



Laws Restricting Internet Freedom in Malawi

A legal and policy analysis

by

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Executive summary

This report presents analysis of policies and laws that restricts internet freedom in Malawi. Malawi's information and communication technology (ICT) sector opened up in the mid to late 1990s, following the country's political transition from one party dictatorship to a multiparty state. The political transition started with a referendum in 1993 in which Malawians voted against 30 years of Hastings Kamuzu Banda's dictatorship in favor of multiparty democracy.

While Malawi's ICT sector remains very small and access to the internet still very low and a luxury to the majority of Malawians; a lot of gains have also been made over the years. There is steady increase in access and proliferation of the internet and services in the country. Various mobile phone services such as mobile banking and mobile health are available, yet major challenges also remain. According to a National Statistics Survey on Access and Usage of ICTs, by 2019 only 14.6% of Malawians have access to the internet; 40.7% of the population in urban areas use the internet and only 9.3% of population in rural areas use internet.

Although access to the internet remains very low and growth is slow, in the last five years or so the government has enacted laws to legislate internet usage and transactions. Unfortunately, the analysis of laws and legislation shows that these laws and legislation carry punitive and vague provisions that have the capacity to limit internet freedom as it paves the way for the state to restrict internet usage at its convenience. Experience elsewhere shows that African government are increasing weaponizing the law to restrict internet access and usage, especially during critical times such as elections.

Thus, this analysis recommends that all the punitive and vague laws be removed, unconditionally or be amended, in consultation with all relevant stakeholders, in order to align internet and ICT legislation with constitutional provisions guaranting freedoms of expression, press, association, assembly and access to information. This is in recognition with the United Nations' resolution that freedoms offline are also freedoms online.

1.0 Introduction

Over the past two decades, Information and Communications Technology (ICT) has revolutionized the way both the private and public sectors conduct business. It has allowed easy and accessible electronic money transactions and enabled e-government and electronic voter registration, among others. The importance of the ICT sector has been enhanced further with the Coronavirus disease of 2019 (COVID-19), as countries across the world resorted to nationwide full and partial lockdowns, restricting people's movement, as one way of mitigating the impact of the disease. ICT provided the only safe means of communication among people; it helped in dissemination of crucial messages concerning the pandemic; it allowed continued education and it allowed people to work from home – this allowed economies and businesses to continue amidst the pandemic.

In the 1990s Malawi reformed the telecommunication sector following a political transition, from one party state to multiparty democracy. The reforms resulted in the liberalisation of the sector.¹ The reforms led to the formation of Malawi Telecommunications Limited (MTL), which was registered as a limited company in 2000 when the government decided to split the parastatal Malawi Posts and Telecommunications Corporation (MPTC) into two entities, the MTL and Malawi Posts Corporation (MPC), to allow the two to concentrate on their separate core businesses.²

Before the reforms, MPTC was the only telecommunications operator in Malawi, as well as the industry regulator. Donor pressure for reforms following the political transition, and the poor performance of MPTC, both as regulator and operator, were major factors that led to the reforms.³ The reforms also led to the enactment of the Communications Act No 41 of 1998 as a legal framework for the industry. Section II of the Act establishes the Malawi Communications Regulatory Authority (MACRA) as the industry regulator.⁴

The 1998 Act was amended in 2016 to respond to new developments in the sector. For instance, the amended law introduced the Universal Service Fund, aimed at increasing access to ICTs through expansion of mobile network across the country. However, the Communications Act No. 34 of 2016 and Electronic Transaction and Cyber Security Act,⁵ also have punitive provisions that undermine internet freedom in the country. These include criminalization of some online communication and activities; provisions requiring that internet users disclose their personal information online; and provision that facilitated collection of personal data,

¹ George R. G. Clark, Frew A. Gabreab & Henry R. Mgombelo (200) Telecommunications Reform in Malawi: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=636398 accessed 12 January 2021

² Malawi Telecommunications Limited: https://www.presscorp.com/index.php?view=article&catid=37:subsidiary-companies&id=118:malawi-telecommunications-limited&format=pdf&option=com_content&Itemid=104 accessed 12 January 2021

³ George R. G. Clark, Frew A. Gabreab & Henry R. Mgombelo (200) Telecommunications Reform in Malawi: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=636398 accessed 12 January 2021

⁴ Communications Act, 1998: <https://bit.ly/2Md4WBj> accessed 16 July 2019

⁵ Electronic Transactions and Cyber Security Act, 2016: <https://malawilii.org/mw/legislation/act/2016/33> accessed January 2021

while the country is yet to legislate for data protection, contrary to article 21 of the Constitution of Malawi.⁶

These laws have passed relatively unchallenged by Malawians for a possible number of reasons. Malawians have accepted the official positions that these legislations are necessary to enhance people's and public security in the digital age and improve government's service delivery. Elsewhere, Edge Kanyongolo⁷ noticed that "legal restrictions must be understood in terms of the realities of the interactions among state, community and individual interests in contemporary Malawi." In particular he argues that this is because "Malawian society is shaped by the realities of poverty and inequality experienced by the majority of Malawians. Over 80% of Malawians live in rural areas with poor lines of communication to urban areas ... The predominant feature of realities of life for the majority of Malawians is poverty."

This reality means that the majority of Malawians do see issues of internet freedom as urgent and pertinent to their livelihoods. Indeed, a survey⁸ by National Statistics office shows that by 2019 46.3% of Malawians do not use the internet because they do not know what the internet is. Thus, in part, the lack of public discourse around undemocratic and punitive internet laws owes to this socioeconomic background. Using this background as a point of departure, this report outlines laws that restrict internet freedom in Malawi.

2.0 Socioeconomic and Political Context

Malawi has a population of 17.5 million people.⁹ Malawi was a British protectorate between 1891 and 1964.¹⁰ After 30 years of Hastings Kamuzu Banda's dictatorship the country transitioned to a multiparty democracy in the mid-1990s.¹¹ Currently Malawi has a five-year electoral cycle, electing a President, Members of Parliament and local government councilors. Politically, Malawi has been a relatively peaceful and stable country and it is currently ranked as a hybrid democracy by the Economist Intelligence Unit's Democracy Index, meaning it has elements of democracy and authoritarianism.¹² Yet, the country has always had peaceful transitions of power throughout its history.

⁶ Article 21 of Malawi constitution says "Every person shall have the right to personal privacy"

⁷ Kanyongolo F. E. (2012) Report on Laws that Respect Freedom of the Press in Malawi:

<https://crm.misa.org/upload/web/29-report-on-laws-that-restrict-freedom-of-the-press-in-malawi.pdf> accessed 12 January 2021

⁸ National Statistics Office (2020) National Survey on Access and Use of Information and Communication Technologies by Households and Individuals in Malawi 2019

⁹ 2018 Population and Housing Census, May 2019: <https://malawi.unfpa.org/sites/default/files/resource-pdf/2018%20Malawi%20Population%20and%20Housing%20Census%20Main%20Report%20%281%29.pdf> accessed 12 January 2021

¹⁰ Pre-Independent Malawi, September 2018: https://www.crwflags.com/fotw/flags/mw_his.html accessed 12 January 2021

¹¹ Malawi: Between the Referendum and the Elections, May 1994: <https://www.refworld.org/docid/3ae6a6be8.html> accessed 12 January 2021

¹² The Economist Intelligence Unit's Democracy Index, 2018: <https://infographics.economist.com/2019/DemocracyIndex/> accessed 12 January 2021

3.0 Economic Status

Despite being a politically peaceful country, Malawi remains among the least developed countries in the world. As of 2018, Malawi ranked 171 out of 188 countries in the United Nations Development Programme's Human Development Index. The Index is "a summary measure of average achievement in key dimensions of human development."¹³ In April 2017, *The Nation* newspaper reported on data from the United Nations Commission on Trade and Development (UNCTAD), which indicated that 71% of Malawians were living in extreme poverty. The report noted that this was the case "despite increased public spending on health and education, which are Malawi's priority areas."¹⁴

Agriculture is the mainstay of Malawi's economy and the primary economic activity for over 80% of its population.¹⁵ Tobacco is the country's chief export, while cotton, tea, sugar and coffee are also grown for export and consumption. Roughly 83% of Malawians live in rural areas. The country's gross domestic product (GDP) currently stands at USD 8.33.¹⁶ Agriculture contributes 28% to the country's GDP, manufacturing contributes 10.4%, while industry and trade contribute 15.9%.¹⁷

4.0 ICT Access and Usage

The Malawi Communications Regulatory Authority (MACRA) regulates the country's telecommunication sector. It was established under Communications Act No. 41 of 1998 with the mandate to regulate the country's telecommunications sector.¹⁸ The country's first internet service provider (ISP) was formed in 1997.¹⁹ Today the country has over 20 operational ISPs.²⁰ Given the United Nations' resolution that freedoms offline are also freedoms online²¹, the growth of telecommunications sector enhances constitutional provisions, particularly Chapter IV, which provides for human rights, these provisions include freedoms of press (article 36), expression (article 35), association (article 32), information (article 37), as well as freedom of assembly (article 38).

¹³ Human Index for Everyone: 2018: <http://hdr.undp.org/en/2018-update> accessed 12 January 2021

¹⁴ Poverty Levels Extreme in Malawi, April 4 2018: <https://www.mwnation.com/poverty-levels-extreme-in-malawi-unctad/> accessed January 15 2021

¹⁵ Malawi: Agriculture sector, April 11 2019: <https://www.trade.gov/export-solutions> accessed January 15 2021

¹⁶ Malawi Gross Domestic Product, 2018: <https://knoema.com/atlas/Malawi/GDP-per-capita> accessed 15 January 2021

¹⁷ Agriculture, Value Added: <https://data.worldbank.org/indicator/NV.AGR.TOTL.ZS> accessed January 15 2021

¹⁸ George R. G. Clark, Frew A. Gabreab & Henry R. Mgombelo (200) Telecommunications Reform in Malawi:

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=636398 accessed 15 January 2021

¹⁹ Bkankuzi, "A decade of the Internet in Malawi," available at <http://bkankuzi.blogspot.ug/2008/12/decade-of-internet-in-malawi.html> accessed January 15, 2021

²⁰ Malawi Internet Service Providers Association (MISPA): <http://www.mispa.org.mw/members.html> accessed January 2021

²¹ Human Rights Council (2017) Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development <https://freedex.org/wp-content/blogs.dir/2015/files/2017/05/AHRC3522.pdf> accessed 12 January 2021

According to a survey²² by National Statistics office, only 43.2% of Malawians own a mobile phone. Of the two mobile phone services providers, Airtel have more subscriptions (71.0%) while Telekom Networks Limited (TNM) has 61.0% subscribers. Only 14.6% Malawians use the internet. 3.5% of households have a functioning computer and there are 9.9% households with internet.

4.1 Sector statistics

Country population	17.5 Million people
Number of the telecommunication companies in the country & their respective percentage share of market	Two mobile networks and 2 Landline services. Mobile market Airtel: 70.1 & TNM: 60.1% Landline market: MTL: 0.1% and ACL: 0.1%
Percentage of internet users	Individual users: 14.6% Households: 9.9%
Number of mobile phones capable of browsing the internet	Total: 29.5% Urban areas: 50.7% Rural areas: 21.3%

Source: National Statistics Office: Access and Use of ICTS 2019.

5.0 General Legal framework

The Constitution of Malawi (1994) is the supreme law of the land. The supremacy of the Constitution is provided for in its article 5; it states that “any act of Government or any law that is in consistence with the provisions of [the] constitution shall, to the extent of such consistency, be invalid.” Thus, all other subsidiary legislation must be consistent with the Constitution. Chapter IV of the Constitution provides for Human Rights. These including freedoms press (article 36), expression (article 35), assembly (article 38), association (article 32) and access to information. Access to information (article 37) is subject to an Act of Parliament, which was gazetted in September 2020²³ – more than a decade after the drafting of its bill.

5.1 International laws and instruments

In addition to the domestic legal framework, Malawi is also a party to various international instruments guaranteeing human rights. These include the Universal Declaration of Human Rights (UDHR); International Convention on Civil and Political Rights (ICCPR)²⁴ and the African Charter on Human and Peoples’ Rights (ACHPR), on a continental level. However, Malawi has not signed the African Convention on Cyber Security and Personal Data Protection

²² National Statistics Office (2020) National Survey on Access and Use of Information and Communication Technologies by Households and Individuals in Malawi 2019

²³ Govt Gazettes Access to Information Act: <https://www.mwnation.com/govt-gazettes-access-to-information-act/> accessed January 15, 2021

(ACCSPDP),²⁵ a critical instrument, especially in the digital age when issues of personal data protection have become critical worldwide.

Article 19²⁶ of UDHR states that “everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Likewise, article 19(2)²⁷ of ICCPR provide that “everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regard less of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

The broad reach of these provisions includes freedoms on the internet and any other digital means of communication. These provisions have been reiterated at the United Nations’ Human Rights Council thirty-fifth session – 6-23 June 2017²⁸. The sessions reiterated that freedom of expression and other freedoms offline must also apply online. It says “States may limit freedom of expression only where provided by law and necessary for the respect of the rights or reputations of others, or for the protection of national security or of public order, or of public health or morals.”

Using this background, the following paragraphs assess the laws restricting internet freedoms in Malawi.

6.0 Laws regulating the internet in Malawi

In 2013 the Malawi Government introduced National ICT Policy²⁹. The aim of the policy was to develop “the ICT sector, promoting the development and use of ICT in all sectors and enhancing universal access to ICT services to achieve widespread socio-economic development.” Although the ICT policy has not achieved its aims – as measured by the low access and usage of ICTs in the country (see the ICT usage and Access section above), this policy marked a beginning of a period in which the Malawi Government would enact ICT-related legislations. In the next three years, the country enacted Electronic Transaction and Cyber Security Act No. 33 of 2016 and in the same year the Government amended Communications Act N. 41 of 1998.

6.1 Electronic Transaction and Cyber Security Act

The Electronic Transactions and Cyber Security Act No. 33 of 2016,³⁰ (E-Transactions Act) is the only law in the country directly legislating the use of the internet. The E-Transactions Act

²⁵ African Convention on Cyber Security and Personal Data Protection:

https://www.au.int/web/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf accessed January 15, 2021

²⁶ Universal Declaration of Human Rights: <https://www.un.org/en/universal-declaration-human-rights/> accessed January 15, 2021

²⁷ International Covenant on Civil and Political Rights: <https://www.refworld.org/pdfid/3ae6b3aa0.pdf>

²⁸ Human Rights Council – Thirty-fifth Session 6-23 2017: <https://freedex.org/wp-content/blogs.dir/2015/files/2017/05/AHRC3522.pdf> accessed January 15, 2021

²⁹ National ICT Policy: An ICT-Led Malawi (2013).

³⁰ The Malawi Gazette supplement: <http://www.macra.org.mw/wp-content/uploads/2014/07/E-Transactions-Act-2016.pdf> accessed January 15, 2021

is modelled on the SADC Model Laws on Electronic Transaction and Electronic Commerce.³¹ The Models Laws are a group of laws addressing issues, particularly in the digital age but it is not clear why the Malawi Government decided to legislate for the cyber security law and not others, Data Protection law, for instance.³²

6.1.0 Objectives of E-Transactions Act

As stated in the article three of the Act, the aim of the legislation is to “set up a responsive information and communication technology legal framework that shall facilitate competition, development of information and communication technology and the participation of Malawi in the information age and economy and in particular.” The law has three objectives as follows:

- (a) to set up responsive information and communication technology legal framework that shall facilitate competition, development of information and communication technology and the participation of Malawi in the information age and economy;
- (b) to ensure information and communication technology users are protected from undesirable impacts of information and communication technology, including the spread of pornographic material, cyber-crime and digital fraud;
- (c) to put in place mechanisms that safeguard information and communication technology users from fraud, breach of privacy, misuse of information and immoral behaviour brought by the use of information and communication technology.

6.1.1 Restrictions of Online Communication

Article 24(1) of E-Transactions Act, 2016

Part IV of the E-Transactions Act provides for liability of online intermediaries and content editors as well as the protection of online users. Article 24(1) of the Act guarantees freedom of online communications. It states that “there shall be no limitation to online public communication.” However, freedoms are never absolute and article 24(2) provides for cases under which online communication may be limited. The articles provides that online communication may be restricted in order to:

- (a) prohibit child pornography;
- (b) prohibit incitement on racial hatred, xenophobia or violence
- (c) prohibit justification for crimes against humanity;
- (d) promote human dignity and pluralism in the expression of thoughts and opinions;

³¹ Electronic Transaction and Electronic Commerce: Southern African Development Community (SADC) Model Law: https://www.itu.int/en/ITU-D/Projects/ITU-EC-ACP/HIPSSA/Documents/FINAL%20DOCUMENTS/FINAL%20DOCS%20ENGLISH/sadc_model_law_e-transactions.pdf accessed January 15, 2021

³² The Model Law on Computer Crime and Cyber Crime: A Harmonized Assault on the Right to Privacy? <https://www.linkedin.com/pulse/sadc-model-law-computer-crime-cybercrime-harmonised-assault-kuda-hove/> accessed January 15, 2021

- (e) protect public order and national security;
- (f) facilitate technical restriction to conditional access to online communication; and
- (g) enhance compliance with the requirements of any other written law.

The majority of these provisions are in compliance with international law. However, provisions (e) and (f) are problematic for a number of reasons. The wording of these provisions is vague such that it is open to interpretation and thus it may be abused to meet political interests. Terms such as “public order” and “national security” should be clearly defined and its parameters identified otherwise it open to abuse. These clause may allow government to limit access to internet or aspects of it – this is what is technically called internet shutdown. Internet shutdown is defined³³ as “an intentional disruption of internet-based communications, rendering them inaccessible or effectively unavailable, for a specific population, location, or mode of access, often to exert control over the flow of information.”

Should Malawi government decide to shut down the internet, the government could do so legally with the backing of provision (f), which vaguely calls this a “technical restriction”. And according to this provision, access to online communication is “conditional”. Again, a vague provision in absence of a full description of the conditions.

Internet shutdowns are against the law as it violates people’s freedoms of expression, assembly and association online. It also restricts access to information, which is also guaranteed under the Malawi constitution as well as in the international law. The UN³⁴ has resolved that internet “shutdowns ordered pursuant to vaguely formulated laws and regulations also fail to satisfy the legality requirement.” The UN observe that governments frequently impose shutdowns during critical times, such as demonstrations, elections and other events of extraordinary public interest, often with little or no explanation at.

While Malawi has never experienced any internet shutdown, attempts have been made to shut down the internet. For instance, a report by the Southern Africa Litigation Centre (SALC) indicates that on the eve of the Malawi’s 2019 Tripartite Elections, the Malawi Government, through the telecommunication regulator MACRA, intended to shutdown the internet only that the regulator advised against it on the advice of its lawyers.³⁵ The lawyers reportedly saw the shutdown as “unnecessary”. SALC’s report is collaborated by media report (*Nyasa Times*), which indicated that MACRA planned to shutdown “phone communication” as well as social media such as Twitter, Facebook and WhatsApp³⁶.

³³ Policy Brief: Internet Shutdowns: <https://www.internetsociety.org/policybriefs/internet-shutdowns> accessed January 15, 2021

³⁴ Human Rights Council – Thirty-fifth Session 6-23 2017: <https://freedex.org/wp-content/blogs.dir/2015/files/2017/05/AHRC3522.pdf> accessed January 15, 2021

³⁵ Southern Africa Litigation Centre (2019) Navigating Litigation During Internet Shutdown in Southern Africa, January 15, 2021: <https://www.southernafricalitigationcentre.org/2019/08/14/navigating-litigation-during-internet-shutdowns-in-southern-africa/> accessed January 15, 2021

³⁶ Nyasa Times, May 2019, MACRA Plans to Shut down Phone, WhatsApp on Malawi Elections Days: <https://www.nyasatimes.com/macra-plans-to-shutdown-phones-whatsapp-on-malawi-elections-days/> accessed January 15, 2021

Article 31(1) of E-Transactions Act, 2016

Article 31(1) of the E-Transaction Act provides for an online content providers. It says that an online content provider shall display in a conspicuous manner, the following information on its webpage:

- (a) in case of a natural person, full name, domicile, telephone number, and email address, of the editor;
- (b) in case of a legal entity, corporate name, postal and physical address of the registered office, telephone number, email address, authorised share capital, and registration number, of the editor;
- (c) where applicable, the name of the corporate officer appointed as director of the publication of the online public communication and the editor in chief; and,
- (d) the name, title, corporate name, postal and physical address and telephone number, email address of the intermediary service provider prescribed in this section.

By forcing internet content providers to display their personal details online limits people's freedom to use the internet. It exposes internet users to abuse and they can be targeted by state and non-state actors for their activities online. Thus, undermine people's right to communicate anonymously. Anonymous communication is fundamental for people to fully exercise their right to freedoms of expression, assembly and association online. These freedoms are enshrined in the Malawian Constitution and freedom of expression, in particular, is also provided for under article 19 of both the UDHR and the ICCPR. UN's Human Rights Commission Seventeenth session³⁷ highlighted that "throughout history, people's willingness to engage in debate on controversial subjects in the public sphere has always been linked to possibilities for doing so anonymously."

The UN further adds that the "internet allows individuals to access information and to engage in public debate without having to reveal their real identities, for example through the use of pseudonyms on message boards and chat forums. Yet, at the same time, the Internet also presents new tools and mechanisms through which both State and private actors can monitor and collect information about individuals' communications and activities on the Internet." The irony is that the provision in article 31 of the E-Transaction Act is very similar to one of Malawi's colonial law, the Printed Publications Act, 1947, which has no place in a democratic society like Malawi.

6.2 Communications Act, 2016

Part IX of the Communications Act NO. 34 of 2016 provides for a mandatory registration of generic numbers and SIM Cards. Article 92(1) of objectives of the Act. There are seven objectives are as follows:

³⁷ Human Rights Council – Seventeenth Session:
https://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf 5 access January 15, 2021

- (a) to recognize the convergence of technologies and services for telecommunications, broadcasting, and information through the establishment of technology and service-neutral licensing regimes;
- (b) to remove unnecessary barriers to entry, and attract investment, in the communications sector;
- (c) to facilitate the deployment and use of communications services;
- (d) to encourage the adoption of new services and technologies within the communications sector;
- (e) to encourage the participation of indigenous Malawians in the communications sector;
- (f) to facilitate the provision of affordable communication services;
- (g) to facilitate technology

Article 92(1) of Communications Act

Article 92(1) of the Communications Act No. 34 of 2016 provides for a mandatory SIM card registration. The article obliges all individuals who use a generic number or own or intend to use a SIM card for voice telephony services to register that generic number or SIM card. The registration must be done with any electronic communications licensee or with the distributor, agent or dealer of the electronic communications licensee, authorized to provide or sell generic numbers or SIM cards.

Article 92(2)(a) provides that where a potential subscriber is a natural person, they must obtain and fill in a form the following information:

- i. the full name of the subscriber;
- ii. the identity card number, or any other document that proves the identity of the subscriber; and
- iii. the residential and business or registered physical address of the subscriber,

article 92(2)(b) provides that where the potential subscriber is a legal entity, obtain and fill in a form particulars of the subscriber, together with a subscriber's copy of certificate:

- i. certificate of registration or incorporation;
- ii. business licence; and
- iii. where applicable, tax payer identification certificate number; and
- iv. obtain from the potential subscriber any other

The SIM Card registration exercise was initially suspended before being fully implemented. Then then Minister of Information said the suspension was to make room for civic education.³⁸ Unlike the Minister's explanation, there were also general concerns that the mandatory SIM card registration would lead to state surveillance. These fears were not without merit, SIM card registration has the capacity to limit internet freedom, especially in countries without data

³⁸ Malawi Government Lifts Suspension on SIM Card Registration: <https://www.capitalradiomalawi.com/index.php/blog/local-news/capital-news/item/9083-malawi-government-lifts-suspension-of-sim-card-registration> accessed January 15, 2021

protection legislation like Malawi.

In the same way as article 31(1) of E-Transactions Act, the mandatory SIM card registration also undermines citizen's right to communicate anonymously. In addition to this, Privacy International³⁹ emphasizes the fact that mandatory SIM card registration also undermine citizen's ability to "organise, and associate with others, and it infringes their rights to privacy and freedom of expression." This is so because SIM card registration makes it "easier for law enforcement authorities to track and monitor people, these laws threaten vulnerable groups and facilitate generalised surveillance." This means that challenging the mandatory SIM card registration is very important in order to preserve civic spaces and defending democracy. Governments usually use security national and personal security as a reason to introduce surveillance laws. But governments cannot permanently protect its citizens by taking away other rights and freedoms. It is the obligation of the state to balance between citizens' rights and security.

Article 157 of Communications Act

Part XVIII Communications Act No. 34 of 2016 provides for Universal Service and Access. Article 157 of the Act establishes the Universal Service Fund (USF) to be managed by MACRA and shall become operational on such date as the Minister shall appoint, by the notice published in the *Gazette*.

Article 158(1) says the USF shall be used for purposes of the implementation of universal service and universal access. Article 158(2) says that the proceeds of the USF shall be used to:

- (a) offer subsidies on a competitive basis to licensees in order to provide them with incentives to provide universal access in areas that are not economically viable or that are marginally viable without subsidies;
- (b) provide other financial incentives and assistance;
- (c) meet administrative expenses associated with the execution of the duties, functions and responsibilities of the Universal Service Fund Committee, the management of the Universal Service Fund, publication and independent audit costs of annual reports of the Fund, and the staff costs for the implementation of the Fund, which shall not exceed a certain amount, as determined in regulations made under this Act; and
- (d) conduct research and consultancy assignments related to universal access.

Article 160 says the USF shall be financed through the following:

- (a) operators' levy as prescribed in the licensee, which shall be set by the Authority and reviewed from time to time;
- (b) moneys appropriated by Parliament;

³⁹ Timeline of SIM Card Registration Laws: <https://privacyinternational.org/long-read/3018/timeline-sim-card-registration-laws> access January 15, 2021

- (c) grants, subsidies, bequests, donations, gifts and subscriptions from government or any other person;
- (d) competitive minimum subsidy auctions;
- (e) public access projects designed to generate income for long-term financial self-sustainability; and
- (f) funds made available by the Authority.

Although this legislation came into in 2016, USF has not been implemented and the lack of implementation limits people’s access, use and benefit from the internet. Thus, this is an internet freedom issue because it is about inclusion. As contextualized by International Telecommunication Union⁴⁰, “the underlying concept of Uuniversal Service is to ensure that telecommunications services are accessible to the widest number of people (and communities) at affordable prices.” This is meant to address the problem of insufficient infrastructure, which is one of the biggest problems, insofar as internet connectivity is concerned. Only 76.2% of the country is covered by mobile network, inclusive of 2G, 3G and 4G⁴¹. This means that a good number of Malawians are living in areas without mobile network coverage therefore are unable to use the internet. As seen in the provisions above, the financing of the USF is organized in such a way that the money is available because it is funded by remittances from telecommunication companies.

Summary of laws restricting internet freedom

Legislation	Effect on internet freedom	Suggested action
E-Transaction Act, 2016 – article 24(1) provisions (e) and (f)	Provisions are provided in vague language. Thus, it can be used by the state to facilitate internet shutdown and therefore limiting internet freedom	Provisions should be amended so it is clear and not open to abuse by the state.
E-Transaction Act, 2016 – article 31(1)	Provision violates people’s right to communication anonymously. This violates internet freedom for people who can only communicate anonymously for various and legitimate reasons	Provision should be repealed
Communications Act, 2016 – article 92(2)(a)	Provision violates people’s right to communication	

⁴⁰ Universal Service Funds and Digital Inclusion for all: https://www.itu.int/pub/D-PREF-EF.SERV_FUND accessed January 15, 2021

⁴¹ GSMA Mobile Connectivity Index: <https://www.mobileconnectivityindex.com/#year=2019&zoneIsoCode=MWI&analysisView=MWI&comparison=1&geography=MWI.ZMB.TZA.MOZ&metricsIndex=overall> accessed January 15, 2021

	anonymously. This violates internet freedom for people who can only communicate anonymously for various and legitimate reasons.	Provision must be amended so that SIM card registration is not mandatory. In addition, the country needs personal data protection law to protect abuse of people's private communication information.
Communications Act, 2016 – articles 158(1) and 160	Lack of implementation of Universal Services Fund limits access to the internet and therefore limits internet freedom	Universal Service Fund must be implemented immediately to improve internet accessibility and affordability