding internet access from 14.6% to 80% of the population and broadband coverage to 95% by 2026.⁵¹⁰

According to the 2024 DataReportal report, internet penetration rate in Malawi stood at 27.7% of the total population, representing a 3.3% increase from 2023.⁵¹¹ There were 5.9 million internet users in early 2024. Thus, about 72.3% of the total population of 21.2 million people remained offline. Further, there were only 1.3 million social media users, aged 18 and above, representing 6.1% of the total population. According to Kepios, social media users in Malawi increased by 550,000 between early 2023 and the beginning of 2024.⁵¹² Notably, 35.8% of Malawi’s social media users were women, while 64.2 percent were men. According to Meta, Facebook penetration in Malawi was at 6.1%, and Instagram’s reach was only 130,400 people, equivalent to 0.6% of the total population. There were only 290,000 LinkedIn users in Malawi 32.7% of which were women, , while 67.3% were men. It is worth noting that LinkedIn membership increased by 60,000 (26.1%) between the start of 2023 and the beginning of 2024.⁵¹³

Cellular mobile penetration was at 55.5% of the total population. Thus, the overall picture of Malawi’s digital inclusion remains dim, despite the country’s ambitious Digital Economy Strategy.⁵¹⁴ A low literacy rate of 62% also remains a barrier to accessing ICTs.⁵¹⁵ High digital illiteracy also remains a major setback, with a recent survey by the Malawi Communications Regulatory Authority (MACRA) establishing that 46% of Malawians indicate that they did not use the Internet because they “don’t know what it is”, and 2.4% saying they didn’t use it because it is too expensive.

Despite efforts to expand digital inclusion in the year, the government remained reluctant to revise its tax policy, which increases the cost of accessing the Internet. In Malawi, the telecommunications regulator, Malawi Telecommunications Regulatory Authority (MACRA), requires internet service providers (ISPs) to pay a 3.5% tax on annual sales and turnover, annual license and spectrum fees, and a 0.5% tax on all ICT equipment entering the country⁵¹⁶. Further, in the year, the government has maintained prohibitive taxes on ICT services including 17.5% Value Added Tax (VAT) on mobile phones, 16.5% on internet services and 10% excise duty on messages and internet data transfers. Despite the government’s commitment in the Digital Economy Strategy committed to review these taxes which are significant drivers of high costs of internet and mobile services, there was no action in the reporting period. These taxes continue to make costs of ICT prohibitive, impacting the country’s poor the most as they are effectively shut off essential digital communication platforms and important services, such as mobile banking and money services, education, and commercial markets, which could help graduate them out of poverty. In 2023, Malawi launched “diplomatic data corridor” agreements with Tanzania and Zambia to reduce internet landing costs, which should result in more affordable internet for Malawians.⁵¹⁷

In a bid to reduce cost of data, the two leading mobile operators, Airtel Malawi and Telekom Networks Malawi (TNM), introduced cheaper promotional internet data packages that offer a wider variety of choice. As of December, 2024, a monthly 30 GB data bundle from Airtel Malawi⁵¹⁸ and TNM⁵¹⁹ cost 15,000 kwacha (USD8.82). The country’s minimum monthly wage is still 90,000

509 Communications Act of the Republic of Malawi, 2016

510 Malawi Digital Economy Strategy 2021

511 DataReportal 2024

512 Kepios “Digital 2024:Malawi” (23 February 2024) Digital 2024: Malawi — DataReportal – Global Digital Insights (accessed 23 December 2024)

513 DataReportal 2024

514 Malawi Digital Economy Strategy, 2021

515 “The Economist Group, 2022 “The Inclusive Internet Index 2022” <https://theinclusiveinternet.eiu.com/explore/countries/performance/read....> (accessed 20 December 2024)

516 M Malakata, “Business, Tech Lobbies Malawi’s Govt to Relax Tax,” ITWeb, January 13, 2022, <https://itweb.africa/content/o1Jr5Mx-9n8VqKdWL>. (accessed 23 December 2024)

517 P Kapulula, “Malawi, Zambia for Lucrative Digital Market” Malawi Voice, August 25, 2023 <https://www.malawivoice.com/2023/08/25/malawi-zambia-for-lucrative-digi...> (accessed 24 December 2024)

518 Airtel Malawi “Monthly Bundles,” airtel: Prepaid | Postpaid | 4G (accessed December 2024)

519 TNM Malawi Limited “Monthly Bundles,” TNM - Always With You (accessed December 2024)

kwacha (USD 53), although most Malawians are employed outside of the formal sector.

Despite SpaceX launching Starlink in Malawi promising more reliable and faster internet, there are concerns about the cost of accessing the service. For example, users of Starlink require to initially purchase hardware that costs 577,726 kwacha (USD 340.55) and then to pay a monthly subscription.

During the coverage period, there were no connectivity restrictions imposed by authorities. Moreover, the government of Malawi does not have centralised control over the international gateway.⁵²⁰ The country's internet exchange point (IXP) in Blantyre is operated by the nonprofit Malawi ISP Association (MISPA).⁵²¹

Additionally, there were no incidents of blocking or filtering protected content. Social media platforms are widely available including those critical of authorities.

DIGITAL INCLUSION

In November 2024, the Malawi Government promulgated the National Digitalisation Policy⁵²². This policy provides a roadmap for Malawi's digital transformation. It focuses on expanding digital infrastructure, enhancing digital literacy, improving service delivery, and leveraging ICT for socio-economic development, addressing gaps in education, healthcare, and governance.

Further, in April 2024, the Malawi Government launched the Inclusive Digital Transformation for Malawi (IDT4M) Project.⁵²³ The IDT4M Project seeks to ensure that the digital transformation process is inclusive. It works to improve digital identity systems, reduce the digital gender gap, and enhance governance through technology. This initiative collaborates with partners such as the United Nations Development Programme (UNDP) to ensure marginalised communities, particularly in rural areas, have access to digital services.

Additionally, the Government continued to implement the Digital Malawi Project⁵²⁴, a flagship government initiative in improving broadband connectivity, digital literacy, and public service accessibility. In collaboration with the World Bank, significant progress has been made in expanding the country's communication infrastructure, including the completion of a new primary data centre in Lilongwe and the installation of communication towers in rural areas. This project aims to integrate ICT across all sectors and drive economic growth through technology.

In April 2024, the government introduced the Digital Innovation and Entrepreneurship Bill (2024) which seeks to foster a thriving environment for local ICT startups by establishing a Digital Innovation and Entrepreneurship Fund to support digital solutions, research, and innovation. This legislation promotes a competitive tech ecosystem in Malawi and drives local technological advancements.⁵²⁵

Further, in the year, the government introduced a Bill to revise the Communications Act of 2016. This revision aims to update the legal framework, ensuring that it supports digital rights, protects citizens, and encourages technological growth in Malawi.⁵²⁶

The latest (2023) Global Gender Gap Index ranks Malawi on position 110 out of 146 countries, an improvement from 132 in 2022. However, the assessment of Malawi's digital landscape also reveals a significant gender divide in ICT access and usage. According to the World Bank, 44.9% of men own mobile phones as compared to 37.7% of women. In terms of usage, 68% of men use a mobile phone, compared to just 56.2% of women. Similarly, internet use also remains higher among men at 15.4% relative to 12.4% among women. In 2024 alone, only 35.8% of Malawi's

520 International Telecommunication Union (ITU) "Malawi Profile" (28 March 2019) <https://web.archive.org/web/20191222160905/http://www.itu.int:80/net4/l...> (accessed 21 December 2024)

521 Malawi Internet Service Providers' Association "Malawi Internet Exchange" <http://www.mispa.org.mw/mix.html> (accessed 24 December 2024)

522 "National Digitisation Strategy 2024" <https://ict.gov.mw/index.php/blog/downloads/policies-and-laws?download=25:national-digitalization-policy-final-11-01-2024> (accessed 23 December 2024)

523 UNDP "Breaking Barriers: Malawi's IDT4M Project Paves the Way to Inclusive Digital Futures" (4 April 2024) <https://www.undp.org/malawi/press-releases/breaking-barriers-malawis-idt4m-project-paves-way-inclusive-digital-futures> (accessed 24 December 2024)

524 Digital Malawi Project <https://digimap.pppc.mw/>

525 V Kumwenda, Key Informant Interview (23 December 2024)

526 Ibid

social media users were women, while 64.2% percent were men.⁵²⁷ Specifically, out of 290,000 LinkedIn users, only 32.7% were female, while 67.3% were male.⁵²⁸ Thus, it is critical for the government to implement interventions to increase ICT access and use among women.

There is also a geographic gulf in internet access between the rural and urban. In 2024, 18.5% of Malawi's population lived in urban centres, while 81.5% lived in rural areas. Telecommunication companies are unwilling to invest in Malawi's remote regions due to the high cost of infrastructure development.⁵²⁹ According to a 2023 National Statistical Office (NSO) report, 40.7% of people in urban areas had access to the Internet, as opposed to 13.5% of those in rural areas.⁵³⁰ It is also worth noting that Malawi's electric grid is urban-based, standing at 62% of urban households, compared with a mere 5% of rural households.⁵³¹

There are also gaps regarding limited access to ICT services by persons with disabilities. In 2024, the Government, through the Universal Service Fund (USF), rolled out two interventions "Disability Project for Digital Inclusion" and "Sign Language" aimed at advancing digital inclusion in institutions with people with disabilities.⁵³² The Disability Project for Digital Inclusion" is promoting ICT access and use by people with disabilities (PWDs) living in different areas of the country.

The Universal Service Fund (USF)

Globally, the USF model plays a critical role in narrowing the digital divide, guided by three core principles: the availability, affordability, and accessibility of telecommunication services to all people. These principles underscore the responsibility of telecommunication regulators and government ministries at the state level to ensure universal access to telecommunication services at affordable rates.

While USF models vary across countries, their common objective is to deploy communication infrastructure and promote the adoption of ICT services in rural and underserved areas, even when not economically viable. This reflects a commitment to connecting everyone, regardless of the associated costs. Principle 37(2) of the African Commission on Human and Peoples Rights Declaration on Freedom of Expression and Access to Information (African Commission Declaration) emphasises the necessity of universal, equitable, affordable, and meaningful internet access for the realisation of various human rights. It is by no coincidence that the 32nd Session of the Human Rights Council (2016) affirmed that rights enjoyed offline should also be protected online, necessitating the availability, affordability, and accessibility of telecommunication services.⁵³³

In Malawi, the USF is established under section 157 of the Communications Act of 2016, with the aim of promoting universal access and services in underserved areas. Section 158 outlines the specific purposes of the USF, including offering subsidies on a competitive basis, providing financial incentives and assistance, covering administrative expenses, and conducting research related to universal access⁵³⁴. This aligns with MACRA's statutory obligation to ensure every citizen in Malawi has access to reliable and affordable communication services.⁵³⁵

The Communication Act prioritises areas managed by the USF, including access to telecommunications networks, the internet, public payphones, directory services, emergency services, essential postal services, basic financial services, and broadcasting services.

The Malawi USF is currently valued at USD 5.9 million (10 billion Malawi Kwacha).⁵³⁶ In 2024, the USF continued to roll out 16 projects estimated at a total of USD 7.1 million, with the hope to mobilise the

⁵²⁷ DataReportal Digital 2024: Malawi — DataReportal – Global Digital Insights

⁵²⁸ Ibid

⁵²⁹ Freedom House "Freedom on the Net 2024 " Malawi: Freedom on the Net 2024 Country Report | Freedom House (accessed on December 21, 2024).

⁵³⁰ National Statistical Office, "National Survey on Access and use of Information and Communication Technologies by Households and Individuals in Malawi 2023" "http://www.nsomalawi.mw/images/stories/data_on_line/economics/ICT/Natio.... accessed 22 December 2024

⁵³¹ The Economist Group, 2022 "The Inclusive Internet Index 2022,"<https://impact.economist.com/projects/inclusive-internet-in-dex/2022>. (accessed December 2024)

⁵³² USF Key Informant Interview

⁵³³ UN Human Rights Council 'Report of the Human Rights Council on its thirty second session' <https://documents-ddsny.un.org/doc/UNDOC/GEN/G20/008/73/PDF/G2000873.pdf?OpenElement> (accessed on 25 December 2024).

⁵³⁴ Section 158 of the Communications Act

⁵³⁵ Section 6 of the Communications Act

⁵³⁶ USF Key Informant Interview (15 December 2024)

variance. For example, the Connect a School (CAS) initiative targets rural and peri-urban schools with construction of ICT Labs and provision of internet and ICT Equipment to facilitate access to modern ICTs and internet by learners and communities. Valued at a total of USD 5.5 million, as of December 2024 alone, 75 out of 229 ICT School Labs were constructed under CAS, with 80% completion rate.⁵³⁷ The CAS model which is built on partnering with community actors has also “provided business to rural business persons, job opportunities, and collaboration opportunities to workers from rural communities”⁵³⁸. Other USF-funded initiatives include Community Networks (Yathu Yathu Data),⁵³⁹ expected to diversify the mobile operator market and provide a lower-cost alternative to Airtel and TNM for mobile data, particularly in rural areas,⁵⁴⁰ Radio Access Network (Rural Telephony),⁵⁴¹ Connect Teachers Training College⁵⁴²; Grants for Local Digital Content Production; Sign Language Project; E-Health Project; and E-commerce project. USF projects also include Connect a Post Office;⁵⁴³ National Addressing System Project⁵⁴⁴; Persons with Disability Project for Digital Inclusion; Last Mile; Virtual Postal App; Curriculum Review; SMEs Digital Skills Training; and Digital Ambassadors⁵⁴⁵.

While USF has begun to register notable strides through projects, after inordinate inactivity, it still faces significant operational and institutional challenges, undermining its full potential. According to the USF Management, USF-funded projects were significantly affected by a precarious macro-economic environment including high levels of inflation, pushing up the costs of the projects. The researcher also noted unrealistic ambitions in USF projects. For example, there were over 16 projects running concurrently but, with limited budgets and lean USF management staff, risking underperformance of the projects. Inordinate delays and long procedures in public procurement also affected the timely completion of some projects.⁵⁴⁶ The limited funding for USF is another area of concern. Section 160 outlines diverse funding sources for the USF, including operators’ levies, parliamentary appropriations, grants, subsidies, auctions, public access projects, and funds from MACRA⁵⁴⁷. This assessment, however, established Parliament’s failure to appropriate funds to the USF despite Section 160(b) of the Communications Act, 2016, placing an obligation on Parliament to appropriate funds to the USF. This has increased the financial burden on USF.

Additionally, Malawi’s USF operates with a robust governance structure led by MACRA, which establishes a Universal Service Fund Committee (USFC). The USFC oversees the management of the USF, reviewing and approving annual plans and budgets.⁵⁴⁸ While the USFC has some oversight powers, such powers are limited to recommendations. MACRA Board retains the decision-making powers over USF. As such, delays in decision making by MACRA Board may exert significant impact on the operations of USF. For example, meetings of the USFC only take place after MACRA Board meetings.

There are also transparency and accountability concerns arising from MACRA’s failure to comply with Section 194(c) of the Communications Act, 2016, regarding publication of fund details and reporting to Parliament on USF. Since the establishment and operationalization of USF, MACRA has not published USF reports. There is need for proactive disclosure of information by USF in line with Principle 29 of the African Commission on Human and People’s Rights Declaration on Freedom of Expression and Access to Information in Africa.⁵⁴⁹

537 USF Key Informant Interview (15 December 2024)

538 USF Key Informant Interview (15 December 2024)

539 USF is piloting the Community Broadband Network Project in 8 district councils including the identification of cooperatives that will run broadband network deployments in rural areas. USF has also trained the Cooperatives and facilitated their licensing.

540 “MACRA to roll out Yathu Yathu data network,” Nthanda Times, <https://nthandatimes.com/macra-to-roll-out-yathu-yathu-data-network/>. (accessed 24 December 2024)

541 USF is procuring 26 mobile network towers to connect 22 mobile network infrastructures unserved/underserved areas to ensure adequate broadband coverage.

542 USF Key Informant Interview (15 December 2024)

543 USF Key Informant Interview (15 December 2024)

544 USF-funded digitization of land parcels in all districts

545 USF Key Informant Interview (15 December 2024)

546 Ibid

547 USF Strategic Plan

548 Section 163 of Communications Act

549 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, 2024).

Data Protection:

On February 1, 2024, the Malawi President, Lazarus Chakwera signed the eagerly anticipated Personal Data Protection Bill into law, the Data Protection Act, 2024.⁵⁵⁰ This brings Malawi to the international data protection standards including the General Data Protection Regulation (GDPR).⁵⁵¹ The new legislation aims to establish a comprehensive legal framework for regulating the processing and transfer of personal data, aligning with internationally accepted principles of data protection. The Data Protection Office, operationalised in June 2024, enforces this law, addressing gaps in data security and privacy.⁵⁵² This is a pivotal move toward protecting Malawians' personal information, ensuring that it is handled responsibly and securely.

Notably, the law designates the Malawi Communications Regulatory Authority (MACRA) as the Data Protection Authority responsible for overseeing the implementation of the Bill. It outlines key principles governing the processing of personal data, establishes a robust framework for the rights of data subjects, and defines the duties of data controllers and processors in relation to personal data processing.

Furthermore, the law addresses cross-border transfer of personal data, regulates data controllers and processors of significant importance, establishes mechanisms for enforcing data subject rights, and grants the Authority the power to issue compliance orders to those contravening the Act.

*According to Key informant A from MACRA, the new law will “build trust and confidence – the fact that individuals will have confidence that their personal information will not be abused by the organisation will build trust and confidence between the parties and this will facilitate e-commerce and other digital transactions”.*⁵⁵³

Reacting to the enactment of the Bill by Parliament, MISA Malawi commended the data protection law, emphasizing its potential to “promote responsible handling of personal data by government agencies, private institutions, and individuals”.⁵⁵⁴ MISA expressed hope that the law would safeguard Malawians and the general public from cyber threats, cybercrimes, and unwarranted surveillance.

However, the new law is not without flaws. Firstly, Section 4 designates MACRA as the Data Protection Authority (DPA), potentially compromising the financial, decision-making, and institutional independence of the DPA.⁵⁵⁵ The Ministry of Information and Digitalisation assured Members of Parliament that this arrangement is temporary until the DPA becomes self-sustaining.⁵⁵⁶ According to MACRA, to allay the fears, the regulator intends to put structural and functional arrangements that would ensure the financial, decision, and institutional independence of the DPA. MACRA seeks to set up an autonomous unit within MACRA that will carry out the functions of the DPA.⁵⁵⁷

Additionally, Section 8 (b)(vi)(vii) allows the lawful processing of personal data for “public interest” or “legitimate interests,” terms that are vague and undefined. This could grant excessive discretion to data controllers and processors in determining the lawful processing of individuals' personal data.

Concerns also arise regarding the processing of sensitive personal data. The Act allows for the processing of sensitive personal data under specific circumstances, including “archiving for public

550 Digital Malawi Project <https://digmap.pppc.mw/data-protection-bill-assented/> (accessed on 23 December 2024)

551 GDPR <https://gdpr.eu/what-is-gdpr/> (accessed on 18 February 2025)

552 V Kumwenda, Key Informant Interview (accessed on 23 December 2024)

553 Interview with Zadziko Mankhambo, Director of Broadcasting at Malawi Communications Regulatory Authority (15 January 2024)

554 MISA Malawi, 'MISA Malawi welcomes passing of Data Protection Bill' 8 December 2023

<https://malawi.misa.org/2023/12/08/misa-malawi-welcomes-passing-of-data-protection-bill/>. Accessed on 15 December 2023

555 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 20 December, 2024)

556 MISA Malawi, 'MISA Malawi welcomes passing of Data Protection Bill' 8 December 2023

<https://malawi.misa.org/2023/12/08/misa-malawi-welcomes-passing-of-data-protection-bill/>. Accessed on 15 December 2024

557 Interview with Zadziko Mankhambo, Director of Broadcasting at Malawi Communications Regulatory Authority (15 January 2024)

interest, research, or statistical purposes”⁵⁵⁸ or if the data subject intentionally made the data public.⁵⁵⁹ Such provisions may provide unwarranted discretion to data controllers and processors in processing sensitive personal data.

Moreover, Section 26 includes broad exemptions allowing data controllers and processors to disregard data subject rights for reasons of “national security,” national economic or financial interests, social security, and regulatory functions. These exemptions could grant excessive discretion to determine when rights may be disregarded.

Further, the gap exists regarding the suspension or cancellation of registration of a data controller or data processor of significant importance. Section 42 grants MACRA the authority to suspend or cancel the registration of a data controller or processor “of significant importance” based on vague and broad grounds including not complying “with any provision” of the Act or any term or condition imposed on the registration; or if “there is any other reasonable ground to suspend or cancel the registration”.⁵⁶⁰ These broad provisions would potentially lead to undue restrictions. Notably, the Act lacks a clear procedure for suspension and cancellation, failing to mandate MACRA to provide notice to affected entities. However, Section 42(2) provides that the “Authority shall not suspend or cancel the registration of a data controller of significant importance or data processor of significant importance under subsection 42(1), unless the data controller of significant importance or data processor of significant importance has been given an opportunity to show cause why the registration should not be suspended or cancelled.”

In addition, Milanzi observes that the Act is insufficient in connecting with institutional review boards (IRBs) that oversee the ethical aspects of research involving human data in contexts where data protection intersects with research, given that IRBs play a critical role in evaluating the ethical implications of data use in research projects.⁵⁶¹ She recommends “Establishing a formal connection between the data protection authority and IRBs could enhance the ethical management of research data, ensuring that protections are consistently applied both in commercial and academic settings”.⁵⁶²

While the Act is a shift in the right direction, significant attention should be given to the gaps in the law to prevent abuse of concerning provisions of the law by authorities. To ensure the law is applied effectively, it is also essential to invest in training and public awareness interventions for stakeholders, data controllers, researchers and processors.

In the year, the Malawi government has been registering voters for the General Elections slated for September 2025. While the use of National IDs in the voter registration process is a significant step forward, the integration of National IDs with voter registration systems raises concerns about data integrity. Inaccuracies, such as mismatched data between the ID and voter rolls, can create complications. Moreover, there are concerns about the security of voter data, with stakeholders questioning how well the system can protect sensitive information.⁵⁶³

Surveillance and Cyber-Security

Freedom House reported Malawi’s decline in surveillance score from four to three in 2024 due to new reports that authorities had acquired a surveillance tool, Cellebrite’s UFED system, and concerns that police used extraction tools to search journalists’ devices.⁵⁶⁴ There were strong suspicions of government surveillance of ICT activities, although Section 21 of the Constitution guarantees the right to personal privacy including protection from interference with private telecommunications.⁵⁶⁵

Investigative reports in 2024 revealed that in 2019 MACRA procured UFED system, a powerful technology designed to access and extract information from electronic devices such as phones and laptops sold by the Israel-based company Cellebrite.⁵⁶⁶ MWCERT, MACRA’s cybersecurity

558 Section 16(g) of the Data Protection Act

559 Section 16(g) of the Data Protection Act

560 Section 42(1) of the Data Protection Act of 2023

561 E Milanzi

562 E Milanzi

563 V Kumwenda

564 Freedom House, “Freedom on the Net 2024”. Malawi: Freedom on the Net 2024 Country Report | Freedom House

565 “Malawi’s Constitution of 1994 with Amendments through 2017,” Constitute Project, February 4, 2020, https://www.constituteproject.org/constitution/Malawi_2017.pdf?lang=en.

566 Freedom House, “Freedom on the Net 2024”. Malawi: Freedom on the Net 2024 Country Report | Freedom House

unit, confirmed that it had access to the tool as of January 2023. MACRA also confirmed that it offers its services to the police, military, and intelligence services when conducting cyber crimes investigations, though the regulator stated that they follow a search warrant and approval process, which requires a court order. However, some sources reported that Cellebrite has since ceased issuing license renewals to several countries, including Malawi.⁵⁶⁷ This assessment by Paradigm Initiative also uncovered several cases of privacy breaches by authorities including confiscation and inspection of journalists' devices, raising concerns that authorities could be using extraction or surveillance tools without sufficient oversight.

During the year under review, MACRA presented three cybersecurity-related bills to the Ministry of Justice. According to the regulator, the Cybersecurity Bill, Cybercrimes Bill, and Electronic Evidence Bill aim to strengthen Malawi's legal framework in response to growing cybersecurity challenges. The Cybersecurity Bill outlines national cybersecurity measures, the Cybercrimes Bill addresses cybercrime prevention and prosecution, while the Electronic Evidence Bill provides guidelines for the use of electronic evidence in courts. According to Kumwenda, "Together, these bills form a critical part of creating a secure digital environment and tackling emerging threats".⁵⁶⁸ Despite some significant progress in developing a domestic legal framework on data protection and cybersecurity, Malawi has not adopted the African Union (AU) Convention on Cyber Security and Personal Data Protection (also known as Malabo Convention), a legal framework for addressing cybercrime and data protection on the continent.

In a bid to protect children online, in 2024 MACRA in partnership with the International Telecommunications Union (ITU), developed a National Child Online Protection Strategy.⁵⁶⁹ The strategy seeks to safeguard children from online threats and harms and empower them to optimally benefit from the internet opportunities.

FREEDOM OF EXPRESSION & ACCESS TO INFORMATION

Freedom of Expression:

According to Freedom House's "Freedom on the Net 2024" report, Malawi's score for online activities in the year declined from four to three as authorities continued to crackdown on internet users including arrests and convictions.⁵⁷⁰ Those targeted are usually internet users critical of the government. It remains unclear which officials are responsible for ordering arrests for online expression, raising concerns that such arrests seek to create an environment of intimidation and fear among citizens who are critical of authorities.

In May 2024, Sainani Joshua, a resident of Mponela, was arrested for insulting Malawi president, Lazarus Chakwera, in a WhatsApp group called 'Mponela Hotspot'. He was convicted on May 16, 2024 by a Magistrate court on charges of cyber spamming contrary to Section 91 of the Electronic Transactions and Cybersecurity Act.⁵⁷¹ The sentence was a fine of 200,000 kwacha (USD120) or six months imprisonment.⁵⁷² However, the Act does not clearly make insulting the President or any other individual an offence. In 2022, the Parliament amended the Protected Flag, Emblems and Names Act to remove 'President' as a protected name. Thus, it is not clear which law other than the Electronic Transactions and Cyber Security Act was used to criminalise insulting the President. The spamming provision may be seen as the reincarnation of the insulting of the President's seditious law targeting online speech. Such broad and vague provisions of the law are prone to abuse by authorities.

567 E Chimoyo "Unveiling MACRA's sophisticated phone, PC data extracting tool: balancing privacy and security," Platform for Investigative Journalism, January 26, 2024, <https://www.investigativeplatform-mw.org/show-story/unveiling-macras-so....> (accessed 15 December 2024)

568 V Kumwenda

569 F. Phiri "Macra-Stakeholders Intensify Child Online Protection Efforts" <https://times.mw/macra-stakeholders-intensify-child-online-protection-efforts/>

570 Freedom House Malawi: Freedom on the Net 2024 Country Report | Freedom House

571 Section 91 of the Act reads: "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".

572 CPJ "Malawian journalist Macmillan Mhone facing false news, extortion charges" (15 April 2024) <https://cpj.org/2024/04/malawian-journalist-macmillan-mhone-facing-fals...> (accessed 20 December 2024)

In April 2024, the Police summoned Macmillan Mhone, a journalist working for the online publication Malawi 24 for questioning. Months earlier, he had published two stories alleging police involvement in corruption connected to a businessman facing charges of fraud. Mhone was arrested and transferred from Blantyre to the police headquarters in Lilongwe. It was not clear who ordered Mhone's arrest. He was later granted unconditional bail and charged with "publication of news likely to cause fear and public alarm, cyber spamming, and extortion." It is not known whether the Police will pursue Mhone further as the case is yet to be taken to court eight months after his release on bail. If convicted, Mhone could face a fine and up to two years in prison for the charge of publishing false news, a fine of two million kwacha (USD1200) and five years in prison for cyber spamming, and up to 14 years in prison for the extortion charge. The Electronic Transactions and Cybersecurity Act is increasingly being deployed as a weapon to criminalise freedom of expression and media freedom in Malawi.

On February 13, 2024, police seized phones and laptops from 14 journalists working for the state broadcaster, Malawi Broadcasting Corporation (MBC).⁵⁷³ Police stated that they had received a warrant to search the devices as part of their investigations into a suspected "fake" Facebook page account following a complaint by MBC's management about the creation of the said account bearing the corporation's name and logo. Police obtained court search warrants to search the 14 journalists who were accused of "spamming," an offence under Section 91 of Malawi's Electronic Transactions and Cybersecurity Act⁵⁷⁴ which carries a maximum penalty of two million Malawian kwacha (about USD 1,190) and imprisonment for five years. Some of the journalists reported to have received email notifications about attempts to access their social media accounts while the devices were in police custody. The police reported to have used a "forensics laboratory" to search the devices.⁵⁷⁵ In the same case, on February 15, 2024, police also searched the laptop of Greyson Chapita, MBC's suspended controller of news and programs. They manually looked through his Facebook account in his presence. These acts represent serious breaches of private communications with significant potential of instilling self-censorship among journalists.

In February 2024, investigative online journalist Gregory Gondwe fled Malawi, fearing for his life after he published an investigation into the Malawi Defence Force's connections to a businessman, Zunneth Sattar, accused of grand corruption in Malawi linked to senior government authorities and state institutions including the security agencies.⁵⁷⁶ There were reports that the military planned to arrest him over a story. In 2022, Gondwe was interrogated by police and his devices confiscated for publishing a story exposing corruption. Police demanded that he reveal his sources of the story.

In the recent past, several journalists have been arrested and their communication gadgets confiscated by police. This pattern of criminalisation of online speech and climate of intimidation has significant potential of prompting a degree of self-censorship, especially among media practitioners and social media users. Moreover, 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.⁵⁷⁷ Further, Principle 22(2) of the ACHPR Declaration provides that states must repeal laws that criminalise sedition, insult and publication of false news.

Access to Information:

The right to information is guaranteed under Section 37 of the Constitution, as well as the Access to Information Act (ATI Act) of 2016. To operationalise the ATI Act, regulations were developed in 2021, and the ATI Unit was established under the Malawi Human Rights Commission (MHRC), to oversee overall operationalization of the Act.

In the coverage year, there was notable progress in the implementation of the ATIA. Malawi Human Rights Commission conducted compliance monitoring of 48 public institutions with over 60%

⁵⁷³ CPJ "Malawi police seize equipment from journalists amid fake Facebook page investigation," (8 March 2024) <https://cpj.org/2024/03/malawi-police-seize-equipment-from-journalists-....> (accessed 20 December 2024)

⁵⁷⁴ <https://media.malawilii.org/files/legislation/akn-mw-act-2016-33-eng-2017-12-31.pdf>

⁵⁷⁵ Ibid.

⁵⁷⁶ Lameck Masina, "Malawi Journalist in Hiding After Exposing Government Corruption", (2 February 2024) <https://www.voanews.com/a/malawi-journalist-in-hiding-after-exposing-go...>; accessed 20 December 2024)

⁵⁷⁷ 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 21 December 2024).

of the assessed institutions found non-compliant with the ATI Act and regulations.⁵⁷⁸ In addition, MHRC trained 34 public institutions on the ATI Act and Regulations, reaching 970 officers (665 men, 304 women). As required by the ATI Act, 16 public institutions developed an information manual. In the year, MHRC also reviewed complaints against denial of access to information, with two determinations falling in favour of the complainants, while the other in favour of the information holder.

Lack of proactive disclosure of information by public institutions remained a major setback. For example, the Malawi government did not make a report on Public Sector Reforms public, arguing that the report was only meant for the President. Underfunding and delayed funding of the MHRC which is responsible for oversight implementation of the Act continued to undermine its oversight mandate on the ATIA Act. There was also a low level of awareness among public institutions and the general public on ATIA and ATI regulations.

CENSORSHIP AND CONTENT MODERATION

AI AND EMERGING TECHNOLOGIES

Malawi has no policy and regulatory framework on artificial intelligence (AI). ACHPR Resolution 473 calls on state parties to develop a 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.

However, AI conversation and innovation are on the rise in various sectors including academia. On August 23 and 24 2024, for example, the Malawi University of Business and Applied Sciences (MUBAS) organized a symposium on the application of AI in solving practical problems in various sectors including agriculture, finance, health, and communication in Malawi.⁵⁷⁹ The symposium brought together a diverse group of participants including academicians, students, researchers, and industry professionals. “AI has a lot of potential, and we can benefit significantly from it. Malawi is a very fertile ground for its application,” stated Dr. Anthony Ziba, the Head of ICT at MUBAS.⁵⁸⁰ Additionally, in May 2024, the Malawi University of Science and Technology developed a range of innovative AI solutions, including a car tracking system and an automated employee attendance system which are currently being implemented at the Malawi Revenue Authority (MRA).⁵⁸¹ The automated employee attendance system, which uses fingerprint scanning technology, aims to replace manual log books and enhance employee efficiency and accountability. At the same University, a team of Biomedical Engineering students developed a deep learning system to diagnose measles, boasting a rapid response time of 0.25 seconds compared to the conventional PCR method, which takes four hours. In 2023, with support of various USA Universities⁵⁸² Malawi launched its first-ever Centre for Artificial Intelligence and STEAM — Science, Technology, Engineering, Arts and Mathematics at the Malawi University of Science and Technology.⁵⁸³ The center seeks to promote the study and use of artificial intelligence, or AI, and STEAM for socioeconomic development. The rapid emergence of AI technologies in Malawi calls for swift policy and regulatory framework.

CONCLUSION

While Malawi has made notable strides on digital rights including the enactment of the Data Protection Act, the internet freedom in the coverage period declined slightly as authorities

578 C Kalolokeska, Malawi Human Rights Commission (MHRC) key informant interview (19 December 2024)

579 L Isaac “MUBAS strides in Artificial Intelligence application” (16 December 2024) <https://www.mubas.ac.mw/news/mubas-strides-in-artificial-intelligence-application-16-12-2024> (accessed 28 December 2024).

580 Ibid.

581 J Mpphande “MUST leads AI revolution with groundbreaking innovations” (20 May 2024) <https://www.must.ac.mw/posts/must-leads-ai-revolution-with-groundbreaking-innovations/details> (accessed 28 December 2024).

582 The US Universities include Baylor College of Medicine, Texas Tech University, Morehouse College, Colorado University, Georgia Southern University, Clemson University, New York University and Mercer University <https://www.must.ac.mw/posts/must-leads-ai-revolution-with-groundbreaking-innovations/details>

583 L Masina “US Universities Help Malawi Establish First AI Center” 13 October 2023 <https://www.voanews.com/a/us-universities-help-malawi-establish-first-ai-center-/7310638.html> (accessed 28 December 2024).

continued to clampdown on online journalists and other internet users for their critical expression. Criminalisation of speech is of great concern. The initiation of four new legislative bills on Cyber security is commendable, although there is need for strong public participation in the legislative processes. The rolling out of various digital inclusion initiatives under the Universal Service Fund will go a long way in expanding access to digital services particularly for the majority of the population currently offline. The current low digital penetration requires robust response by government including the review of taxation regime on ICT services and products.

Given the existing gaps, opportunities and recent developments in the digital space in Malawi, the following recommendations are made:

RECOMMENDATIONS

To the Government:

- Review the Electronic Transactions and Cybersecurity Act of 2016 to remove broad and vague provisions and offenses including sections 24(1) (e) and (f); and repealing defamation and sedition laws in the Penal Code
- Address strong suspicions of government surveillance of ICT activities using UFED system, a powerful technology designed to access and extract information from electronic devices such as phones and laptops sold by the Israel-based company Cellebrite
- Guarantee Freedom of Expression and Media freedoms
- Malawi Human Rights Commission to step up investigations of digital rights violations in accordance with its Constitutional human rights mandate
- Intensify implementation of the Malawi Digital Economy Strategy to ensure accelerated universal access to Internet and mobile services.
- Raising public and stakeholder awareness on the Data Protection Act
- Ratifying the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention).
- The Malawi Parliament should allocate funds to the Universal Service Fund (USF) in compliance with section 160(b) of the Communications Act.
- Facilitate consultations with stakeholders regarding the new Bills on Cyber security, and the review of the Communications Act
- Develop policy and regulatory frameworks for Artificial Intelligence (AI)

To Civil Society and the Media:

- Advocating for the review of the Electronic Transactions and Cybersecurity Act of 2016; and repealing of defamation and sedition laws in the Penal Code through engagement with authorities, public awareness, and litigation.
- Demand accountability on the procurement and deployment of UFED system for surveillance.
- Challenge criminalisation of freedom of expression by the State through litigation and law reform advocacy.
- Strengthen digital rights coalitions and networks to bolster civil society agency in digital rights advocacy.
- Demand accountability from the government on implementation of the Malawi Digital Economy Strategy to ensure accelerated universal access to Internet and mobile services.

- Raising public and stakeholder awareness on the Data Protection Act
- Advocate for Malawi's ratification of the African Union Convention on Cyber Security and Personal Data Protection (Malabo Convention)
- Monitoring the operations of the USF to ensure proactive disclosure of USF information every year, transparency, accountability, and effectiveness, while also advocating for the appropriation of funding by Parliament.
- Scrutinise the new Bills and the review of the Communications Act; to ensure alignment with acceptable international standards.

To Mobile Network Operators:

- 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.

To Academia:

- Provide intellectual leadership and guidance on issues of digital rights and inclusion.
- Conduct research on issues of digital rights and inclusion and emerging technologies such as Artificial Intelligence.

TheScore Index

Londa 2025 Key Indicators	ACHPR Declaration (P stands for Principle)	Score	Justification
Internet Shutdowns	P38(2)	5	No incident of internet shutdown
Inexistent laws, policies and other measures to promote universal, equitable, affordable and meaningful access to the internet	P37	4	Policies and laws are there but limited compliance. For example, Malawi has Communications Act, Digital Economy Strategy, Universal Service Fund, ICT Policy – but implementation is insufficient
False News Criminalisation	P22(2)	1	Section 60 of Penal Code, 87, 91, Electronic Transactions and Cyber Security Act, and Penal Code
Sedition Legislation	P22(2)	3	Sections 87, 91, Electronic Transactions and Cyber Security Act

Arbitrary Arrests and Harassments of the Media, HRDs and Citizens	P20(1) & (2)	2	Arrests of journalists and social media users
Data Protection Legislation.	P42	3	The Data Protection Act is in place. Regulations and Data Protection Authority not yet in place
States interfere and require the removal of online content by internet intermediaries	P38 and P39(4)	4	No incident recorded
Invasion of Privacy of Communications	P41	2	Police confiscation and search of journalist gadgets. The Court search warrant was obtained by Police.
Failure by the government to proactively disclose and disseminate information digital technologies.	P29(3)	4	Most government agencies have online presence including websites and social media platforms. However, proactive disclosure of information is limited
AI and Emerging Technologies national strategies	P39(6)	1	No AI Policy and regulatory framework despite emergence of AI Technologies
Adoption of specific child laws, policies and measures promoting children's digital safety and privacy online	P29(3)	3	Adoption of National Child Online Protection Strategy in 2024
Digital Inclusion	P37(3)	3	USF institutional establishment in place with active projects
TOTAL (up to 60)		35	

