**MALAWI HUMAN RIGHTS COMMISSION**

**Submissions to the UN Special Rapporteur on Freedom of Expression and Opinion**

**Q. 1. HOW DOES FREEDOM OF EXPRESSION AND OPINION PROMOTE SDGs (give examples, laws and policies)**

Freedom of expression which is akin to goal number 16 of the SDGs, does not only speak to media freedom, it also speaks to all the other goals and its attainment advances or promotes the attainment of all the other goals.

When there is freedom of expression education is promoted to the extent that, people are free to state their opinions without fear of being reprimanded by the authorities in any way. Opinions of leaners allow them to advance their curiosity and sense of trying to find out solutions to seemingly complex problems.

In Malawi, the Constitution which is the highest law of the land accords freedom of opinion and freedom of expression on sections 34 and 35 respectively. In the year 2011, at the University of Malawi formally Chancellor College, lecturers and the government found themselves at loggerheads when a university lecturer was arrested following what was said in a class of political science. The lecturers protested using academic freedom as something that should be respected in schools. The conflict lasted for 12 months and to this date lessons were learnt concerning freedom of opinion and expression in classrooms.

Apart from enhancing education, freedom of opinion and expression also advances SGD goal no. 5 which speaks to gender equality. Women have a platform to voice out their concerns and get to be heard without being afraid of anything. In Malawi, we have the Gender Equality Act, a domestication of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The instruments are used to advocate for the rights of women without fear.

Furthermore, the freedom of opinion and expression also assists in the promotion of goal no.10 that speaks to inequalities. In Malawi, marginalized people have had a voice on a number of things that affect them. Laws have been enacted that help them to advance their cause, reduce inequalities and normalize differences.

In Malawian schools for example, inclusive learning has been advocated for and is now a success story, the Disability Act which domesticated the Convention on the Rights of People with Disabilities is part of the law that promotes and enables concerned parties to have a voice, call out inequalities and speak their truth.

In general, without freedom of expression and opinion, there is no democracy because democracy is about promoting different views in the development of the nation. In Malawi, general elections are held every five years where citizens are freely allowed to express their opinion of choice by casting a ballot on the candidate of their choice but also to campaign for their candidate and for themselves.

**Q.2** Malawi as a country has flexible laws that allow for freedom of expression and also access to information. Access to information on its own is stipulated under section 37 of the Constitution of the Republic of Malawi and it has a separate statute called the Access to Information Act which was operationalized in 2020.

The majority of the people however do not know how to use the law to have answers to their questions. Most information holders do not conform to the dictates of the law which acts as a stumbling block to people who wish to access information. On this point hence, it is safe to state that Malawi does have some restrictions in accessing of information and to a certain extent freedom of opinion because of late people have been arrested based on their sentiments on social media. A combination of all these things involved does affect the people’s attainment of their social cultural rights. For instance, access to health is part of a progressive right under the ESCR. The majority of people are unable to access information even about their own health because of inadequate care that they receive at public health facilities. SDG no. 16 however strives towards an open society to information and more.

In order to resolve these problems, it is highly recommended that all institutions which are supposed to comply with the Access to Information Act must do so. In addition, there is need form more civic education on the rights of the people to use the law to access information.

**Q. 3**. Women, girls and marginalized populations are usually at the centre of inequalities. Research shows that women suffer the consequences of poverty more than men. In Malawi, even though there are laws that allow for access to information, women, girls and the marginalized fail to access information largely due to poverty. To afford technologies like cellphone and internet is a luxurious expense most women, girls and marginalized cannot afford.

There have been some interventions that have tried to resolve the access to internet challenge whereby government has opened resource centres in rural areas so that people can have access to information using the internet. However, women and girls do not frequent these places as much as men and boys do due to other burdens in the homestead. The problem of acute of electricity supply which at present less than 15% of the population have access to electricity worsens the situation.

It is therefore recommended that government put in place measures that will promote digital technology and internet accessibility. These might include expanding access to electricity even in rural areas, reducing the cost of data and providing free access to internet in designated public places/facilities. In addition, promote education for women and girls

**Q.5**. Access to Information Act (ATIA) of 2017 which became operational in 2020, domesticates the right of access to information enshrined in Article 9 of the African Charter on Human and Peoples’ Rights and the international human rights instruments including Article 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. The Act covers issues such as: proactive disclosure; the duty to create, keep, organize and maintain information; the need for an oversight mechanism to monitor, promote and protect the right of access to information; protected disclosures in the public interest; sanctions for failure to proactively disclose information; to name a few.

In 2017, the Malawi parliament approved changes to the Public Procurement Act to introduce a legal mandate for disclosing data in line with the Construction Sector Transparency Initiative (CoST) Infrastructure Data Standard (IDS), designed to put data into a format that is accessible, understandable and applicable for both policy-makers and the public. The legislation, which was brought into effect in 2021, requires information related to public infrastructure to be disclosed at each stage of the project cycle.

Furthermore, the President of Malawi gave a Presidential Directive in July 12, 2022, requiring all public agencies to publish information of infrastructure projects on the Information Platform for Public Infrastructure (IPPI) Portal with the aim of empowering the public with information on public infrastructure projects.

However a 2022 analysis initiated by the Centre for Human Rights and Rehabilitation (CHRR) in Partnership with the Malawi Human Rights Commission (MHRC), Cost Malawi, the African Institute of Corporate Citizenship(AICC), and Africa Freedom Information Centre(SFIC) and the Partnership for Transparency Fund (PTF) shows that the IPPI is not being effectively used to support the Formal Disclosure Requirement (FDR) to make information on infrastructure projects accessible to the public ; a requirement in the Public Procurement and Disposal of Public Assets Act. Out of 92 Ministries, Departments and Agencies of Government (MDA), only 31 have published data on the portal representing 31% compliance. The data uploaded on the portal by the agencies are lacking in detail as the highest complying project in the study scored 62% and the lowest compliance percentage being 6%.

The Study shows that the MDAs are not complying with the minimum requirements to provide data that is meaningful, complete and concise. The public is as a result denied access to information.

**Q.7.** The media plays a major role in ensuring that there is access to information among the masses. Through their work, people are able to know about things that they would not have normally known. In Malawi the Platform for Investigative Journalism has exposed so much corruption and hidden illegalities that have not only assisted the public to voice out their anger towards the grand scale corruption cases exposed, it has also put the journalists in danger.

Journalists are not completely free to put information that they come across in the media, sometimes they are forced to reveal their sources which is a major ethical issue in their work.

In 2022, Gregory Gondwe one of the journalists at Platform for Investigative Journalism was arrested by the police after they uncovered a major syndicate. The arrest exposed how government and state agents use force and phone call logs to monitor who journalists are communicating with, posing threats to media freedom and whistle blower protection.

As at now, the Whistle Blower Protection Act has not yet been enacted, there are however great steps towards its enactment following the push by the Anti- Corruption Bureau to see to it that the same is enacted, so that whistle blowers can be protected. However, most institutions already have their own internal whistle blower protection mechanism. The institutions which do not have were and are being encouraged to have while steps are being taken to enact the Whistle Blower Protection Act.

The abuse of laws and systems by state agents and other actors to spy on journalists and their sources is not only a threat to the right to privacy that the Malawi Constitution guarantees but erodes whistle blowers and public trust in the media.

ANNEX





