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Malawi

Country:

Malawi

Year:

2017

Status:

Partly Free

Total Score:

42

(0 = Best, 100 = Worst)

Obstacles to Access:

16

(0 = Best, 25 = Worst)

Limits on Content:

11

(0 = Best, 35 = Worst)

Violations of User Rights:

15

(0 = Best, 40 = Worst)

Population:

18.1 million

Internet Penetration:

9.6%

Social Media/ICT Apps Blocked:

No

Political/Social Content Blocked:

No

Bloggers/ICT Users Arrested:

No

Press Freedom Status:

Partly Free

Key Developments:

June 2016–May 2017

- Average connection speeds decreased due to poor infrastructure management and lack of investment (see **Availability and Ease of Access**).
- Online news was subject to increasing government manipulation in the form of directives to web editors (see **Content Removal**).
- The Electronic Transactions and Cybersecurity Act was passed in July 2016 and includes problematic provisions that critics worry will be used to censor online content and silence dissent (see **Legal Environment**).
- Three political opposition members, who were arrested in February 2016 and charged with treason for allegedly plotting a coup through WhatsApp, were discharged by the High Court in March 2017 due to lack of evidence (see **Prosecutions and Arrests for Online Activities**).

Introduction:

Internet freedom in Malawi suffered from declining quality of access and new legal restrictions passed in July 2016 that may lead to censorship of online speech.

In the past year, Malawi's President Arthur Peter Mutharika repeatedly warned that the government would begin to take punitive action against online speech viewed as denigrating to others.¹ He followed through by passing the controversial Electronic Transactions and Cybersecurity Act in mid-2016, which includes problematic provisions that critics worry will be used to silence dissent, especially as the country gears up for elections in 2019. The new law provides for restrictions on online communications to "protect public order and national security," as well as vague clauses that may enable network shutdowns or blocks on communications platforms. The law also penalizes "offensive communication" via ICTs with penalties of fines or a maximum 12-month prison sentence, and places vague restrictions on encryption.

Despite the new law, no websites were blocked in the country during the coverage period, and users have increasingly turned to online platforms to express critical viewpoints. Nevertheless, online news was subject to increasing government manipulation in the form of directives to web editors.

There were fewer blatant arrests or prosecutions of online users during this report's coverage period compared to past years. In one murky case, the sister to former president Joyce Banda, Cecelia Kumpukwe, was arrested in April 2017 for allegedly forging a fake resignation letter from the current vice president and circulating it on social media.² In a positive development, three political opposition members, who were arrested in February 2016 and charged with treason for allegedly plotting a coup through WhatsApp, were discharged by the High Court in March 2017 due to lack of evidence.³

Meanwhile, access remains a principle obstacle to internet freedom in Malawi, as unprecedented inflation and currency depreciation has fueled economic instability, negatively impacting the ICT sector and citizens' ability to afford basic goods, including mobile services

Obstacles to Access:

Economic stagnation and high taxes make access to ICTS prohibitively expensive for the majority of Malawians, resulting in low access rates across the country. Average

connection speeds decreased from the previous year, partly due to poor infrastructure management and lack of investment.

Availability and Ease of Access

Malawi – a poor, densely populated, and landlocked country – has one of the lowest and slowest growing rates of internet access in the world, in stark contrast to the exponential growth in access among its neighbors on the continent. According to the latest data from the International Telecommunication Union (ITU), internet penetration stood at under 10 percent in 2016, up from just 9 percent in 2015. Fixed-broadband subscriptions are extremely rare. Mobile phone penetration is also low at 40 percent in 2016 growing from 35 percent in 2015, compared to an average of 78 percent in Sub-Saharan Africa.⁴

Poor growth rates of internet and mobile phone access are largely a result of the high service costs for consumers, which include a 17.5 percent value-added tax (VAT) on mobile phones and services, a 16.5 percent VAT on internet services,⁵ and an additional 10 percent excise duty on mobile phone text messages and internet data transfers introduced in May 2015.⁶ Consequently, access to the internet is extremely expensive for average Malawians. As of mid-2017, a monthly data bundle for 20GB cost US\$47 with Airtel, but US\$55 with TNM. The high costs have hit the country's poor the hardest, shutting them out of an increasingly digital world of important services like mobile banking and money services that could help lift them out of poverty, as well as access to essential communications platforms.⁷

In early 2017, the regulatory body began developing a cost model and pricing framework for wholesale and retail telecommunication services to enhance competition among operators in Malawi and reduce costs for users. Once in place in late 2017, the cost model aims to ensure that MACRA is effectively and efficiently regulating the tariffs offered by the operators to provide lower rates while providing a viable business environment for operators to maximize their profits.

For the few users who have access, connection speeds are frustratingly slow and have decreased to an average of 1.3 Mbps in 2017 from 1.7 Mbps a year prior, compared to a global average of 7.0 Mbps, according to Akamai's "State of the Internet" report.⁸ Slowing speeds have coincided with rising costs due to poor infrastructure management and lack of investment. Malawi's flagging economy over the past few years has reinforced its status as a least developed country, with soaring inflation having a negative impact on the ICT sector.

A low literacy rate of 64 percent also hinders access to ICTs, and there is a significant digital divide along gender lines. Unreliable electricity and the high cost of generator power strain ICT use. Less than 10 percent of the country has access to electricity, giving Malawi one of the lowest electrification rates in the world, according to the World Bank.⁹ The electricity grid is concentrated in urban centers, but only 25 percent of urban households have access, compared to a mere 1 percent of rural households. Half of Malawi's private sector enterprises rely on backup generators. The high cost of infrastructure development in rural areas makes companies unwilling to invest in the country's remote regions.

Restrictions on Connectivity

There were no restrictions on connectivity imposed during the report's coverage period. The government of Malawi does not have centralized control over the international gateway, which the ITU characterizes as competitive.¹⁰ Malawi has a total of six fiber gateways to the SEACOM and EASSy cable landings, three each through MTL and the Electricity Supply Corporation of Malawi Limited (ESCOM). The state-owned Malawi Sustainable Development Network Programme (SDNP), a licensed ISP, oversees the local traffic hub that connects the country's internet service providers (ISPs), but does not have the capacity to block content or restrict connectivity.¹¹

Due to Malawi's landlocked location, it is connected to the international fiber network in Mozambique, Zambia, South Africa, and Tanzania through the SEACOM and EASSy networks. A new fiber optic network SimbaNET was launched in May 2016, establishing a connection between the capital, Lilongwe, and Tanzania¹² and promising to decrease internet prices by 75 percent, which have yet to be observed as of mid-2017.¹³

The country's ICT backbone is entirely national in nature, with no regional integration yet in place. The scarcity of regional internet exchange points forces telecoms to rely on upstream service providers that are usually based outside in Europe or North America. Data that should be exchanged locally within Malawi or regionally must pass outside Africa, resulting in an unnecessary and expensive use of upstream bandwidth.

ICT Market

Malawi's ICT market is reasonably competitive with 50 licensed ISPs, the majority of which are privately owned with the exception of the Malawi Sustainable Development Network Programme (SDNP).¹⁴ One ISP, MTL, also serves as the country's telecommunication backbone, leasing its infrastructure to most ISPs and mobile phone service providers in the country.¹⁵ Previously a government-owned entity, MTL was privatized in 2005; at present, the government retains 20 percent of MTL shares while Telecomm Holdings Limited holds the other 80 percent.

Mobile phone services are offered by four providers – Airtel Malawi, Telecom Networks Malawi (TNM), MTL, and Access Communications.¹⁶ In October 2015, the licensing of the mobile phone company Lacell Private promised to help increase Malawi's market competition in the mobile sector,¹⁷ though it has failed to roll out services through subsidiaries – Malawi Mobile Limited (MML), G-Mobile, and Celcom Malawi – due to legal challenges.¹⁸

Regulatory Bodies

The Malawi Communications Regulatory Authority (MACRA) remains the country's sole communications regulator, established under the 2008 Communication Act to ensure reliable and affordable ICT service provision throughout Malawi. Its mandate is to regulate the entire communications sector and issue operating licenses for mobile and fixed-line phone service providers, ISPs, and cybercafés.

Political connections are often necessary to obtain such licenses. Moreover, the institutional structure of MACRA is subject to political interference, with its board comprised of a chairman and six other members appointed by the president, and two ex-officio members – the secretary to the Office of the President and Cabinet and the Information Ministry secretary.¹⁹ The director general of MACRA, whose appointment is also overseen by the president, heads the authority's management and supports the board of directors in the execution of its mandate.

Limits on Content:

In the past year, content remained uncensored, though online news was subject to increasing government manipulation in the form of directives.

Blocking and Filtering

The current government of Malawi does not block or filter internet content aside from child pornography. Social media platforms are freely available in Malawi. Former presidential regimes have censored internet content in the past.²⁰

Observers and critics worry that the new Electronic Transactions and Cybersecurity Act passed in July 2016 may be used to block content in the future, among other internet freedom restrictions. In particular, Article 28 allows for restrictions on online communications to “protect public order and national security,” a broad provision open for abuse.²¹ The same article would also “facilitate technical restriction to conditional access to online communication,” an unclear clause that could be interpreted to enable network shutdowns or blocks on social media platforms (see Legal Environment for more details).

Content Removal

Content removal tactics in Malawi are largely informal according to analysts who have received anonymous reports about how the authorities regularly direct editors of online news websites to take down critical content. However, the practice is underreported and the extent of content affected is not known. In one observed incident, a news story about a dispute between President Peter Mutharika and Vice President Saulos Chilima mysteriously disappeared from an online outlet within 30 minutes of posting.

In early 2017, the president instructed his newly appointed Minister of Information, Communication and Technology, Nicholas Dausi, to crackdown on online defamation,²² leading to concerns that content removal may become more systematic, alongside other internet freedom restrictions.

Media, Diversity and Content Manipulation

In the past year, online news was subject to increasing government manipulation in the form of directives. According to anonymous interviews, several journalists complained that some of their articles were never published online or in print because their editors received directives from officials to refrain from publishing about certain topics.

Malawi's online media landscape does not reflect a wide diversity of viewpoints, primarily due to the low level of internet use. Economic conditions make it difficult for journalists and media groups to launch online outlets. The high cost of using the .mw domain – currently administered by the Malawi SNDP on behalf of the Malawian government – is also an obstacle to publishing locally-produced content. According to an official at the SDNP, the cost of using the .mw domain is US\$100 per month for two months after registration and US\$50 per month thereafter. Furthermore, online advertising is low due to a limited understanding of the internet among businesses, which are hesitant to advertise with independent media outlets. Nonetheless, Malawi's blogosphere has continued to grow, with Malawian journalists frequently winning the Media Institute of Southern Africa's annual blogging award.

Internet users and commentators practice a degree of self-censorship but are generally more open to discussing topics of controversial nature. In contrast, online journalists usually exhibit caution when handling news associated with ethnic, racial, or religious minorities.

Digital Activism

The most influential ICT tool in Malawi remains the mobile phone. Messaging platforms such as WhatsApp are regularly used to organize campaigns and demonstrations, garner political support, and conduct opinion polls. In the past year, the government partnered with UNICEF to send public health messages via WhatsApp and SMS, encouraging citizens to vaccinate children for measles. Digital activism for political or social causes occurs occasionally, though there were no notable efforts during this report's coverage period.

Violations of User Rights:

The Electronic Transactions and Cybersecurity Act was passed in July 2016 and includes problematic provisions that critics worry will be used to censor online content and silence dissent. Three political opposition members, who were arrested in February 2016 and charged with treason for allegedly plotting a coup through WhatsApp, were discharged by the High Court in March 2017 due to lack of evidence.

Legal Environment

Malawi has strong constitutional guarantees for freedom of the press and expression, though there are several laws that restrict these freedoms in practice. The 1967 Protected Flag, Emblems and Names Act and the 1947 Printed Publications Act both restrict the media from reporting on the president, among other limitations.²³ Libel is punishable with up to two years imprisonment if prosecuted as a criminal charge, though most libel cases are processed as civil offences or settled out of court. Malawi's judiciary is generally regarded as independent.

In an effort to provide a regulatory framework for ICTs and address cybercrime, parliament passed the controversial Electronic Transactions and Cybersecurity Act in July 2016, which came into force on June 1, 2017.²⁴ Critics have highlighted its potential to limit internet freedom since it was first drafted in October 2013 and worry that the problematic

provisions of the law will be used to silence dissent ahead of elections in 2019. Article 24 allows for restrictions on online communications to “protect public order and national security,” a broad provision open for abuse.²⁵ The same article would also “facilitate technical restriction to conditional access to online communication,” an unclear clause that could be interpreted to enable network shutdowns or blocks on social media platforms.²⁶ Article 87 penalizes “offensive communication” via ICTs that disturbs the privacy rights of any person with fines or a maximum 12-month prison sentence – a provision that public officials could exploit to punish critical speech by online journalists or internet users.²⁷ Article 52 of new law also places vague restrictions on encryption (see Surveillance, Privacy, and Anonymity).

Prosecutions and Detentions for Online Activities

Malawian netizens occasionally face legal sanctions for their online activities, though there were fewer blatant arrests or prosecutions of online users during this report’s coverage period compared to years past. In one murky case, the sister to former president Joyce Banda, Cecelia Kumpukwe, was arrested in April 2017 for allegedly forging a fake resignation letter from the current vice president and circulating it on social media.²⁸

In a positive development, three political opposition members, who were arrested in February 2016 and charged with treason for allegedly plotting a coup through WhatsApp, were discharged by the High Court in March 2017 due to lack of evidence.²⁹ Nonetheless, repeated government declarations to crackdown on critical online speech and the passage of the new Electronic Transactions Act in 2016 have led to growing fears that arrests and prosecutions will rise in the future.³⁰

Surveillance, Privacy, and Anonymity

Government surveillance of ICT activities is suspected in Malawi, in large part due to the regulatory authority’s efforts to implement technology known as the Consolidated ICT Regulatory Management System (CIRMS), known locally as the “spy machine.” The regulatory body MACRA described the system as a tool for monitoring the performance of mobile phone companies and improving quality of service. However, news reports said that the machine would also allow MACRA to obtain data from telephone operators, including the time, duration, and location of calls, SMS messages sent and received, the type of handset used, and other subscriber details, without judicial oversight.³¹ After a series of legal challenges, the Supreme Court said the system was in accordance with the law,³² and in June 2017, the MACRA announced it would begin using the system in September.³³

The new Electronic Transactions and Cybersecurity Act enacted in January 2017 requires providers of cryptography services or products to register with MACRA and provide the regulator with “the technical characteristics of the encryption means as well as the source code of the software used.”³⁴ Though it is uncertain whether or how the new requirements will affect popular technologies with end-to-end encryption such as WhatsApp, penalties for violating the law include up to seven years in prison, a fine of MWK 5,000,000, or both.³⁵

Potential restrictions on anonymous communication include SIM card registration requirements that were announced in June 2014 and reinforced in a new Communications Act enacted in 2016,³⁶ though they have yet to be enforced as of June 2017. Instead, mobile companies began inviting subscribers to register their SIM cards under what they were calling “Know Your Customer (KYC)” initiative, and street vendors are still selling unregistered SIM cards.

Nevertheless, service providers are required by law to hand over user information when presented with a court-issued warrant, though such legal safeguards have failed to prevent abuse in the past, particularly under the past presidents. The last reported incident of abuse occurred in 2012, when the former government suspected a group led by then-Vice President Joyce Banda of scheming to overthrow it and obtained transcripts of the group’s mobile phone and SMS communications from service providers. The arrest of three opposition MPs for their WhatsApp messages in February 2016 raised suspicions that the current government may be carrying out similar practices, though WhatsApp messages are more difficult to intercept than SMS.

Intimidation and Violence

There were no reports of physical assaults, extralegal detentions, or harassment of opposition activists, bloggers, or ordinary internet users in the past year.

Technical Attacks

There were no technical attacks against independent news websites, activists, or ordinary users reported during the period under review.

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Gregory Gondwe, “Internet VAT bites consumers,” Biztech Africa, July 24, 2013, <http://bit.ly/1Zim7Ai>.

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13 Christopher Jimu, “Simbanet sees internet tariffs going down,” *Nation Online*, January 9, 2017, <http://mwnation.com/simbanet-sees-internet-tariffs-going-down/>.

14 Henry Lancaster, *Malawi - Telecoms, Mobile and Broadband - Market Insights and Statistics, Executive Summary*, BuddeComm, last updated October 25, 2016, <http://bit.ly/1OoOUOx>.

15 “Fibre optic backbone yielding fruits – MTL,” *Mkali Journalist (blog)*, June 11, 2013, <http://bit.ly/1jeMOpM>.

16 Henry Lancaster, *Malawi - Telecoms, Mobile and Broadband - Market Insights and Statistics, Executive Summary*.

17 Ida Kazembe, “Govt licenses new mobile service provider – Lacell Public Tele Communication Company,” *Malawi News Agency*, via *All Africa*, October 5, 2015, <http://allafrica.com/stories/201510071727.html>.

18 MACRA argues that the company failed to beat roll out deadline while on the other hand Lacell argues that it asked for an extension which MACRA never heeded. See: <http://mwnation.com/operator-stops-macra-over-licence/>

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35 Global Partners Digital, <https://www.gp-digital.org/national-encryption-laws-and-policies/>.

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