



**For immediate release**

### **A call for data protection legislation in Malawi**

The Centre for Human Rights and Rehabilitation (CHRR) is deeply concerned about the continued absence of a specific data protection law in the country even with a lot of personal data being collected by telecommunication companies such as Airtel and TNM and public authorities such as the National Registration Bureau (NRB).

CHRR observes that currently there is a lot of personal data being collected by telecommunication companies and state authorities through various processes such as the SIM (Subscriber Identity Module) card registration process, the National Identity registration and Voter Registration, and yet there are no statutory data protection regulations to protect the data being collected from abuse.

CHRR deeply regrets that, despite concerns raised by various individuals and groups about the risks of collecting personal data in the absence of a data protection law, the government of Malawi went ahead with the SIM card registration. This represents a lost opportunity for Malawi. It is unfortunate that the government of Malawi went ahead to introduce this programme. Mandatory registration, especially in the absence of clear registration guidelines and the lack of data protection laws, puts personal data at risk.

CHRR notes with deep concern that all the information being collected through this process is not protected as the country does not have a comprehensive data protection law. This poses the risk of third parties tampering with the information and fabricating or altering it to falsely implicate those who are critical to the government. It also raises the risk of 'corporate surveillance'. We have seen how in some countries such personal data is abused by companies for their commercial interests. Memories are still fresh of Cambridge Analytica where personal data of Facebook users was abused to influence elections. Elsewhere such personal data has been weaponized to suppress minority voters, radicalize young people and exploit political beliefs to sow division.

CHRR, therefore, calls upon the government to come up with a Data Protection law as a matter of urgency in order to regulate how personal data is collected and handled by private companies, public authorities, law enforcement agents and intelligence agencies. CHRR notes that having such a law in place will strengthen the rights of individuals and increase obligations for private companies and state authorities.

CHRR is cognizant of the data protection and privacy provisions contained in the Electronic Transaction Act of 2016. However, we note that these provisions are adequate in protecting the data being collected. The E-Transaction Act lacks adequate safeguards to ensure the safety and security of sensitive personal information of an individual. There is, therefore, need for the country to have a comprehensive standalone legislation to regulate the processing of personal data by private companies and state authorities and to protect personal data from falling into the hands of wrong people.

The need for transparency and accountability is more vital than ever considering the growing number of internet users in the country. Current statistics puts the number of internet users in Malawi at 1, 828, 503 and Facebook users at 720, 000 as of December 2017, according to Internet World Stats. With this large and growing number of internet users, data protection laws are paramount. Recent incidents from other countries, such as Cambridge Analytica, should be a wake-up call for Malawi to put in place strict data protections laws to stop companies from abusing personal data. This law is, therefore, important to keep the companies and state authorities accountable.

It is sad that Malawi is not one of the 22 African countries with privacy and/ or data protection laws, such as South Africa, Botswana, Ghana, Angola, Senegal, among others. In countries, like the European Union (EU), data protection is recognized as a fundamental human right. And for a very good reason because data protection is important. Data protection is linked to the right to privacy. The right to privacy is central to the protection of human dignity, and supports other rights, such as freedoms of expression, information and association. It is essential, therefore, for states, like Malawi, to have policy and legal frameworks that robustly protect the individual from invasion of their privacy and abuse of their personal data.

Privacy or data protection laws are important. They are key to ensuring that people's right to privacy is protected. Without these laws, people's data may be misused by third parties for fraud or theft. The absence of data protection legislation, therefore, greatly undermines the citizens' right to privacy, which is guaranteed in section 21 of the Republican Constitution of Malawi. This section provides that "Every person shall have the right to personal privacy, which shall include the right not to be subject to a) searches of his or her person, home or property; b) the seizure of private possessions; or c) interference with private communications, including mail and all forms of telecommunication."

### **A call for Malawi to ratify the Malabo Convention**

The African Union (AU) has taken steps to strengthen privacy and personal data protection. In 2014, AU member states adopted the AU Convention on Cyber Security and Personal Data protection (also referred to as the Malabo Convention), making it the first Pan-African instrument on privacy and personal data protection. The convention addresses electronic transactions, personal data protection, cybersecurity and cybercrime. In particular, Article 8 of the Convention calls upon state parties to commit

to establish a 'legal framework aimed at strengthening fundamental rights and public freedoms, particularly the protection of physical data, and punish any violation of privacy without prejudice to the principle of free flow of personal data.' The convention also outlines internationally recognized principles in personal data collection, storage and processing. It is unfortunate that up to now Malawi has not signed this convention. We urge the government to urgently ratify and domesticate the Malabo Convention.

In November 2012, the SADC ministers responsible for ICT adopted a model law on data protection to assist member states to prevent the violations of privacy likely to arise from the collection, processing, transmission, storage and use of personal data, and to protect the related rights of the data subject. The model law provides for general rules on the processing of data, including data quality to ensure lawful and fair data processing; and duties of data controllers and data processors, to promote data security, transparency and accountability. It also provides for rights of data subjects, including to access, rectification, deletion of data, temporary limitation of access to data and recourse to judicial authority.

In May 2018, the African Union Commission (AUC) launched the Personal Data Protection Guidelines for Africa, which were developed jointly with the Internet Society (ISOC). The Guidelines emphasize the importance of ensuring trust in online services and set out 18 recommendations for governments and policymakers. We urge the Malawi government to adopt the SADC model law and the AUC guidelines.

With the growth of internet use, Malawi can no longer continue to turn a blind eye to the need for data protection laws. Privacy and data protection are fundamental human rights and, therefore, demand to be protected through appropriate legislation. We urge the government of Malawi to comply with their obligations to respect, fulfil and protect and give effect to the right to the right to privacy, by developing a comprehensive data protection legislation. The legislation should provide for: data collection, processing, sharing and security, big data, and profiling; define the rights of data subjects and responsibilities of data controllers and processors; provide for dispute resolution and effective remedies for breach including against private entities e.g. compensation, accounting for profits, penalties, cease and desist orders; establish adequate checks and balances, including an independent oversight body; ensure transparency and accountability, including requiring user notification and transparency reporting.

**Signed by:**

**Timothy Mtambo**

**Executive Director, Centre for Human Rights and Rehabilitation**

**Date: 8th October 2018**