Malawi

	2015	2016
Internet Freedom Status	Partly Free	Partly Free
Obstacles to Access (0-25)	15	16
Limits on Content (0-35)	12	10
Violations of User Rights (0-40)	13	15
TOTAL* (0-100)	**40**	**41**

* 0=most free, 100=least free

Population:	17.2 million
Internet Penetration 2015 (ITU):	9 percent
Social Media/ICT Apps Blocked:	No
Political/Social Content Blocked:	No
Bloggers/ICT Users Arrested:	Yes
Press Freedom 2016 Status:	Partly Free

Key Developments: June 2015 – May 2016

- Average connection speeds decreased due to poor infrastructure management and lack of investment (see **Availability and Ease of Access**).

- Three opposition parliamentary members were arrested for treason in February 2016 for a private WhatsApp group conversation that authorities said evidenced a coup plot (see **Prosecutions and Arrests for Online Activities**).

- In December 2015, a mobile provider obtained a court injunction against the rollout of the government's so-called "spy machine" monitoring system over surveillance and privacy concerns (see **Surveillance, Privacy, and Anonymity**).

Introduction

Internet freedom in Malawi suffered from declining quality of access and problematic arrests of opposition members for messages exchanged on WhatsApp.

In the past year, Malawi's President Arthur Peter Mutharika began showing autocratic tendencies similar to his elder brother and former President Bingu wa Mutharika, whose repressive tenure ended when he died in 2012. Previous governments focused on traditional media and civil society, but in a shift, the governing Democratic Progressive Party (DPP) under the younger Mutharika has specifically targeted online activities, indicating that the authorities perceive the potential of digital media to empower journalists and citizens as a threat.

Parliament passed the controversial Electronic Transactions Bill (E-Bill) in July 2016, after this report's coverage period. If signed into law by the president, it will allow for restrictions on online communications to "protect public order and national security," and "facilitate technical restriction to conditional access to online communication," an unclear provision that could be interpreted as enabling blocks on social media or communications platforms. Further, "offensive communication" via ICTs that disturbs the privacy rights of any person is penalized with a fine and 12-month prison sentence, and could be used by public officials to punish their online critics.

In February 2016, the authorities arrested three opposition members of parliament based on a private WhatsApp group chat in which they allegedly schemed to unseat the president. The circumstances in which the conversation came to the government's attention remain unclear. Some analysts believe the content was leaked to the authorities; some feared the messages were altered or fabricated. The MPs were released on bail, but charges of treason were pending in October 2016.

Meanwhile, access remained one of primary obstacles to internet freedom in Malawi, as unprecedented inflation and currency depreciation fueled economic instability, negatively impacting the ICT sector and citizens' ability to afford basic goods, including mobile services. In a positive development, the launch of the government's so-called "spy machine," which was widely criticized for its potential to allow government access to user data without judicial oversight, was halted after a telecom provider obtained a court injunction against the monitoring system. No websites were blocked in the country, and users have increasingly turned to online platforms to express critical viewpoints.

Obstacles to Access

Economic turmoil 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, due to poor infrastructure management and lack of investment.

Availability and Ease of Access

Malawi, a densely populated country that suffers from widespread poverty, has one of the lowest rates of internet access in the world. According to the International Telecommunication Union (ITU),

internet penetration stood at 9 percent in 2015, up from 6 percent in in 2014.[1] Fixed broadband subscriptions are extremely rare.[2] Mobile phone penetration is also low at 35 percent,[3] compared to an average of 76.2 percent across the continent.[4] A survey of 12,000 citizens between November 2014 and January 2015 published by Malawi's National Statistics Office in January 2016 reported more positive data, with 85 percent of households surveyed owning a mobile device, and 30 percent of households using one to access the internet.[5]

Meanwhile, connection speeds for Malawian users are frustratingly slow, decreasing to an average of 1.7 Mbps from 1.9 Mbps a year prior, compared to a global average of 6.3 Mbps, according to Akamai's "State of the Internet" report.[6]

Slowing speeds have coincided with rising costs, likely due to poor infrastructure management and lack of investment. Malawi's flagging economy in the past year has reinforced its status as a least developed country, with soaring inflation having a negative impact on the ICT sector. Low rates of internet and mobile phone access in Malawi are largely a result of the high cost of service for consumers, including 17.5 percent value-added tax (VAT) on mobile phones and services, and 16.5 percent VAT on internet services.[7] In May 2015, the Malawian parliament implemented an additional 10 percent excise duty on mobile phone text messages and internet data transfers.[8] The increased tariffs could reduce uptake of important digital services like mobile banking and money services.[9]

Consequently, access to the internet is extremely expensive for average Malawians. According to 2015 research by the Alliance for an Affordable Internet, 500MB of mobile data costs over 24 percent of the country's GNI per capita, which is well above the target of 5 percent or less set by the UN Broadband Commission in 2011 as a goal for broadband affordability.[10] The price of data packages also vary considerably by provider. As of mid-2016, a monthly data bundle for 20GB cost US$29 with Airtel, but US$43 with TNM.

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.[11] 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

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1   International Telecommunication Union (ITU), "Percentage of Individuals Using the Internet, 2000-2015," http://bit.ly/1FDwW9w.

2   ITU, "Fixed (Wired) -broadband Subscriptions, 2000-2015," http://bit.ly/1FDwW9w.

3   ITU, "Mobile-cellular Telephone Subscriptions, 2000-2015," http://bit.ly/1FDwW9w.

4   ITU, "Key 2005-2016 ICT data," http://bit.ly/1cblxxY.

5   Suzgo Khunga, "High costs prohibit cellphone usage—survey," MWNation, January 26, 2016, http://mwnation.com/high-costs-prohibit-cellphone-usage-survey/

6   Akamai, "State of the Internet, Q1 2016 Report," https://goo.gl/TQH7L7; Akamai, "Average Connection Speed," map visualization, *The State of the Internet*, Q1 2016, accessed August 1, 2016, http://akamai.me/1LiS6KD.

7   Frontier Economics, *Taxation and the Growth of Mobile Services in Sub-Saharan Africa,* GSMA, 2008, http://bit.ly/1Pk9rVc; Gregory Gondwe, "Internet VAT bites consumers," Biztech Africa, July 24, 2013, http://bit.ly/1Zim7Ai.

8   WangaGwede, "Malawi hikes tax on internet, duty on SMS: Goodall says local resources to finance 2015/16 budget," *Ny*asa Times, May 23, 2015, http://bit.ly/1Mh08jG.

9   "J-Lu takes a swipe at Malawi's SMS and internet tax, labels it 'Retrogressive and anti-democratic,'" Malawian Watchdog, May 25, 2015, http://bit.ly/1OoNIe5.

10   "The Affordability Report 2015-16," Alliance for Affordable Internet, http://a4ai.org/affordability-report/report/2015/#

11   Latest available data is from 2012. World Bank, "Access to electricity (% of population)," accessed October 1, 2016, http://bit.ly/1zN9Eaf.

of infrastructure development in rural areas makes companies unwilling to invest in the country's remote regions.

Restrictions on Connectivity

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. In January 2016, Tanzanian operator SimbaNET finished its construction of a third network, which established a connection between the capital, Lilongwe, and Tanzania.[12] Minister of Information, Communications, Technology and Civic Education Patricia Kaliati launched SimbaNet's connection in May 2016, touting the network's promise to decrease internet prices by 75 percent.[13]

The government of Malawi does not have centralized control over the international gateway, which the ITU characterizes as competitive.[14] 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.[15]

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. As a result, data that should be exchanged locally within Malawi or regionally must pass outside Africa 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).[16] 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.[17] 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, MTL, and Access Communications.[18] The licensing of the mobile phone company La-Cell in October 2015 helped increase Malawi's market competition in the mobile sector.[19]

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12 "Cable Compendium: a guide to the week's submarine and terrestrial developments," TeleGeography, January 15, 2016, http://bit.ly/2efQzwe

13 Linda Tembo, "Optic fiber cable to improve ICT in Malawi," Zodiak Online, May 9, 2016, http://bit.ly/2fhzcbp

14 ITU, "Malawi Profile (Latest data available: 2013)," ICT EYE, accessed May 1, 2016, http://bit.ly/1Pk9X5I.

15 Author interview with IT engineer for a local mobile phone company on March 25, 2015.

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

17 "Fibre optic backbone yielding fruits – MTL," Mkali Journalist (blog), June 11, 2013, http://bit.ly/1jeMOpm.

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

19 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

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Regulatory Bodies

The Malawi Communications Regulatory Authority (MACRA) is 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.[20] 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

There were few restrictions placed on online content during the coverage period. Anecdotal reports of critical online posts "disappearing" suggests that informal content removals demanded by government officials is common.

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.[21]

Content Removal

Online content critical of the government frequently disappeared without explanation during the period under review. Observers have reported anonymously that the government forces editors of online news websites to take down content deemed objectionable, though the practice is underreported and the extent of content affected is not known. In 2015, an article on *Nyasa Times* that accused President Peter Mutharika's Special Aide Ben Phiri of corruption and bribery disappeared from the news website within 30 minutes of publication. Observers believed the apparent takedown was in keeping with the media's common practice of yielding to government pressure exerted behind the scenes.

Media, Diversity, and Content Manipulation

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

20   International Research & Exchanges Board (IREX), "Malawi," *Media Sustainability Index 2012*, http://bit.ly/1Gz5PHM.

21   During violent anti-government protests in July 2011, MACRA reportedly ordered ISPs to block certain news websites and social media networks, including Facebook and Twitter, in a supposed effort to quell the spread of violence. See, Michael Malakata, "Malawi blocks social media networks to quell protests," *Computer World*, July 22, 2011, http://bit.ly/1L9Bn93.

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. As a result, even Malawi's oldest media house, the Times Media Group, laid off numerous staff from its online division in early 2016 due to flagging profits.[22]

Nevertheless, the growing blogosphere is regarded as an important aspect of journalism in Malawi, with Malawian journalists frequently winning the Media Institute of Southern Africa's annual blogging award. Media publishers such as Blantyre Newspapers Limited often host bloggers on their websites to enhance their image as independent news sources.

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.

There was little to no government or partisan manipulation of online content evident during the coverage period. Since the current government was elected in May 2014, progovernment trolls have reduced their activity. In the past, government-aligned commentators infiltrated social media and online news websites to undermine critical commentary.

Digital Activism

The most influential ICT tool in Malawi remains the mobile phone. Text messages are used to organize demonstrations, garner political support, and conduct opinion polls. Significant social media commentary and activism followed the government's May 2015 announcement that internet and text messaging services would be subject to a 10 percent excise duty (see Availability and Ease of Access). The campaign had not elicited a response in mid-2016.[23]

Violations of User Rights

The controversial Electronic Transactions Bill (E-Bill) was passed in July 2016 and awaited the president's assent as of October 2016, despite criticism of the bill's potential to limit internet freedom. Three opposition parliament members were arrested and charged with treason in February 2016 based on a private WhatsApp group chat that was interpreted as a plot to stage a coup against the ruling party.

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

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22   "Media release 26th February 2016, Blantyre TIMES GROUP BUSINESS RE-ENGINEERING," The Times Group, February 26, 2016, http://www.times.mw/media-release-26th-february-2016-blantyre-times-group-business-re-engineering/

23   Thom Khanje, "Consumers scorn SMS/internet tax," The Times Group, May 25, 2015, http://bit.ly/1L2z365.

president, among other limitations.[24] 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 Bill (E-Bill) in July 2016, after this report's coverage period. It awaited the president's assent in late 2016.[25] First drafted in October 2013, the E-Bill stalled before being reintroduced in November 2015. Critics have highlighted its potential to limit internet freedom for years.

Article 28 allows for restrictions on online communications to "protect public order and national security," a broad provision open for abuse.[26] The same article would also "facilitate technical restriction to conditional access to online communication," an unclear clause that could be interpreted to enable blocks on social media or communications platforms.[27] Article 90 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.[28]

Prosecutions and Detentions for Online Activities

Members of the political opposition were arrested for online activities during the coverage period, marking a disconcerting development. Malawian netizens have not generally faced legal sanctions for communicating online before, though online journalists were periodically arrested in relation to their work in previous years.

In February 2016, the authorities arrested three opposition members of parliament (MP) for the content of a closed WhatsApp group chat that they said was evidence of a plot to stage a coup.[29] Human rights observers condemned the arrests as politically motivated. Reports said the arrests came after the ruling party received a tip about the WhatsApp conversation. Some analysts believe the private messages were leaked to the authorities, and some speculated that the content of the messages had been altered either before or after the arrests occurred. One of the MPs said his mobile phone was impounded during his detention and was missing data when it was returned, including call history, texts, contacts, and WhatsApp.[30] The MPs were released on bail, but charges of treason were pending in October 2016.[31]

24   Freedom House, "Malawi," *Freedom of the Press 2015*, https://freedomhouse.org/report/freedom-press/2015/malawi.

25   Jacqueline Nhlema, "Malawi Parliament passes E-Bill," Zodiak Online, July 6, 2016, http://bit.ly/2fUnt62

26   Media Institute of Southern Africa (MISA), "Southern Africa: Malawi Parliament Rejects Bill to Gag Online Media," press release, November 29, 2015, http://allafrica.com/stories/201511303064.html

27   Part IV, Article 28, Electronic Transactions Bill 2015, gazetted May 15, 2015, www.parliament.gov.mw/docs/bills/BILL11_2015.pdf

28   Part X, Article 90, Electronic Transactions Bill 2015, gazetted May 15, 2015.

29   Lameck Masina, "Malawi government faulted over arrests of coup suspects," Voice of America, February 26, 2016, http://www.voanews.com/a/malawi-government-faulted-over-arrests-of-coup-suspects/3209056.html

30   Alfred Chauwa, "Police extract Msungama's mobile phone data: 'Malawi WhatsApp coup plot,'" Nyasa Times, March 2, 2016, http://bit.ly/2eOWrsF

31   Owen Khamula, "Malawi police say they are 'still investigating' WhatsApp coup plot," Nyasa Times, June 17, 2016, http://www.nyasatimes.com/malawi-police-still-investigating-kabwila-chakwantha-treason-case/; Luke Bisani, "Malawi police angers WhatsApp treason suspects," Malawi 24, October 4, 2016, http://bit.ly/2fLZCX6

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." MACRA described the system, purchased from the U.S.-based company Agilis International for US$6.8 million in 2011, as a tool for to monitor the performance of mobile phone companies and improve 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.[32] After a series of legal challenges, the Supreme Court said the system was in accordance with the Communications Act in September 2014.[33]

In December 2015, one of Malawi's two mobile phone companies, Telekoms Network Malawi (TNM), obtained another injunction to halt the machine's rollout based on concerns over the machine's potential to allow government access to user data.[34] In response to the repeated legal challenges, the regulator began engaging with the South African firm, Global Voice Group, to implement a different telecom network management system in July 2016.[35] It is unclear whether this new system to replace the "spy machine" will enable unchecked government surveillance.

Potential restrictions on anonymous communication include SIM card registration requirements announced in June 2014, to be implemented by January 2015. As of mid-2016, they had not been enforced.[36]

By law, service providers are required to hand over user information when presented with a court-issued warrant; however, such legal safeguards have failed to prevent abuse in the past, particularly under the late President Bingu wa Mutharika 's regime. In 2012, 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 (see Prosecutions and Detentions for Online Activities), 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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32   Gregory Gondwe, "'Spy Machine' brings telecoms fears," Biztech Africa, November 14, 2011,http://bit.ly/1Mhgs3V.

33   Tikondane Vega, "MACRA gets Supreme Court nod to use CIRMs 'spy' machine," Mana Online, September 15, 2014, http://bit.ly/1Nr9aAo.

34   Anita Dakamau, "TNM risks losing license over anti-spy machine stand," Malawi Punch, April 20, 2016, http://bit.ly/2fLZgj6

35   "Malawi taxpayer hit over messed up 'spy machine': Macra risk massive pay-out to US firm Agilis," Nyasa Times, July 2, 2016, http://www.nyasatimes.com/malawi-taxpayer-hit-messed-spy-machine-macra-risk-massive-pay-us-firm-agilis/

36   WangaGwede, "Malawi to start mandatory SIM card registration," Nyasa Times, January 11, 2014, http://bit.ly/1NrjecG.