

The State of Civic Space Under the Tonse Alliance Administration

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YOUTH AND SOCIETY

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Economic Freedom for All

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Access to information

Gains

- The administration has honoured its campaign promise to implement the access to information (ATI).
- The policyholder, Malawi Human Rights Commission (MHRC), has also issued regulations, a key component in the operationalization of the law.
- MHRC has also established ATI Unit within the Commission dedicated to ATI oversight.
- The MHRC has been conducting public awareness of the law through the media and training information officers.

Gains continued

- Some public institutions have already appointed information officers as required by section 12(1)(a) of the Act.
- The Government has introduced a public portal that registers all the companies providing services to the government.
- The State President has made himself available to Parliament to take and respond to questions.
- The Government has implemented the Political Parties Act, which is critical for the public to access information about political parties, their source of funding etc.

Access to information

Gaps

- Although some public institutions have proactively appointed information officers, there is a lack of enforcement to appoint or designate these officers for the rest of the public institutions.
- There is no public register of information officers appointed and the respective institutions' names as provided under section 3(3) of the ATI Regulations.
- The MHRC is insufficiently funded and lacks resources to disseminate information to the public, including people with disabilities and special needs.

Gaps continued

- The internet is a conducive platform for accessing information, yet, only 14.6% of the population have access to the internet.
- Over 20% of people live in areas not covered by a mobile network, which enables people to access the internet.
- There is no whistle-blower protection to encourage people to reveal information on wrongdoing without the fear of reprisals, including losing their jobs.
- While the principle behind ATI is to promote openness and accountability, the country still has laws that conflict with the ATI law, the Official Secrets Act, for example.

Freedom of expression

Gains

- The State House Communications Team engages with the public through the media, “Meet the Press”, for example.
- The media and the general public can write, engage freely, and interact with government officials in their offices and even on social media.
- The Parliament has repealed the sedition laws in the Penal Code, which all the previous governments used to restrict freedoms of expression and opinion and silence critical voices.
- Thus, the amendment bolsters the enjoyment of Freedom of expression.

Freedom of expression

Gaps

- Several laws limit Freedom of expression; these laws need to be reviewed, like the Electronic Transactions and Cyber Security Act, 2016 and laws criminalizing defamation.
- Section 61 of the penal code imposes criminal sanctions against the defamation of foreign dignitaries.
- Section 60 of the penal code also prohibits the ‘publication of false news likely to cause a breach of peace’.
- Principle 22(2) of the African Commission on Human and People’s Rights Declaration on Access to Information and Freedom of Expression provides that States must ‘repeal laws that criminalize sedition, insult and publication of false news.

Gaps continued

- The undue enforcement of regulation by MACRA has forced some media institutions to close.
- ... about 20 radio stations and three TV stations were shut down in 2022 due to delayed payment of annual licence fees.
- Crucially, the annual fees, costing the equivalent of US\$5,000, were prohibitively exorbitant for most media operators, particularly community radios.
- As noted by MISA, “the revocation of licenses is too drastic and can be construed as a systematic violation of freedom of expression in the country” .

Gaps continued

- Freedom of expression allows people to express themselves but also to hear the views and opinions of others, media is an enabler of this right.
- While online platforms have been vibrant, allowing those with access to the internet to express themselves, there has also been the criminalization of Freedom of expression.
- ... especially when it is the influential people and powerful institutions that have been offended.
- In particular, the Electronic Transaction and Cyber Security Act 2016 has been weaponized to criminalize free expression, and there has been a lack of police accountability for their decisions and actions.

Freedom of Association and Freedom of Assembly

Gains

- The Mandatory registration for NGOs and CSOs with Council for Non-Governmental Organizations in Malawi (CONGOMA) has been removed.
- Removing the burden of dual registration on NGOs and CSOs with CONGOMA and the NGO Board.
- The NGO Amendment Act 2022 has provided for the regularisation of partnerships between local and International NGOs through a provision to have regulations for the registration and operations of international NGOs in Malawi.

Gains continued

- CSOs are generally allowed to operate within Malawi, which has allowed more CSOs to advance social issues in the mainstream spaces;
- ... this is against a background of Human Rights Defenders Coalition (HRDC) dominance between 2018 to 2020.
- The judiciary has continuously reaffirmed the right to demonstration;
- ... there has been the appointment of more judges in the judiciary, which will help to speed up cases.
- There has been increased allocation of resources to key governance institutions, including the Anti-Corruption Bureau (ACB), the MHRC and the Office of the Ombudsman.

Freedom of Association and Freedom of Assembly

- **Gaps**
- On 23rd March 2022, Parliament passed the Non-Governmental Organizations (NGO) Amendment Bill, ignoring an injunction some CSOs obtained against the tabling of the Amendment Bill.
- The NGO Board must be renamed NGO Authority without additional powers and mandate; the Act must also be amended so that the Board's composition varies and diversifies the current 70-30% composition.
- The NGO Amendment Act has increased the stake of liability for board members.
- The NGO Amendment Act 2022 has also imposed prohibitive registration and subscription fees.

Gaps continued

- Section 50 of the Employment (Amendment) bill is of great concern as it empowers employers to deduct wages from employees who are absent from work for more than three (3) days in a year for participating in industrial action.
- Despite the strong opposition, President Chakwera assented to the Bill on 7th October 2021.
- There have also been covert efforts by the government to weaken the Teachers Union of Malawi (TUM) by splitting the TUM into two factions, with secondary teachers forming their own body.
- The government intimidated TUM, threatening that the government would stop deducting membership fees from teachers' salaries on behalf of TUM, which could weaken TUM's financial position and operations.

Gaps continued

- The government has appointed some influential HRDC leaders into public service, including diplomatic posts.
- HRDC has since 2018 played a critical role in mobilizing citizens to demand better governance and human rights protection in Malawi.
- These state tactics threaten the legitimacy and integrity of HRDC work; it reduces public trust in the work and intention of HRDC and CSOs in general.
- There has also been notable intimidation of CSO leaders, arrests and attacks (including online).
- Thus, unlawful and bureaucratic means are deployed to intimidate civil society leaders, especially when planning demonstrations.

Gaps continued

- There has also been deliberate polarisation and demonization of demonstrations and mushrooming of groups that masqueraded as civil society.
- Law enforcement agencies have promoted vigilantism during protests by partnering with business owners to install citizen policing units around business premises, carrying machetes.
- There has been growing impunity for overzealous public servants, political agents and law enforcement agents who intimidate and attack civil society leaders.
- Although appointing more high court judges is a welcome development, appointing many judges in a short time can be counterproductive as it creates opportunities for undermining judicial independence.

Digital Rights

- In 2016 the UN Human Rights Council affirming that the same rights that people have offline must also be protected online.
- Thus, digital rights are human rights online; it enables people to enjoy freedoms of expression, association, assembly and access to information.
- However, there are multiple issues affecting digital rights in Malawi.
- These include access to the internet, instances of the use of state surveillance apparatus for repressive purposes and prosecutions and lack of data and online privacy protections.

Access to the internet

- The MACRA is mandated to ensure that "... so far as it is practicable, every citizen in Malawi must have access to sufficient, reliable and affordable communication services."
- However, only 14.6% of Malawians have access to the internet.
- 9.3% of internet users are in rural areas, where most of the population live.
- A significant number of Malawians (46%) say they don't use the internet because they don't know what it is.

Access to the internet continued

- Access to the internet is a primary requirement for people to enjoy digital rights.
- Achieving this also requires infrastructure, including affordable internet data, gadgets, reliable electricity and mobile network connectivity.
- A 2019 GSMA report found that 72.6% of Malawi has mobile network coverage.
- According to Freedom on the Net 2022, mobile connectivity in Malawi is usually "slow, sluggish and unreliable."

Privacy and data protection

- The Constitution of Malawi protects privacy under section 21.
- Yet, Malawi lacks a data protection law, particularly for the digital age, which is critical in ensuring safety and protection online.
- Without data protection, the safety of people's data and the right to privacy is not guaranteed.
- The government is aware of the legislation gap given a draft Data Protection Bill (2020), which aims “to make provision for the protection of personal data, for regulation of the processing of personal data, and for matters connected therewith or incidental thereto.”
- Meanwhile, personal data is being collected and centralized through digital ID. The Data Centre has been given the go-ahead without a robust data protection law.

Surveillance

- Data centralization paves the way for state surveillance, and in Malawi, evidence of state surveillance is emerging.
- Over eight people were arrested between 2021 and 2022, and two have been convicted for their various online activities (see Case Study 3.3).
- However, one thing that stands out from these arrests is that those detained had allegedly offended influential people in the country, including the State President, a Member of Parliament and one of the big banks.
- This points to abuse of the power to stifle digital rights, particularly Freedom of expression.

Recommendations

Government:

- Refrain from criminalisation of freedom of expression and guarantee media freedoms, access to information, assembly and association.
- Refrain from all forms of surveillance in citizens' private social media conversations
- Repeal criminal defamation laws in the Penal Code, and review the Electronic Transactions and CyberSecurity Act of 2016.
- Review ATI Regulations to empower MHRC to give penalties / sanctions against non-compliance with the ATI law.
- Expedite the enactment and implementation of the whistle-blower protection law.
- Expedite enactment of the Data Protection Bill into law to provide for protection of personal data.

- Ratify the African Union Convention on Cyber Security and Personal Data Protection.
- MACRA should bolster transparent and effective management of the Universal Access Fund (USF), and roll out the USF Strategic Plan (2022-2027) to improve universal access to internet and mobile services.
- Review the prohibitive MACRA's licensing fees for media institutions to enable them satisfy their licensing obligation without undue pressure.
- Enforce sanctions against public officials who deliberately flout legal procedures to frustrate the enjoyment of freedoms and human rights in the civic space.

- Recognize and reward public officials who uphold and facilitate the enjoyment of freedoms and human rights in the civic space.
- Bolster the financial capacity of key governance and human rights institutions such as the MHRC and ACB to enable them discharge their oversight duties competently.
- Intensify implementation of the Malawi Digital Economy Strategy to ensure accelerated universal access to Internet and mobile services
- Remove barriers to internet and mobile services access particularly prohibitive taxes on internet and mobile services

Civil Society:

- Challenge the government's growing crackdown and criminalisation of freedom of expression through engagement, litigation and law reform advocacy.
- Step-up advocacy on enactment of the Data Protection Bill into law.
- Monitor the implementation of Malawi's five-year Digital Economy Strategy (2021-2026)
- Invest in digital literacy programs for the rural masses

Civil Society:

- Establish protection mechanisms for victims of digital rights violations
- Support capacity strengthening of law enforcement agencies including Police and Judiciary in digital rights and civic space issues
- Strengthen coalitions and networks to bolster civil society resilience and agency in human rights and governance advocacy.
- Hold the government accountable for its international human rights obligations through national, regional and international mechanisms.

Media:

- Ensure compliance with regulatory laws and policies to pre-empt State encroachment of media space.
- Advocate for the review of MACRA's licence fees
- Uphold professional ethics in reporting to avoid misinformation and disinformation.
- Bolster advocacy in defending freedom of expression, media freedoms and access to information

Development partners:

- Strengthen support to civil society on civic space and media freedoms.
- Intentionally leverage on the diplomatic avenues to engage Malawi Government authorities on the shrinking of civic space.