



Press release

Concerns over rising incidents of Police surveillance, interception of private conversations and crackdown on freedoms of expression and the Press in Malawi

We, the undersigned organisations with a shared vision of promoting digital rights, press freedom and freedom of expression online and offline in Malawi, are deeply concerned with the rising cases of Police surveillance and interception of private conversations of citizens resulting in arbitrary arrests, prosecutions and convictions. These acts have a chilling effect on citizens, journalists and activists who use social media platforms, such as WhatsApp, and violate section 21 on the right to privacy, section 34 on freedom of opinion, section 35 on freedom of expression, and section 36 on press freedom under the Malawi Constitution. The same acts also violate international law. Critically, this growing crackdown smacks of incipient authoritarianism and institutionalisation of state intimidation through the application of archaic and draconian laws.

Malawi is a state party to both the African Charter on Human and Peoples' Rights (ACHPR) and the International Covenant on Civil and Political Rights (ICCPR) and must uphold its human obligations including respecting articles 9 and 19 of the ACHPR and the ICCPR respectively. The ACHPR [Declaration of Principles on Freedom of Expression and Access to Information](#) (the Declaration) elaborates on freedom of expression stating under Principle 21(1)(b) and (c) that public figures shall be required to tolerate a greater degree of criticism and that sanctions shall never be so severe as to inhibit the right to freedom of expression. Principle 23(3) of the Declaration is also instructive that States shall not prohibit speech that merely lacks civility or which offends or disturbs.

The arrest of Mr Chidawawa Mainje on Sunday, 1 May 2022 over a WhatsApp political conversation and the charge preferred against him under section 86 of the Electronic Transactions and Cyber Security Act of 2016 (the Cyber Security Act) for allegedly insulting President Lazarus Chakwera, is not an isolated incident. We are concerned that

since the Tonse administration came into power in 2020, the arrests of citizens over online activities has intensified. Some of the recent arrests of online users include the following:

- In January this year, police arrested social media activist, Joshua Chisa Mbele, after he posted on his Facebook page an unauthenticated document with names of top government officials allegedly implicated in corruption.
- Again, in January this year, Police issued a warrant of arrest for political activist, Bon Kalindo, for allegedly insulting President Chakwera. The warrant was later withdrawn after public outcry.
- In February this year, Police arrested a 39-year-old man, Joseph Mathews, based in Lilongwe City allegedly for publishing a story on Facebook alleging that a member of parliament (MP) for Kasungu West, Jailosi Bonongwe had diverted two trucks of relief maize meant for his constituents.
- In July 2021, police arrested a 20-year-old girl, Chisomo Makala, for allegedly sharing on social media a video clip that appeared to ridicule President Chakwera. Makala was arrested in Chigwirizano Township after police traced a phone number that she had used to share the video clip on a WhatsApp group called Mandota Comedy.
- In April 2021, Ignatius Kamwanje was arrested over a *Facebook* post alleging that money was being stolen from National Bank of Malawi (NBM) clients' accounts. He was later convicted by the Lilongwe chief resident magistrate's court and made to pay a fine.
- In February 2021, Police arrested former Member of Parliament for Kasungu West, Alex Meja, for issuing a statement critical of President Chakwera.

In a similar brutal fashion, several journalists have been targeted including Gregory Gondwe, Watipaso Mzungu and Enock Balakasi, who were arbitrarily arrested and intimidated for their work deemed critical of Chakwera's administration. It is thus less surprising that the 2021 Freedom House's report on internet freedom in Malawi shows a decline in Internet freedom, citing the government's intensified arrests of individuals "*for their online activities for the first time in recent years*". This pattern of state surveillance and climate of intimidation has a chilling effect on freedom of expression and active citizen participation in critical governance issues affecting Malawi and may prompt a degree of self-censorship, especially among media practitioners and social media users. We further wish to stress that the sharing of private communications with the Police by certain individuals and subsequent arrests on a law that violates the Constitution and international standards is a violation of privacy by the government of Malawi. WhatsApp is a private social media platform protected by encryption for a reason, to safeguard the privacy of communications.

We, therefore, remind authorities that they have a duty to uphold freedom of expression online as pronounced by both the Declaration and the [African Declaration on Internet Rights and Freedoms](#). We further remind authorities that Malawi is a democratic country and freedom of speech, applies to ideas of all kinds, including those that may be deeply offensive to authorities. The only permissible restrictions are those that are prescribed by law, which are reasonable, recognised by international human rights standards and necessary in an open and democratic society, according to section 44(1) of the Constitution of the Republic of Malawi.

Recalling the Catholic Bishops' observation in their pastoral letter commemorating the 30th Anniversary of 'Living Our Faith' that ***“dissenting voices in our society are muted through the application of archaic and draconian laws”***, we reiterate our call for government to repeal all laws that suppress freedom of expression online and offline including the Electronic Transaction and Cyber Security Act; the Protected Flag, Emblems and Names Act (Cap. 18:03); and the Penal Code, among others, which over the years have been used to restrict freedom of expression online and offline, especially for those with dissenting views. Principle 22(2) and (3) of the Declaration of Principles provides that States must repeal laws that criminalise sedition, insult and publication of false news and amend criminal laws on defamation and libel in favour of civil sanctions which must themselves be necessary and proportionate.

We further urge the Tonse administration to drop all criminal charges related to freedom of expression online and offline and restore the government's human rights obligations according to the Constitution and international law.

As watchdogs, we are determined and committed to ensuring full respect for fundamental rights and freedoms enshrined in our constitution and international law, including freedom of expression.

Signed today 2 May 2022 by:

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