Freedom of Expression online in Malawi

Presentation made by Michael Simon Kaiyatsa on behalf of the Centre for Human Rights and Rehabilitation at the UPR-pressions

The situation in Malawi

The right to freedom of expression online is an important issue in Malawi, and must be reflected in the recommendations made during the third cycle of the UPR in May 2020.

Since the second review, the number of individuals online in Malawi has continued to grow. At the time of the second review in 2015, only 4.1 in every 100 inhabitants had a mobile broadband subscription, but by 2017, the most recent year ITU data is available for, the figure had reached 25.5 in every 100.

As Malawi’s online population grows, it is increasingly important for UPR recommendations to reflect explicitly the need for the rights to freedom of expression to be protected online as well as offline, in line with the state’s obligations under Articles 17 and 19 of the ICCPR.

The legal framework

Section 34 of Malawi’s constitution guarantees the right to freedom of opinion and Section 35 states that “every person shall have the right to freedom of expression.”

Furthermore, Article 9 of the African Charter on Human and Peoples’ Rights to which Malawi is a party provides for citizens to express and disseminate opinions and views within the law.

Article 19 of the ICCPR guarantees the right to freedom of expression and opinion.

Despite these enabling provisions, in practice freedom of expression online has faced restrictions, with the government sometimes using anti-sedition and breach of peace laws to stifle criticism.

Implementation of previous recommendations on freedom of expression

In the second cycle of the UPR, Malawi received 199 recommendations from 69 countries. Malawi supported 2 of 3 recommendations that were categorized as relating to Freedom of Opinion and Expression and/or Freedom of the Press. None of these recommendations explicitly mentioned the online sphere, although 3 are implicitly relevant.

The situation of freedom of expression online has improved slightly since Malawi’s previous review, with no incidences of outright online censorship reported in 2017-18.

However, the broad 2016 Electronic Transactions and Cybersecurity Act has empowered the government to crack down on online dissent.

Current challenges
The law penalizes “offensive communication” via ICTs with penalties of fines or a maximum 12-month prison sentence, and places poorly defined restrictions on encryption.¹

Imprecise language in Section 87 of the Act criminalizes the posting of “offensive” content online, which could place journalists at risk of prosecution. A law against insulting the leader of Malawi also remains on the books, although it is rarely enforced.

There are many instances in which the government has used the Electronic Transactions and Cybersecurity Act of 2016 to restrict freedom of expression online.

In April 2017 Cecelia Kumpukwe, the sister to former president Joyce Banda, was arrested for allegedly forging a fake resignation letter from the former Vice President and circulating it on social media.²

In April 2019 the Malawian citizen Tumpale Mwakibinga was arrested after he posted on his Facebook page a picture likening first Lady Gertrude Mutharika to cartoon character Rango. He was charged with insulting the modesty of a woman, as well as violations under the Electronic Transaction and Cybersecurity Act of 2016. In February 2016, three political opposition members were arrested and charged with treason for allegedly plotting a coup through a WhatsApp conversation. The three were later discharged by the High Court in March 2017 due to lack of evidence.

On August 21 2018, police arrested Manes Hale, an American citizen of Malawian origin, while she was boarding an airplane departing the country.

The government charged her with insulting the president under Section 4 of the Protected Flag, Emblems, and Names Act for critical remarks she wrote concerning the president on Facebook.

In recent years, the Minister of Information and government spokespeople have repeatedly warned that the government would begin to take punitive action against online speech viewed as “denigrating to others”⁴. Malawi’s President Arthur Peter Mutharika has additionally taken a hard public line on online expression, warning repeatedly that punitive action would be taken against online speech that was deemed “denigrating to others”.

**Recommendations**

In light of Malawi’s existing record on freedom of expression online, CHRR calls on states to offer the following recommendations to Malawi:

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• In compliance with international standards and the right to freedom of expression guaranteed under Article 19 of the ICCPR, guarantee the freedom of expression and opinion online for media and individuals, including marginalized and discriminated groups.
• Refrain from implementing internet shutdowns on disruptions under any circumstances.

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