



# MALAWI

National Overview 2017  
by MISA Malawi

## NATIONAL OVERVIEW

**I**n 2017, the Malawi media established itself as a key player in the fight against corruption and the country's democratisation process. Despite a hostile political environment and economic strangulation, the media managed to hold duty bearers accountable and expose corruption, social injustices, abuse of power and public resources as well as demand political democracy and fiscal prudence.

The media was central in exposing the infamous Maizegate which saw the Anti-Corruption Bureau (ACB) arrest former Minister of Agriculture and ruling Democratic Progressive Party (DPP) political heavyweight George Chabonda for alleged abuse of power in the procurement of maize from Zambia. The media was also central in exposing a US\$74 million Electricity Supply Corporation of Malawi (ESCOM) plan to procure generators without following procurement procedures. Overall, the media provided forums for citizens to freely voice their policy preferences, suggest solutions to national or community problems, and debate a diversity of issues, which included access to information, gender-based violence, power outage, water development projects, sanitation, climate change and the environment.

However, the media operating environment in 2017 remained risky, exploitative and retrogressive. Members of the media were physically assaulted when covering public functions such as demonstrations. Practitioners received anonymous threats for carrying stories critical of the state or the ruling elite. Media practitioners were barred from covering public functions at both the district and national level, including coverage of

proceedings of a conference on implementation of the country's public sector reforms. Barring reporters from covering public functions was one of the major problems for the Malawi media in 2017. This was however happening at a time when the country's President Professor Peter Mutharika had just assented to the Access to Information Act (2016) confirming his government's commitment to promoting the right to information.

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This review looks at the Malawi media operating environment in 2017 with distinct focus on media-government relationship, Constitutional rights and legislative environment, access to infor-

mation, state of broadcasting and digital migration.

## FREEDOM OF EXPRESSION

### Media-government relationship

In 2017, the relationship between the media and civil society on one hand and government and government functionaries on the other could best be described as a cat and mouse affair and one of a blame game, which clearly reflects ‘the dynamics of power in politics.’<sup>1</sup>

The ruling DPP and government generally viewed the media and civil society leaders as corrupt and enemies of the state.

The blame game started in January when Providence Industrial Mission (PIM) president and overseer reverend Patrick Makondetsa accused the media of “derailing the country’s development because of negative reporting.” Makondetsa was speaking during the commemoration of the life of PIM’s founder and freedom fighter Reverend John Chilembwe at PIM headquarters in Chiradzulo, southern Malawi, where President Mutharika was in attendance. Makondetsa argued that negative reporting was promoting disrespect for leaders and scaring away potential investors.

Mutharika himself has, on a number of occasions, accused the media of negative reporting and “receiving bribes to publish stories.” Speaking during the elevation ceremony of Traditional Authority (T/A) Ngolongoliwa at Chonde in Thyolo District, southern Malawi on Sunday, 28 May, President Mutharika attacked the media for publishing stories that come out “because they [the report-

ers] have been bribed.” Several months later, on his return from the United Nations General Assembly (UNGA) in October, the President told journalists to report positive stories about Malawi and not dwell on negative issues, which he said were tarnishing the country’s image. The media on its part called on the President to provide evidence of the corruption in the media, and argued that he had become “accustomed” to criticising the media for playing its watchdog role.

Apart from criticising the media for publishing negative stories, MISA Malawi received reports that government had gone further, by withholding advertising from media houses deemed critical of the state. Several media outlets deemed pro-opposition or critical of the ruling DPP confided in MISA Malawi that government had stopped giving them adverts, a development that could potentially cripple the outlets concerned. The private media survives on advertising and government is the biggest advertiser in the country. Withholding government advertising is a deliberate attempt to stifle critical voices.

### Constitutional Rights and Legislative Environment

Malawi has one of the best Constitutions in the region with clear and independent provisions of freedom of expression – Section 35, media freedom – Section 36 and access to information in Section 37. The country, however, has over a dozen archaic, anti-press laws that negate these Constitutional guarantees. As noted in our past reports, some of these laws 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, which past administrations have applied to silence critics. The Pro-

<sup>1</sup> See *So This is Democracy*, Malawi Chapter review, 2011.

tected Flags, Emblems and Names Act still quotes a fine in Pound Sterling (1000 Pounds, about MK660, 000) and not Malawi kwacha, an element that supports the argument that this law is archaic and needs to be reviewed, 54 years after independence.

As argued in past reports, the presence of draconian laws in the country's statutes is a cause for concern because they have a chilling effect on both journalists and civil society actors.

## Defamation

Cases of defamation have over the years crippled many media outlets in Malawi. Most of these cases are rarely publicised and have been resolved behind the scenes through alternative dispute resolution, which requires that any civil case registered with the court is examined for determination on whether it can be resolved through dialogue and negotiation. Most media owners and managers in the country regard this process less costly, speedy, informal, friendly and flexible than the usual court process.

In 2017 however, at least one defamation case against the media was publicised. It all started with a court order by the Agricultural Development and Marketing Corporation (ADMARC) on 29 December 2016 stopping Times Group from publishing stories on the Maizegate. Times Group challenged the injunction but barely two weeks later the Malawi Revenue Authority (MRA) closed Times Group over unpaid taxes. MISA Malawi issued a statement arguing that the closure of Times Group was ill-timed, could easily be construed as an attempt by government to stop the media house from further publication of the Maizegate stories specifically, and silence critical voices generally. The MISA Chapter argued that the issue of unpaid

taxes could have easily been resolved through mutual business negotiations.

But on 2 February 2017, Maravi Post claimed that then Minister of Agriculture George Chabonda had sued Times Group for defamation because of an article published in the Malawi News of 28 January to 3 February 2017 titled "Defiant Chabonda." Quoting court documents from Chabonda's lawyers, M and M Global Consultants, Maravi Post claimed Chabonda had sued Times Group because "...the title of the story was defamatory as in simple terms it means to offer resistance to something or challenge something...the publication was intended to portray an appalling image of Chabonda and attacking his character as a public official as well as an individual."

More reports surfaced on 13 February 2017 that Chabonda had sued Times Group including editors George Kasakula, Innocent Chitosi, Arnold Munthali and reporter Alick Ponje for defamation over articles on Maizegate. Kasakula argued the Times Group was ready to defend the articles in court. Chabonda was later arrested by the Anti-Corruption Bureau for alleged abuse of office in the MK26 billion Maizegate scandal in his capacity as Minister of Agriculture. The defamation case remains in court.

## BROADCASTING

### State of Broadcasting and Digital Migration

The broadcasting sector continues to grow with the rolling out of new license holders. Radio Lilanguka, which was licensed in 2016, began operating on 27 November 2017, Love FM went on air on 27 March 2017, and Chisomo in February 2017, bringing the total of operational community broadcasters to 40.

The growth in the sector has increased sources of information for the citizenry. Unfortunately, only few outlets have the financial means to sustain their operations, let alone roll out.



**The amendment of the Communications Act (1998) was a key milestone in the push for transformation of MBC from state control to a public service broadcaster and government's continued interference with MBC programming is retrogressive and regrettable.**

MISA Malawi has secured funding from the Open Society Initiative for Southern Africa (OSISA) to promote access to information through community radio. Among others, the funding will help build capacity of community broadcasters in participatory programming, management and resource mobilisation as one way of ensuring sustainable community broadcasting.

Securing a broadcasting license is one thing and rolling out and sustaining operations, especially within a geographical community, is another.

Nonetheless, the growth in the sector is important as it demonstrates government's commitment and willingness to strengthen the broadcasting industry given the country's literacy levels and limited penetration and circulation of the print media.

Regrettably, the country's public broadcaster, Malawi Broadcasting Corporation (MBC) radio station and television continue to operate as a propaganda tool for the party in power. This is regrettable as MBC had managed to register commendable progress during the 2014 Tripartite elections by developing content that was largely based on public interest and professionalism. MBC has always supported the party in power with over 99 percent content in favour of the state but a media monitoring project of the 2014 elections noted that "... compared with the bias demonstrated by the state media towards the ruling party in 2009, this time round the bias was slightly less... a development that can only be welcomed."

This was however not the case during the 2017 by-elections in which the ruling DPP performed poorly. MBC angered most stakeholders for not broadcasting results of the by-elections and no reasons were given.

As a public broadcaster MBC has a mandate to fairly cover elections, including announcement of results regardless of the faction of the winning candidates.

Different governments have come and gone with promises that they would loosen government grip on the MBC. The current administration is no excep-

tion. What is clear, however, is that it is easy to promise change but next to impossible for those in power to walk the talk and let go of the public broadcaster.

The amended Communications Act (2016), which subjects all presidential appointments of MBC and Malawi Communications Regulatory Authority (MACRA) boards to national assembly screening, became effective on 1 June 2017, but most critics, including MISA Malawi, doubt the new law will change how MBC has been operating if its conduct during the 2017 by-elections is anything to go by. The amendment of the Communications Act (1998) was a key milestone in the push for transformation of MBC from state control to a public service broadcaster and government's continued interference with MBC programming is retrogressive and regrettable.

### Digital Migration

Malawi is making commendable progress as far as digital migration is concerned. At the time of writing this report, the Digital Broadcasting Network Limited Company was completing work on a transmitter in Dowa District, central Malawi, to increase signal distribution and coverage from 70-90% of the country. Signal distribution stood at 48% of the total population before the migration from analogue to digital. As stated in our 2016 report, however, awareness is still a challenge as most Malawians do not understand what digital migration means for the country.

2016. Many people argued that Mutharika would not sign the Act, considering the various instances over the past few years, when government had tried to derail and block the process both in and outside the National Assembly. Mutharika's signing of the Act concluded a process that started in 2004 and pushed the country into the limelight as one of the few countries on the African continent with an access to information law.



**Deliberate attempts to strangle the media, delay in implementation of the Access to Information Act, impunity of the ruling elite, existence of old and new draconian laws and low media penetration in the country, remain major challenges, which require strategic planning and persistent monitoring in 2018.**

## ACCESS TO INFORMATION

President Peter Mutharika surprised many critics when he, on 10 February 2017, assented to the Access to Information (ATI) Act which the National Assembly had passed on 5 December

Part 1, Section 1 of the Act however states that the law would become effective on a date appointed by the Minister and published in the gazette. The Minister of Information and Communication Technology, Nicholas Dausi, was yet to set a date for the implementation of the Act as at 31 December 2017, casting doubt on government's commitment to the promotion of access to information as indicated in the 2014 ruling DPP manifesto.

It is important to note that MISA Malawi made ATI a campaign issue during the 2014 Tripartite Elections and capitalised on the presidential debates to get commitments from candidates to enact legislation on ATI once in power. The DPP committed in its manifesto to ensure that Malawi has ATI legislation. Section 180 of the DPP manifesto reads: "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."

Although one would argue that the DPP has lived up to its campaign promise, MISA Malawi believes that the process does not end with enactment but effective implementation and enjoyment of that right by all Malawians. This however, does not seem to be the case looking at a number of developments in 2017.

Firstly, the oversight body, the Malawi Human Rights Commission (MHRC), does not have resources to effectively undertake its oversight mandate. The MHRC cannot effectively operate without the necessary support and resources for effective implementation of the ATI Act. In the 2017/2018 national budget, no funds were allocated for preparatory work that MHRC had to undertake in readiness of implementation of the law. More surprising was the fact that during the Parliamentary Budget Review meet-

ing, the Commission's budget was cut to MK166, 000,000 (US\$227, 397.27) from MK185,000,000 (US\$253,424.66). There is need to support and build the capacity of the Commission to effectively discharge its duties.

Secondly, the Chapter received several reports of public bodies and individuals banning the media from covering public deliberations and functions at the time the President had assented to the ATI Act. For example, in mid September 2017, the Chapter received reports that the Phalombe District Council in southern Malawi had banned reporters from covering Council proceedings. Just one month earlier, in August, officials from the Office of the President and Cabinet (OPC) had also banned the media from covering the public-sector reform meetings which were taking place at the Bingu International Conference Centre. On 17 July, MISA Malawi issued a statement condemning the assault of MBC journalists by prison warders at Maula Central Prison. The prison warders assaulted and barred reporter Patrick Dambula and cameraman Hastings Khombo from covering a strike the warders had been holding since 14 July to force government to revise their salaries.

MISA Malawi also issued another statement on 21 July over reports that the media had been barred from covering the infamous Maizegate case involving former Minister of Agriculture George Chaponda.

Barring reporters from public functions is unconstitutional and retrogressive for Malawi and happened at a time the country had just enacted legislation on ATI. MISA Malawi believes such developments are an infringement on the right to know and demonstrate the urgency with which the country needs implementation of the ATI Act. These

developments show the urgent need for the Minister responsible to set a date for the law to become effective.

Section 37 of the Malawi Constitution clearly provides for the right of access to information. The provision is however not sufficient to ensure easy access as several factors, including an unresponsive/willing public sector and high levels of illiteracy amidst other issues combine to limit the citizenry from enjoying this right. Implementation of the ATI Act will help address some of these shortfalls as it, among others, calls for civic education and proactive disclosure on the part of information holders. The law also sets clear penalties for failure to comply with its provisions.

## FREEDOM OF EXPRESSION ONLINE

Unfortunately, in 2017, government proceeded to implement the Electronic Transactions and Cyber Security Act (2016), despite concerns from MISA and other stakeholders that the new legislation has broad provisions that can be abused to limit Constitutional guarantees on media freedom and freedom of expression. One of the controversial parts of the legislation concerns control of online expression.

The law provides government with a tool to police and restrict online communication with broad provisions open to abuse. MISA Malawi has been critical of the new legislation and tried to engage the National Assembly to revisit the provisions but failed.

The Act provides that online communication may be restricted in order to “promote human dignity and pluralism in the expression of thoughts and opinions”, “protect public order and national security”, “facilitate technical restrictions” and “enhance compliance

with the requirements of any other written law.”

MISA Malawi believes that these clauses are broad and fail to provide a clear framework of what amounts to human dignity, public order and national security or technical restrictions. In addition, the wording “enhance compliance with the requirements of any other written law” complicates matters as the country has maintained several colonial laws that criminalize free speech and contradict Constitutional provisions on media freedom and freedom of expression.

## LOOKING FORWARD TO 2018

The developments in the Malawi media in 2017 can only be looked at as milestones in the development of a mature media democracy. The media showed resilience in troubled times and continued to undertake their noble task of informing Malawians and holding those in power accountable. The media continue to actively participate in nation building even under hostile political and economic strangulation. The advocacy and resolve to defend media freedom are clearly influencing development of positive policy reforms evident in the enactment of the access to information legislation and review of the Communications Act.

Deliberate attempts to strangle the media, delay in implementation of the Access to Information Act, impunity of the ruling elite, existence of old and new draconian laws and low media penetration in the country, remain major challenges, which require strategic planning and persistent monitoring in 2018.

# MALAWI MEDIA FREEDOM VIOLATIONS AND VICTORIES 2017



**13 January 2017**

## **CENSORED**

### **Malawi Revenue Authority closes Times Group over taxes**

The Malawi Revenue Authority (MRA) has closed Blantyre Printing and Publishing Company (Times Group) offices over unpaid taxes. The closure of Times Group comes less than a week after the Agricultural Development and Marketing Corporation (ADMARC) sought an injunction restraining the media outlet from publishing stories on Maizegate – exposure of the scandal of alleged irregular procurement of maize from neighbouring Zambia.



**15 January 2017**

## **THREATENED**

### **Religious leader attacks media**

Providence Industrial Mission (PIM) president and general overseer the reverend Patrick Makondetsa on Sunday, 15 January, attacked the media for alleged negative reporting.

Makondetsa attacked the media in his sermon at PIM headquarters in Chiladzulo, southern Malawi, where President Peter Mutharika led Malawians in commemorating the life of PIMs founder and freedom fighter the Reverend John Chilembwe.

Makondetsa argued that the media's reporting was derailing Malawi's development.



**10 February 2017**

## **VICTORY**

### **President Mutharika approves ATI Act**

President Peter Mutharika has signed the Access to Information

(ATI) Act, casting Malawi into the spotlight as one of the few countries on the African continent with legislation on access to information.

Malawi Members of Parliament passed the Act on Wednesday, 14 December 2016, after a heated debate that went into the night.

President Mutharika was largely seen as an obstacle in the push for legislation on ATI. His approval of the legislation has silenced many critics including MISA Malawi who considered as mere politics his campaign promise to enact the long awaited legislation once elected into office.



**13 February 2017**

## **LEGISLATED**

### **Minister sues Times Group for defamation**

Minister of Agriculture and Food Security George Chaponda has sued Malawi's publishing giant Times Group for defamation in conjunction with a series of Maizegate stories the media house has been publishing.

Chaponda is suing Times Group editor in-chief George Kasakula, The Daily Times editor Innocent Chitosi and his assistant Madaliso Musa, Sunday Times editor Chachacha Munthali and reporter Alick Ponje. Blantyre Newspapers Limited – publishers of the Daily Times, Malawi News and Sunday Times, published extensive irregularities around the procurement of maize from Zambia. Chaponda is claiming damages for alleged false and malicious articles by Times Group.



**28 May 2017**

**THREATENED**

**Mutharika calls the media 'corrupt'**

President Peter Mutharika on Sunday, 28 May, alleged that the media in Malawi is corrupt as stories are published after the writers have been bribed.

In reaction to the allegations, the Media and Communications Committee of Parliament has asked President Peter Mutharika to produce evidence that the Malawi media is corrupt. Media and Communications Committee chairperson Sam Kawale is quoted in the Daily Times issue of Tuesday, 30 May, as saying the President should come out in the open and prove to Malawians that the local media was corrupt. Kawale said the President's remarks could mislead Malawians who may lose trust in the local media.



**17 July 2017**

**ASSAULTED**

**Prison wardens assault journalists**

Malawi prison wardens on Monday, 17 July 2017 assaulted MBC journalists for covering an ongoing strike by the prison wardens. Prison wardens at Maula in Lilongwe manhandled reporter Patrick Dambula and cameraman Hastings Khombo who had gone to the prison to cover the strike. In an interview with MISA Malawi Dambula said that they failed to do their story because of the hostile atmosphere at the prison.



**20 July 2017**

**CENSORED**

**Journalists barred from covering Chaponda case**

Democratic Progressive Party (DPP) supporters insulted and barred journalists who wanted to cover the court case involving



Minister of Agriculture and Food Security George Chaponda when he appeared for his bail application before the Blantyre Magistrates Court in Blantyre on Thursday, 21 July 2017.

Chaponda is accused of abuse of office in the procurement of maize from Zambia. Chaponda, who is ruling DPP vice president for the south, was arrested by the Anti-Corruption Bureau (ACB) on Wednesday, 19 July 2017.

**22 August 2017**

**CENSORED**

**Journalists barred from covering Public Sector Reforms conference**

The Public Service Reforms Management Unit (PSRMU) in the office of the President and Cabinet on Tuesday, 22 August, barred journalists from covering a conference on the implementation of the public sector reforms.

An official from PSRMU ordered journalists out of a meeting that was taking place at Sunbird Capital Hotel in Lilongwe. The Nation Newspaper on 23 August 2017 reported that the unit's chief director Seodi White had also refused to grant The Nation Newspaper an interview to clarify a number of issues White had raised in her presentation during the conference arguing that the Nation Newspaper was bent on having her fired.



**21 September 2017**

**CENSORED**

**Journalists barred from covering council meetings**

The Public Service Reforms Management Unit (PSRMU) in the office of the President and Cabinet on Tuesday, 22 August, barred journalists from cover