

# LONDA



2021



**Malawi Digital Rights and Inclusion Report**

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**MALAWI DIGITAL RIGHTS AND INCLUSION 2021 REPORT**

A PARADIGM INITIATIVE PUBLICATION

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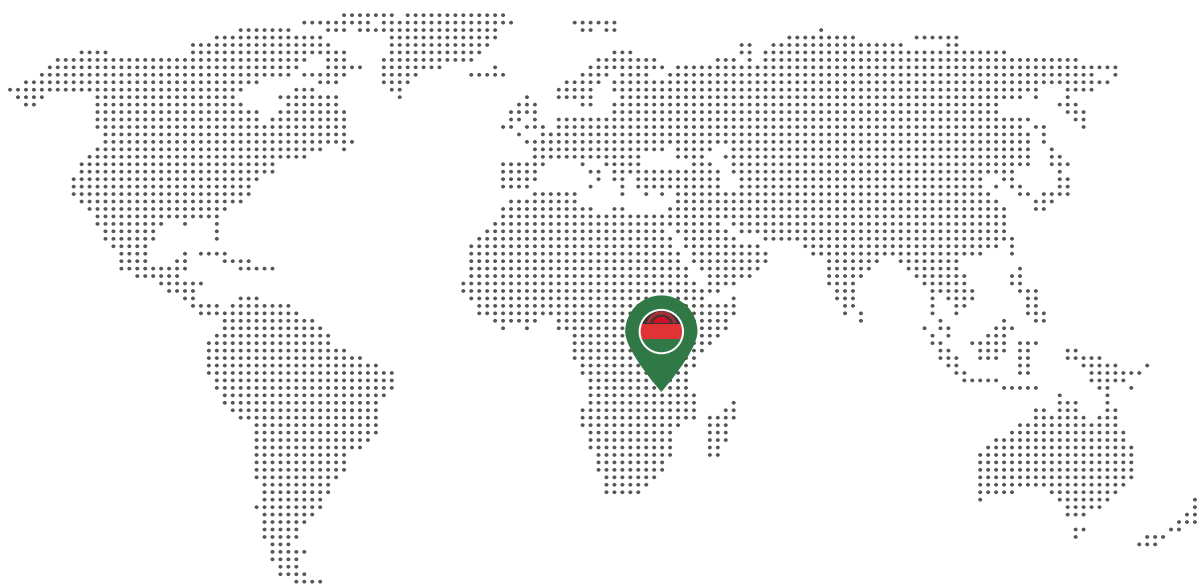
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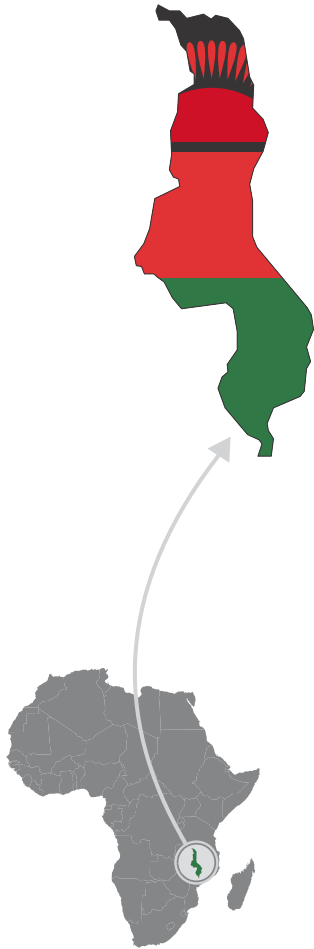
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## EXECUTIVE SUMMARY

This report maps the state of digital rights and inclusion in Malawi in 2021. It concentrates on the country's opportunities and threats to digital rights. The report has established Malawi's decline on the 2021 Internet Freedom ranking due to increased criminalisation of online speech.<sup>1</sup> Prohibitive cost of internet and mobile services; low levels of electricity access, and the absence of legislative and policy framework on personal data protection and Artificial Intelligence (AI) also remained major gaps. However, Malawi rolled out an ambitious five-year Digital Economy Strategy (2021-2025), and the Malawi 2063 (MW2063), the country's long term development plan. Both the Digital Strategy and MW2063 recognise investment in ICT as a critical enabler in industrialization of the economy. There were also significant strides in implementation of the Access to Information Act (ATI Act). The report recommends the following: repealing of defamation and sedition laws in the Penal Code and reforming the Electronic Transactions and CyberSecurity Act of 2016, to bring them into conformity with Malawi's international human rights obligations. In order to safeguard the right to privacy, Parliament should prioritise the enactment of the Data Protection Bill, currently in draft, and also ratify the African Union Convention on Cyber Security and Personal Data Protection. Critically, the government should expedite efforts in providing equal access to Internet and ICTs for all citizens, including marginalized groups. On ATI, the government should accelerate appointment of information officers in all public institutions in conformance to section 12 of the ATI Act. In relation to AI, the government should develop a national strategy on AI.



1. Freedom House 'Freedom on the Net 2021' (2021) <https://freedomhouse.org/country/malawi/freedom-net/2021> (accessed on 15 January 2022).



## INTRODUCTION

# DIGITAL RIGHTS AND INCLUSION IN MALAWI

Located in Southern Africa, Malawi shares its borders with Mozambique, Zambia and Tanzania. With an estimated population of 17.5 million, which is expected to double by the year 2038, about 51.7% of the population lives below the poverty line and 25% percent living in extreme poverty.<sup>2</sup> The per capita income has remained low, averaging US\$502 over the past decade.

Inequality has also remained high with a Gini Coefficient of 0.6.<sup>3</sup> Malawi's development is heavily donor and credit dependent. According to the National Planning Commission, *"As at June 2020, public debt stock was as high as K4.1 trillion (around US\$5.5 billion, representing 59 percent of national income) hence posing a threat to the socio-economic development of the country"*.<sup>4</sup>

In recent years, however, Malawi has made significant policy, legal and structural reforms in the ICT sector. As aptly noted by Kainja, *"there is steady increase in access and proliferation of the Internet and services in the country. Various mobile phone services such as mobile banking and mobile health are available, yet major challenges also remain"*.<sup>5</sup>



**K4.1 TRILLION**  
PUBLIC DEBT STOCK

2. International Monetary Fund 'Country Report No. 17/184' (2017) file:///C:/Users/User/Downloads/cr17184.pdf (accessed on 17 January 2022).

3. National Planning Commission 'Malawi 2063'.

4. As above.

5. J Kainja 'Laws Restricting Internet Freedom in Malawi' (2021).

## COMPLIANCE WITH REGIONAL AND INTERNATIONAL FRAMEWORKS

Malawi is a State party to key international human rights treaties in relation to freedom of expression (FoE) and access to information (ATI). These instruments include:

- the African Charter on Human and Peoples Rights;
- Universal Declaration on Human Rights (UDHR);
- 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. Notably, however, Malawi has neither signed nor ratified the African Union Convention on Cyber Security and Personal Data Protection.<sup>6</sup>

### FREEDOM OF EXPRESSION

Sections 34 and 35 of the Constitution of Malawi and Article 9 of the African Charter on Human and People's Rights (African Charter) guarantee freedom of opinion and expression. While at face value Malawi has a permissive legal and policy regime guaranteeing freedom of expression, in practice, this fundamental right continues to face significant restrictions. According to the Freedom House, in 2021, Malawi's ranking on internet freedom declined, as the government intensified criminalisation of freedom of expression online.<sup>7</sup> Authorities arrested five individuals, two of whom were convicted using criminal defamation and cyber security laws.

On 25 June 2021, the senior magistrate Court in the capital city Lilongwe convicted and sentenced Ignatius Kamwanje to a K 200,000 (US\$ 270) fine or to 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' accounts.<sup>8</sup> Kamwanje was convicted for the offence of 'spamming' under section 91 of the Electronic Transactions and CyberSecurity Act of 2016.<sup>9</sup>

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

6. 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 10 February 2022).

7. Freedom House 'Freedom on the Net 2021' (2021) (accessed on 15 January 2022).

8. C Chinoko 'Court convicts Facebook user over malicious post' (22 June 2021) Court convicts Facebook user over malicious post - The Nation Online (mwntation.com) (accessed on 15 January 2022).

<https://www.mwntation.com/court-convicts-facebook-user-over-malicious-post/> (accessed on 14 January 2022).

9. 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".

police custody under questionable circumstances.<sup>10</sup> 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 (US\$ 64) or in default serve a one month jail term.

In July 2021, police arrested Joshua Chisambe, a social media critic of President Chakwera's administration over his Facebook post.<sup>11</sup> Similarly, a 20-year-old girl, Chisomo Makala, was arrested for reportedly sharing on social media a video clip that appeared to ridicule President Chakwera.<sup>12</sup> Makala was arrested in Lilongwe after police traced a phone number that she had used to share the video clip on a WhatsApp group called '*Mandota Comedy*'. She was released on bail.

On 6 April 2021, a freelance journalist, Watipaso Mzungu was summoned to national police headquarters in Lilongwe over the online story he published on Nyasa Times which was deemed critical of the President.<sup>13</sup> The Media Institute of Southern Africa (Malawi Chapter) condemned the police's action describing it as an attack on media freedom.<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup>



10. The Malawi Post 'Be warned! Malawi Court fines woman over fake viral voice note' (10 May 2021) <https://www.maravipost.com/be-warned-malawi-court-fines-woman-over-fake-viral-voice-note/> (accessed on 14 January 2022).

11. Chisambe posted a series of Presidents of different countries who were deposed while out of their countries. This was at a time President Chakwera was in London. He was verbally told by the Police that he was being detained on allegations of "incitement". However, after spending two nights in Police cell at Area 18 in Lilongwe, he was released without a charge. See <https://www.malawivoice.com/2021/07/28/ralph-kasambara-warns-police-for-arresting-chakwera-social-media-critic-joshua-chisa-mbele/> (accessed on 12 January 2022).

13. Centre for Human Rights and Rehabilitation "A call to the Chakwera administration to drop all court cases related to freedom of expression and to repeal all laws that suppress freedom of expression" (24 January 2021).

S Chitete 'Police chief justifies journalists' questioning' (7 April 2021) <https://www.mwnation.com/police-chief-justifies-journalists-questioning/> (accessed on 15 January 2022).

14. As above.

15. R Kondowe 'Journalist Arrested Over Fake News' (27 February 2021) <https://malawi24.com/2021/02/27/journalist-arrested-over-fake-news/> (accessed on 18 January 2022).

16. Freedom House 'Freedom on the Net 2021' (2021).



**Section 36 of the  
Malawi Constitution  
guarantees freedom  
of the press.**

This pattern of crackdowns on online dissent and the climate of intimidation may prompt a degree of self-censorship, especially among media practitioners and social media users.<sup>17</sup> Section 36 of the Malawi Constitution guarantees freedom of the press. In addition, Principle 20(1) of the African Commission on Human and Peoples' Rights (ACHPR) Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019 (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.*'<sup>18</sup>

## 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. In 2021, the Government registered some significant milestones in implementation of the ATI Act. It adopted the ATI Act regulations, and established the ATI Unit under the Malawi Human Rights Commission (MHRC), to oversee overall operationalization of the Act. In addition, 160 information officers were deployed to 123 public institutions.<sup>19</sup> MHRC also developed a comprehensive road map for the operationalization of the Act, conducted a legal and technical analysis of ATI Act, and translated its regulations into local languages.<sup>20</sup>

However, there is non-compliance by some public institutions in designating information officers, hence undermining citizens' access to information. In addition, 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.<sup>21</sup> 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.<sup>22</sup> There was also a low level of awareness among public institutions and the general public on ATIA and ATI regulations. The MHRC also cited COVID-19 protective measures as a challenge which slowed down implementation of some activities.<sup>23</sup>

17. As above

18. African Commission on Human and Peoples' Rights (ACHPR) Declaration on Freedom of Expression and Access to Information <https://www.achpr.org/legalinstruments/detail?id=69> (accessed on 14 January 2022).

19. P Kachinziri 'Government tough on information access'. <https://times.mw/government-tough-on-information-access/> (accessed on 14 January 2022).

20. Malawi Human Rights Commission's PowerPoint presentation made at the International Day on Universal Access to Information in Salima on 30 September 2021.

21. Times News 'Questions over reforms report secrecy' (22 May 2021) <https://times.mw/questions-over-reforms-report-secrecy/> (accessed on 19 January 2022).

22. P Kachinziri 'Government tough on information access' <https://times.mw/government-tough-on-information-access/> (accessed on 19 January 2022).

23. As above.



## DIGITAL INFRASTRUCTURE AND PRIORITIZATION OF ICT



Malawi has in recent years made significant policy and structural reforms in ICT. 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.<sup>24</sup> Among others, on 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 scraping off the 3.5% revenue tax for telecom providers which are significant drivers of high costs of internet and mobile services in Malawi.

Further, Government targets to increase device ownership from 51% to 80% and access to energy to 20%. On digital finance services, the

Government seeks to achieve a 30% increase in mobile bank accounts, thus targeting an additional 2.1 million Malawians. In relation to digital skills, the Strategy seeks to increase availability of relevant digital skills and literacy in secondary schools, aimed at increasing the pass rate from 50 % to 80 % by 2026. The Malawian government also continued to operate the Universal Service Fund (USF) aimed at increasing access to ICTs through expansion of mobile networks across the country.<sup>25</sup> As of 2021, the country had over 20 operational Internet Service Providers.<sup>26</sup> Further, social media platforms continue to be actively vibrant in giving citizens a voice and influencing policy debates. As aptly stated by Kainja, *'Social media has given Malawians the means to hold power to account, to shape policies, talkback to authorities and to push for improved governance'*.<sup>27</sup>

24. World Bank 'Malawi Economic Monitor : Investing in Digital Transformation' (23 June 2021) <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/131501624458623473/malawi-economic-monitor-investing-in-digital-transformation>(accessed on 19 January 2022).

25. J Kainja.

26. Malawi InternetService Providers Association (MISPA) <http://www.mispa.org.mw/members.html> (accessed on 21 January 2022).

27. J Kainja 'The State of Internet and Social Media Use in Malawi: Where Are We?' PowerPoint Presentation (accessed on 22 February 2022).

Despite notable strides, the penetration and utilisation of ICTs remained significantly low.<sup>28</sup> The most recent survey shows that only 43.2% of Malawians own a mobile phone, and landline penetration is only around 1%. Only 14.6% used the internet, 9.3% of whom are in rural areas as compared to 40.7% of urban areas.<sup>29</sup> Strikingly, a recent survey by the Malawi Communications Regulatory Authority (MACRA), established that 46% of Malawians say they don't use the internet because they don't know what it is, and 2.4% say they don't use it because it is too expensive.<sup>30</sup> Thus, high digital illiteracy remains a major setback in Malawi's digital space. Reiterating the significance of the Internet in fulfilment of other fundamental democratic rights such as freedom of expression and access to information, the 32nd session of Human Rights Council (2016) affirmed that the same rights enjoyed offline must also be protected online.<sup>31</sup> Therefore, access to the Internet must be universal and affordable for all citizens.

The country's telecommunications sector is a duo monopoly, with two companies, Telekom Networks Malawi Limited (TNM) and Airtel Malawi Limited who control a market share of 99.6% between them.<sup>32</sup> MTL and ACL are the only landline telephone companies both, with 0.1 % market penetration.<sup>33</sup> Only 76.2% of the country is covered by mobile network, inclusive of 2G, 3G and 4G;<sup>34</sup> thus, around 4.1 million Malawians have no access to mobile network coverage, eventually unable to

use the Internet and other mobile services. Inadequate ICT infrastructure, inadequate investment and high taxes are major drivers of low internet penetration. For example, in 2021, the government maintained a 17.5% value-added tax (VAT) on mobile phones and services, a 16.5% VAT on Internet services, and 10 % excise duty on mobile phone text messages and Internet data transfers.<sup>35</sup> Consequently, access to the Internet is exorbitant for a majority of the population, particularly the rural masses.

Unreliable electricity also heavily strains Malawi's ICT sector. Only 12.7 percent of the country's population has access to electricity.<sup>36</sup> The urban electricity penetration is only 25 %, compared to a mere 1% of rural households.<sup>37</sup> Those with access to electricity also face frequent blackouts. Notably, due to interrupted power supply, half of Malawi's private businesses rely on heavy backup generators, pushing cost of production by firms high, which in turn are compensated through prohibitive costs of services on the market.<sup>38</sup>



**Access to the internet must be  
universal and affordable to all citizens.**

26

28. Freedom House 'Freedom on the Net 2021' (2021).

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

30. J Kainja 'The State of Internet and Social Media Use in Malawi: Where Are We?' PowerPoint Presentation (accessed on 22 February 2022).

31. UN Human Rights Council 'Report of the Human Rights Council on its thirty second session' <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/008/73/PDF/G2000873.pdf?OpenElement> (accessed on 22 February 2022).

32. J Kainja 'Mapping Digital Surveillance and Privacy Concerns in Malawi' (November 2021) <https://www.mediaanddemocracy.com/> (accessed on 1 March 2022)

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

34. GSMA Mobile Connectivity Index

<https://www.mobileconnectivityindex.com/#year=2019&zonsocode=MWI&analysisView=MWI&comparison=1&geographys=MWI,ZMB,TZA,MOZ&metricsIndex=overall> (accessed 17 January 2022).

35. Freedom House 'Freedom on the Net 2021' (2021). (accessed on 21 January 2022).

36. The World Bank 'Access to electricity (% of population)' (26 February 2020)

<https://data.worldbank.org/indicator/EG.ELC.ACCS.ZS?locations=MW> (accessed on 17 January 2022).

37. Freedom House 'Freedom on the Net 2021'

38. As above.

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”.<sup>39</sup> Thus, electrical power challenges adversely affect the delivery of ICT services and the economy at large.<sup>40</sup>

Implementation of the government's ICT initiatives were also marred by serious challenges. For example, in September 2021, the new political administration announced abolition of the Community Telecentre Program, a program aimed at expanding access to ICT services to members of the public, especially underserved rural communities.<sup>41</sup> It cited politicisation and lack of sustainability plan of the Program by the previous political administrations. The government stated that it will instead prioritize a new program, “Connect a School”.

However, civil society groups expressed concerns over government's lack of transparency and accountability in its decision to abandon the Telecentre program demanding that government should “provide a detailed report on the status of the Connect a Constituency Telecentre program and government's justification of its decision to abandon this program as announced by the Minister of Information”.<sup>42</sup> In addition, despite completing a National Optic Fibre Backbone Project in April 2018, promising to deliver faster internet services, as of December 2021, the project's benefits were yet to be seen.<sup>43</sup> Stakeholders also raised concerns over the government's lack of accountability in the management of the USF.<sup>44</sup>



43.2%

OF MALAWIANS OWN  
A MOBILE PHONE



1%

LANDLINE PENETRATION



14.6%

MALAWIANS USE  
INTERNET

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

40. O Chipwanya 'Improved power supply offers business relief' (19 January 2019) <https://mwntation.com/improved-power-supply-offers-businesses-relief/> (accessed 17 January 2022)

41. YAS,DCT and Oxfam's press statement 'Communique On High Level Multistakeholder Conference On Access To Information' (11 October 2021).

42. As above (41)

43. N Tobor 'Malawi to enjoy faster Internetspeeds as the Malawi National Optic Fibre Backbone Project nears completion' (2 February 2018) <https://www.iafrikan.com/2018/02/02/malawi-national-optic-fibre-backbon> (accessed 15 January 2022).

44. YAS, DCT and Oxfam's press statement.

## PRIVACY, DIGITAL IDS AND SURVEILLANCE

The right to privacy is provided under section 21 of the Constitution. The major win for Malawi in 2021 was the development of the long awaited Data Protection Bill, 2021. Overall, the Bill seeks to protect the right to privacy of the individual in line with Malawi's obligations under international human rights law.<sup>45</sup> However, according to CIPESA, while the Bill contains various positives including core principles on 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 MACRA as prescribed under section 4 of the Communications Act, 2016,<sup>46</sup> may significantly undermine and limit the financial, decisional and institutional independence of the DPO.<sup>47</sup>

Malawi continued to enforce the mandatory registration of sim cards as prescribed by the Communications Act, 2016. Use of unregistered SIM cards is punishable under section 93(3) of the Communications Act with a fine of 5 million kwacha (\$6,400) and five years imprisonment. This undermines citizens' ability to communicate anonymously via mobile phones, and perpetuates digital exclusion as individuals without official IDs are unable to register.<sup>48</sup> Further, in the absence of data protection law, the mass personal data collection has increased the possibility of state surveillance.<sup>49</sup>

## IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS AND INCLUSION IN MALAWI

The pandemic continued to ravage Malawi's economy and public health system. 2,364 people died of COVID-19, as of 31 December 2021.<sup>50</sup> With restrictions put in place to control the spread of COVID-19, the ICT sector continued to play a critical role in providing Malawians with a safe means of communication.

Various online platforms helped in the dissemination of crucial COVID-19 messages. Businesses heavily relied on ICT to continue amidst the pandemic.<sup>51</sup> Notably, the cost of living turned unbearable for most Malawians particularly the poor, attracting a wave of citizen protests in major cities.<sup>52</sup>

Mismanagement of COVID-19 funds was a major issue of public concern in the year. Most public institutions failed to provide reports to the Presidential Task Force on COVID-19 on how they had spent 6.2 billion MWK (US\$7.9 million), two weeks after the President had ordered them to do so.<sup>53</sup>

As of February 2021, most public institutions had not accounted for 17 billion MWK (US\$21 million) that the central government had disbursed. In February 2021, President Chakwera suspended several heads of public institutions for failure to

45. 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>

46. Communications Act, 2016 of the Republic of Malawi <https://macra.mw/wp-content/uploads/2021/04/COMMUNICATIONS-ACT-2016.pdf>

47. 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 17 January 2022).

48. C Handforth & M Wilson "Digital Identity Country Report: Malawi" (2019) [https://www.macra.org.mw/?page\\_id=9582](https://www.macra.org.mw/?page_id=9582) (accessed on 17 January 2022).

49. J Kainja 'Are Malawians Sleepwalking into a Surveillance State?' (12 August 2019) <https://mwnation.com/are-malawians-sleep-walking-into-a-surveillance-st> (accessed on 17 January 2022).

50. Ministry of Health 'Ministry of Health's Covid-19 Situation Update' (31 December 2021)

51. J Kainja 'Laws Restricting Internet Freedom in Malawi'

52. L Masina 'Malawians Protest High Cost of Living' (2 November 2021) <https://www.voanews.com/a/malawians-protest-high-cost-of-living/6296985.html> (accessed on 17 January 2022).

53. W Gwede 'Heads roll in Malawi civil service: 10 PS, 28 DCS interdicted' (17 February 2021) <https://www.nyasatimes.com/more-heads-roll-in-malawi-civil-service-10-ps-28-dcs-interdicted/> (accessed on 8 March 2021).



## THE USE OF MOBILE MONEY SYSTEM

report on their use of funds.<sup>54</sup> Chakwera also fired his Minister of Health for alleged abuse of COVID-19 recovery funds. Principles 29(1) and (2) of the Declaration are instructive that public bodies should proactively make information including budget expenditures available to the public.

In a bid to cushion vulnerable and low-income households from the socio-economic shocks of the COVID-19 pandemic, in February 2021, the government rolled out the COVID-19 Emergency Urban Cash Transfer Intervention (CUCI) to support vulnerable households with a three-month subsistence allowance. The cash transfers had a monthly cash payment of MK35, 000 (\$43) over a period of three months, and were delivered using a mobile money system. Two mobile companies, TNM and Airtel Malawi were contracted as disbursement agents.<sup>55</sup> However, use of mobile money facilities disadvantaged poor households that did not have mobile phones or have registered mobile money accounts.



## INTERNET DISRUPTIONS

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 block social media platforms. While in 2021, there were no reports of state-linked internet disruptions in Malawi, the existence of Article 24 above continues to pose a threat to freedoms online. 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.

## DIGITAL EXCLUSION AND HUMAN RIGHTS

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.”<sup>56</sup> However, the high costs of internet and mobile services and inadequate ICT infrastructure continue to shut out the poor, who are largely rural-based on digital services like mobile banking and money services that could help lift them out of poverty. Notably, the 2021 Inclusive Internet Index report, ranks Malawi as very poor on all four of its indicators: internet availability, affordability, relevance, and readiness.<sup>57</sup> Freedom House attributes this poor rating to “rising costs of the Internet due to poor infrastructure management and lack of investment”.<sup>58</sup> The digital divide between the rural and urban areas is also widening.<sup>59</sup>

54. L Masina 'Malawi President Sacks COVID-19 Fund Heads over Alleged Abuse of COVID Funds' VOA 15 February 2021 <https://www.voanews.com/africa/malawi-president-sacks-covid-19-fund-heads-over-alleged-abuse-covid-funds/> (accessed on 8 March 2021).

55. L Tembo 'Cash transfers help families during COVID-19' 14 May 2021 <https://www.unicef.org/malawi/stories/cash-transfers-help-families-during-covid-19>

56. Communications Act of the Republic of Malawi, 2016 <http://www.macra.org.mw/wp-content/uploads/2014/07/Communications-Act-2016.pdf> (accessed on 15 January 2022).

57. The Inclusive Internet Index (2020) <https://theinclusiveinternet.eiu.com/explore/countries/performance/avai> (accessed on 15 January 2022).

58. Freedom House 'Freedom on the Net 2021'.

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

In terms of cost of mobile services and internet, in 2021, the two major mobile service companies, Airtel and TNM reduced their cost of internet. In May, the cost of 1GB and 4GB bundles were slashed down by between 10% and 31% respectively.<sup>60</sup> The reduction in prices followed the engagement between the country's regulator, MACRA, and the two companies. Airtel Malawi also removed the validity period for its 1GB internet bundles. Despite the reduction in bundle prices, the cost of internet and mobile services in Malawi remained exorbitantly high.

## ARTIFICIAL INTELLIGENCE NATIONAL STRATEGY

Malawi's Artificial Intelligence (AI) industry is at a nascent stage.<sup>61</sup> Notably, Malawi does not have legislation and national strategy on 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.<sup>62</sup>

## HATE SPEECH, MISINFORMATION AND CRIMINAL DEFAMATION LAWS

Malawi did not make any progress in repealing defamation and sedition 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. Furthermore, the government also uses sedition laws in sections 50 and 51(3) of the Penal Code to crack down on critics of the government or the president. 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.'*

In addition, section 60 of the penal code prohibits *'publication of false news likely to cause breach of peace'*. Such provisions on 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.'*<sup>63</sup> 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.<sup>64</sup>

## GENDER AND ICT

The 2021 Global Gender Gap Index ranks Malawi in position 115 out of 156 countries.<sup>65</sup> The gender divide in ICT access and usage remained persistent. According to the World Bank, 44.9 % of men own mobile phones as compared to 37.7% of women.<sup>66</sup> 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. Thus, it is critical for the government to implement interventions to increase ICT access and use among women.



60. J Kainja 'Malawi Telcos Further Reduce Data Prices But Affordability Concerns Remain' 20 May 2021 <https://cipesa.org/2021/05/malawi-telcos-further-reduce-data-prices-but-affordability-concerns-remain/> (accessed on 15 January 2022).

61. D Malanga 'Framing the impact of artificial intelligence on the protection of women's rights in Malawi' (2019) <https://giswatch.org/node/6179> (accessed on 16 January 2022).

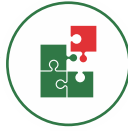
62. As above.

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

64. *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 22 January 2022).

65. Global Gender Gap Index (2021) [https://www3.weforum.org/docs/WEF\\_GGGR\\_2021.pdf](https://www3.weforum.org/docs/WEF_GGGR_2021.pdf) (accessed on 21 January 2022).

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



## CONCLUSION

The rolling out of the ambitious Digital Economy Strategy (2021-2026) coupled with the development of Malawi2063 which places ICTs at the heart of its success, demonstrated Malawi's commitment towards expanding the country's digital infrastructure, and realisation of digital rights.

The drafting of the Personal Data Protection Bill was a significant step in ensuring the country's obligation in upholding the right to privacy of all individuals. However, the wanton crackdown on online freedoms through arrests and criminal convictions continued to undermine freedom of expression.

Further, prohibitive costs of internet and mobile services, low access to energy, and low ICT literacy levels remained a major threat to Malawi's development prospects and realisation of digital rights especially among the marginalised groups including women and rural-based Malawians.



***The Malawian government has to  
take significant steps in upholding  
digital rights of all Malawians.***



## RECOMMENDATIONS

In view of the prevailing digital rights climate in Malawi, the following recommendations should be considered:

### The Government

- Repeal defamation and sedition laws in the Penal Code, and amend sections 24(1) provisions (e) and (f) of the Electronic Transactions and CyberSecurity Act of 2016.
- Guarantee freedom of expression online and media freedoms.
- Parliament to prioritise enactment of a Data Protection law to provide for protection of personal data.
- 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, including rural populations, women and people with specific needs.
- 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.
- Expedite appointment of information officers in all public institutions in conformance to section 12 of the ATI Act.
- Provide adequate resources to the Malawi Human Rights Commission to ensure it discharges its oversight role over the implementation of the ATI Act.
- Intensify public awareness on ATI Act.
- Develop legislation and a national strategy on Artificial Intelligence (AI).
- Ratify the African Union Convention on Cyber Security and Personal Data Protection.
- Bridge the gender digital divide by implementing interventions to increase ICT access among women such as increased budgetary allocations for ICT services targeting women and girls.



### **The Civil Society**

- Step up advocacy efforts on decriminalisation of freedom of expression.
- Monitor the implementation of Malawi's five-year Digital Economy Strategy (2021-2026).
- Lobby and demand urgent enactment and implementation of data protection law.
- Advocate for Malawi's ratification of the African Union Convention on Cyber Security and Personal Data Protection.
- Intensify multi-stakeholder engagement on inclusive and affordable access to the Internet and mobile services.
- Establish protection mechanisms for victims of digital violations.

### **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.

**Londa 2021 expands on last year's report with findings from 22 countries, examining themes of privacy, freedom of expression, access to information, segmentation and exclusion, digital transformation, affordability, gender and others within existing legislative frameworks, and against the backdrop of a widening digital divide. This edition captures the gaps and proffers recommendations to achieve a digitally inclusive and rights - respecting Africa.**



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