



Malawi

National Overview 2015
by MISA Malawi

Dominating both the political and media environment was the vigorous push for the enactment of

ATI legislation by the media sector under the leadership of MISA Malawi and the Media Council of Malawi (MCM). In a coordinated and strategic effort, the print and electronic media simultaneously ran articles and news bulletins spanning over a week, to press the Peter Mutharika administration to enact the ATI Bill, as promised during the 2014 elections.

In addition, the media provided platforms for Malawians to freely discuss policy preferences, suggest solutions to national or community problems, and debate a range of issues, including crime, corruption, access to justice, food security, minority rights, power outage, sanitation and climate change. The media was also instrumental in exposing social injustices and abuse of power and public resources.

The year under review was a period of contestation between the state and activists – which included the media, as civil society challenged government and questioned its ability to improve the wellbeing of Malawians. With continued economic decline, civil society organizations planned demonstrations highlighting the poor performance of the Democratic Progressive Party (DPP) in terms of social, economic and political governance. Media articles on the demonstrations also focused on apparent lack of focus and lack of direction by the government in running the affairs of the country. The articles openly quizzed

government to explain its apparent lack of seriousness and political will to adhere to its own austerity measures to reduce expenditure. This, attracted the ire of government, which accused the media of being political and partisan.

The year under review also witnessed ordinary citizens being arrested, charged and fined for insulting the president. All these developments occurred while the Malawi Constitution provides for media freedom, freedom of expression and right to information.

FREEDOM OF EXPRESSION

Outdated legislation used to restrict free speech

Existing anti-free speech laws were systematically employed to suppress free speech. Colonial legislation that inhibits freedom of speech continues to be applied by the state to curtail media freedom and freedom of expression. By their very nature, the laws instill fear and self-censorship of the media compromising the media's role to promote public accountability.

The most common law the state applies is Section 181 of the Penal Code which states that *“Every person who in any public place conducts himself in a manner likely to cause a breach of the peace shall be liable to a fine of K50 and to imprisonment for three months.”*

Several people have been arrested, charged and convicted based on this section for apparently insulting the President. Most of the cases go unreported but MISA Malawi noted a growing intolerance of free speech in the country and called upon President Arthur Peter Mutharika to distance his administration from the arrests which were tarnishing the image of his government.

In September, a 60-year-old man, Alinafe Paulo of the Traditional Authority Nsamala in Balaka in southern Malawi was convicted and fined MK3,000 (about \$5) and serve three months imprisonment with hard labor for insulting the President. This was also a trend during the period 2012 and 2014 when over 10 cases were reported of people being arrested for insulting the then President Joyce Banda.

Apart from Section 181 of the Penal Code, other laws in the statute books include the Official Secrets Act (1913), the Printed Publications Act (1947) and the Censorship and Control of Entertainments Act (1968) as well as the Protected Flags, Emblems and Names Act. As stated in our past narratives of the same publication, the Protected Flags, Emblems and Names Act still quotes a fine in Pound Sterling and not Malawi kwacha, supporting the call for law reform, 51 years after independence.

The DPP promised to amend and/or repeal laws that limit freedom of expression, including signing the Declaration of Table Mountain, as a sign of commitment to repealing repressive and insult laws, but nothing has happened two years down the line. The existence of these laws remains a cause for concern because they continue to silence both journalists and civil society actors.

Access to Information

Malawi was considered progressive when Cabinet approved a policy on access to information, during a Cabinet meeting on January 27, 2014.

Since the campaign on ATI started in 2004, the only administration to include ATI as its campaign promise was the DPP by including it in their manifesto. Section 180 of the DPP manifesto read:

'We recognize that access to information is a major challenge... In this regard, the DPP government will pass and implement the Access to Information bill.'

“Existing anti-free speech laws were systematically employed to suppress free speech.”

Twenty one months later, to the surprise and disappointment of many Malawians, activists, stakeholders and human rights advocates, the Mutharika administration reneged on its promise to enact the Bill and rejected the proposed legislation during a Cabinet meeting held on Tuesday, November 17, 2015 in the capital Lilongwe. The Bill was referred back to the Cabinet Committee on Legal and Constitutional Affairs for further review.

The Cabinet rejected the Bill on the grounds that it was filled with inconsistencies. Cabinet felt the law could not be applied retrospectively; there were concerns with whistle blower protection and surprisingly it did not want the Official Secrets Act of 1913 to be invalidated by the new law. Cabinet apparently also wanted the Ministry of Information to be the implementation agency and not the Malawi Human Rights Commission or indeed an Independent Information Commission as proposed by different stakeholders who assisted with the drafting the Bill.

The Draft ATI Bill was developed based

on provisions contained in the National Access to Information Policy which government adopted in January 2014. So the concerns of government appear to be in contradiction of the principles it promoted prior to elections.

Although Cabinet rejected the Bill, MISA Malawi and different stakeholders believe that ATI has been irreversibly placed as a crucial development agenda item not just for the DPP administration but all subsequent administrations to come. Chances are high that the Bill will be tabled in Parliament in 2016 and Malawi will join an enviable list of countries with legislation on ATI. MISA Malawi has currently teamed up with a cross section of stakeholders to push the DPP administration to walk the talk on ATI. The Chapter is also engaging chiefs and people at the grassroots level to start demanding information as a right and engage their Members of Parliament (MPs) to support the Bill once tabbed in Parliament.

JOURNALIST SAFETY

President Mutharika verbally attacks the media

The media operating environment in 2015 remained risky, exploitative and showed serious signs of backsliding. Media houses and journalists deemed critical of the ruling administration were denied access to presidential functions and openly castigated for 'being pro-opposition.' Information officers in some government departments were ordered to 'stop talking to the media' and some mainstream media practitioners were threatened with arrests for carrying stories critical of the elite.

During a press conference held at Kamuzu Palace in the capital Lilongwe On October 8, 2015, President Arthur Peter

Mutharika lambasted and labelled the media 'liars, irresponsible and agents of the opposition'.

President Mutharika's outbursts followed a string of articles and news bulletins criticising the size of the President's entourage, hiring of a private jet and the level of expenditure incurred during his trip to the United Nations General Assembly (UNGA) in New York. The President asked for an apology from some media houses over these stories and fell short of specifying what action he would take should the apologies not come forward. Mutharika's Press Secretary, Gerald Viola, joined the fray and attacked one unspecified radio station, accusing it of having a hidden agenda against the DPP government.

A few weeks after this development, MISA Malawi received reports that Zodiak Broadcasting Station (ZBS), one of Malawi's renowned national radio stations in the country, was being sidelined and denied access to some Presidential functions.

Such developments clearly demonstrated that government was being intolerant of CSOs and media outlets critical of the ruling DPP led administration. All in all, however, the year in question saw the media and selected CSOs fiercely defend their spaces of freedom by strategic networking with both domestic and international advocates.

BROADCASTING

The shortlived evolution of the Malawi Broadcasting Corporation

Developments in the broadcasting sector during the period under review also show that Malawi takes a step forward and a step backwards.

History was made during 2014 when state controlled Malawi Broadcasting Corporation (MBC) stunned Malawians by 'focusing their content to reflect public interest and professional standards rather than political whims. Better known for being a mouth piece of the party in power, with over 99 percent content in favour of the party in power, MBC shifted gears from being a propaganda machine to a 'platform for critical debate and dialogue on matters of national interest.'

The media operating environment in 2015 remained risky, exploitative and showed serious signs of backsliding.

As stated in our 2014 review of this publication, 'MBC proved most critics wrong by broadcasting all the presidential debates live, despite the fact that then incumbent Joyce Banda had refused to participate in the debates.'

During 2015, however MBC reverted back to type and positive steps the radio had taken were obliterated and the people in positions of authority at the station were replaced.

At the same time, Government changed a revised Communications Bill to maintain its grip on MBC and MACRA. MISA Malawi called on MPs to reject the adulterated version of the Bill and ensure that the original version stakeholders had

agreed on is tabled in the August House. In particular, MISA-Malawi raised concern that government reversed stakeholders' proposals in the draft bill which removed the Head of State as the sole appointing authority for the boards and management of the Malawi Communications Regulatory Authority (MACRA) and the Malawi Broadcasting Corporation (MBC). The independence of both MACRA and MBC was key in the review of the Communications Act of 1998. By maintaining the state president as the appointing authority for the boards and management of the two institutions, the cabinet effectively rendered the review of the law useless.

Digital migration

Malawi is on track with the digital migration process and is one of the few countries on the continent that met the June 17 deadline. Reports also indicate that the country is currently doing well in the region as far as content management and signal distribution is concerned.

Malawi established the Digital Broadcasting Network Limited Company to provide signal distribution services to all licensed broadcasters and the company is currently fully established and hopes to continue doing well. Most Malawians, however, have minimal understanding of the digital migration process and officials at the Digital Broadcasting Network concede that there is a critical need to raise awareness so there is an appreciation of what digital migration means for the country and its citizens.

New media and ICTs

Malawi has several policies that touch on ICT, including the ICT Policy (2013), the National Access to Information Policy (2014), Digital Broadcasting Policy (2013) among others. These poli-

cies recognize the importance of new media and ICTs in promoting national development. Internet penetration however, remains the lowest in the region at 6 percent with the majority of users being in urban centers. Low levels of computer literacy, high cost of internet services, poor infrastructure and erratic power supply continue to limit advances in ICTs.

Despite these challenges, new media and ICTs remain an exciting platform for most Malawians in general and journalists specifically. A worrying trend is the desire by government to regulate and limit online expression. Government has developed draft legislation dealing with online regulation, which is currently with the Media and Communications Committee of Parliament for consultations after different stakeholders had raised concerns on a number of issues in the Bill. MISA Malawi had also raised concern over sections that limit free speech on the pretext of national security and public order. MISA Malawi argued that the sections were broad and open to abuse.

Most media houses have online publications and the number of stand-alone online news sites is increasing. It is important to note that most of these sites have interactive features for user participation and most journalists are 'blogging as a form of journalism to circumvent editorial control or self-censorship in mainstream media houses.' The biggest challenge is however lack of professionalism in online content.

The Chapter has since introduced awards to recognize on line professionalism as one way of promoting journalistic standards on line. The Chapter introduced an award called blogger of the year and Online Media House of the Year Award to recognize excellent blog-

gers and Online Media Outlets as one way of promoting ethical standards on the net. The Chapter is optimistic that the initiative will in the long term help improve the quality of journalism on line and make it more exciting and rewarding.

LOOKING AT THE YEAR AHEAD 2016

Despite a hostile environment and an openly antagonistic government, the media continue to play a critical role in building Malawi's democracy and holding elected officials accountable. The sector remained instrumental in exposing social injustices and abuse of power and public resources. In addition to accountability, the media continued to provide a platform for Malawians to freely discuss problems and solutions to improve the welfare of their communities.

The punitive and litigious tendency of the government calls for more advocacy work in 2016 and beyond to rid the country of colonial laws that continue to be used to suppress critical voices and ensure respect for constitutional guarantees on media freedom, freedom of expression and right to information.

Malawi 2015 violations & victories



January 23

Mulanje Police Public Relations Officer James Kadadzera ordered reporters from private media houses not to take pictures of First Lady Gertrude Mutharika. The First Lady was the guest of honour at a function organized by Plan International at Mthuruwe Primary School in the area of Traditional Authority Mkanda in Mulanje, southern Malawi. Kadadzera denied barring reporters from taking pictures saying he wanted people to have identification cards before attending the function. MISA Malawi condemned the action of the Police and appealed to law enforcers to respect journalists.



February

Government backtracked on its promise to table the much awaited Bill on Access to Information during the February-March sitting of Parliament despite promising Malawians that it would be tabled.



November 17

Cabinet rejected the draft Access to Information Bill and sent it to the Cabinet Committee on Legal and Constitutional Affairs for review. During a meeting with MISA Malawi, Minister of Information, Tourism and Civic Education Jappie Mhango confirmed the meeting and rejection of the bill by Cabinet. Cabinet claimed that the bill is filled with inconsistencies.



September 28

The Balaka Magistrates Court convicted a 60 year old man, Alinafe Paulo, of Traditional Authority Nsamala in the district and fined him MK3,000 (about \$5) or serve three months imprisonment with hard labor for insulting the President. Paulo was arrested based on Section 181 of the Penal Code and charged with conduct likely to cause breach of peace.



October 8

President Arthur Peter Mutharika labeled the media as 'liars, irresponsible, and agents of the opposition,' for criticizing his trip to the United Nations General Assembly (UNGA) in New York. The media questioned Mutharika's entourage, hiring of a private jet and the level of expenditure incurred during the trip in the wake of economic problems prevailing in the country. The president also asked for an apology from some media houses over stories on the trip and fell short of specifying what action he would take should the apologies not come forward.