

Malawi government drafts 'E-bill'

By Gregory Gondwe: @Kalipochi

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The government of Malawi has announced the completion of the drafting of the electronic legislation called 'E-bill', which now awaits input from institutions and individuals before parliament passes it into law.

10 areas of focus

The draft copy has 62 sections that address ten areas.

The first area focusses on 'legal recognition of electronic messages', which the bills acknowledges does not exist as such in the current legal framework, whereas it is a condition to the development of electronic transactions in the country.

The bill will therefore seek to enforce that any written document and any signature should be possibly created and stored in an electronic manner while ensuring that electronic documents should have the same legal probative force as paper documents.

The second point of focus by the bill is what it is calling 'proceedings applicable to the conclusion of electronic contracts' - where it specifies and clarifies rules regulating the conclusion of contracts in order to ensure security with respect to electronic transactions.

The proposed law also seeks 'legal responsibility of various actors' with respect to the internet. It observes that as it is the case regarding television, radio, or written press, the freedom of speech should be limited by certain principles of public order.

The bill defines precisely the responsibility of technical service providers and editors of online contents.

The bill's chapter three of Part III, which has the headline 'Online user's protection and liability of intermediaries and content editors', defines who the editors are in Section 23.

The draft bill describes operators as intermediary, who are any legal or physical person or any entity that provides electronic communications services consisting of the provision of access to communication networks, as well as storing or transmission of information through communication networks.

The said section of the draft bill says the editors of online public communication services shall offer in an open standard, among others, their names, domicile, and telephone number.

It further states that should these persons be subject to registration as required by law, the number of such registration and individuals involved should also be disclosed.

However, the draft bill says where such an intermediary has corporate name and registered office, telephone number, authorized share capital and registration number; such registration shall be disclosed as well.

The proposed law states that it would require the name of the corporate officer appointed as director of the publication of the online public communication service and, if applicable, the editor in chief. This information would also be required with particulars on the name, title, corporate name, address and telephone number of the intermediary service providers.

One other area the draft bill demands is that the persons editing online public communication services on a non-professional basis may, for ensuring their anonymity, solely make publicly available their name as well as the name and address of the intermediary service provider.

The qualification as editor of an online public communication service, the draft bill says, does not exclude the qualification as intermediary service provider and both qualifications may apply distributively to each activities exercised by the same person.

It is hoped that with such information, and more demanded in this section, legal responsibility of various actors will be enforced.

The provision of financial and banking services

The fourth area deals with the 'Consumer protection with respect to e-commerce'.

"Online purchase of services or goods requires the adoption of specific provisions in addition to classical consumer rules. Consequently, the bills provides for specific obligations lying on professionals regarding the display of information and online advertising," says the draft bill.

The fifth aspect captured in the draft legislation is on 'Taxation' where it says the bill will detail the circumstances under which value added tax and customs fees can apply to e-transactions.

This is immediately followed by 'Online financial services' and the importance and the specificity of the risks for these services, the bill says, have driven the government to introduce very strict provisions regulating the online provision of financial and banking services.

The draft bill has also looked at 'Encryption' as a way of including specific provisions that will ensure the security of digital economy.

"In particular, the bill provides for the legal framework regulating encryption in conformity with international best practices," says the draft bill.

Cybercrime

The eighth area the bill has tackled is 'cyber criminality' where it sets out the principles for combating crimes in the e-environment and establishes a dedicated institution, the Malawi CERT, to fight against cyber threats and attacks.

The other area is 'Data protection' and the bill says it provides for specific provisions in order to regulate online collection of personal information regarding users and imposing systematic information on the purposes of the data processing and the rights of the data subject.

In the previous draft, government omitted 'E-Government' which appears in the draft legislation.

"The bill reminds administrators to oblige and do their best efforts to promote the development of online public services and facilitate the use of ICT in the Republic of Malawi," reads the draft in part.

'Regional Communication Infrastructure Program - Malawi project'

Last week, the office of president and cabinet announced, through the local media, that with the draft in place, Malawi will align the development agenda with a legally supported ICT platform.

The Privatisation Commission, a government unit, is implementing 'Regional Communication Infrastructure Program - Malawi project' with funding from the World Bank.

The main objective of the project is to improve quality, availability, affordability and utilisation of broadband internet in Malawi wherein one of its subcomponents is the drafting of an electronic legislation.

With the electronic legislation in place, government says it expects to create adequate, enabling and favourable environment for information and Communication Technology (ICT) users.

Addressing internet-specific issues

It also hopes to provide legal foundation that will address internet-specific issues and challenges as well as protecting the public from cybercrime.

The legislation will also guide in maintaining a secure space where data and intangible money could be stored, shared and legally and securely transferred.

Government also hopes this piece of legislation will address treatment of electronic evidence and develop information society.

As explanatory outline in the draft bill, government acknowledges that the development of the information society has originated considerable progresses in the ICT sector.

It says most significant steps of these changes are networks digitalization, components miniaturization and more recently the development of the Internet and mobile telephones.

"The Republic of Malawi is convinced that its predominantly agro-based economy can rapidly grow and diversify through participation in the information society," the bill points out.

"In order to fully benefit from the information revolution, the Republic of Malawi needs to modernize various sectors of its economy using ICT."

The government's main objective is to benefit from a true technological leap which may fasten its economic growth by enabling the development of new economic activities - thanks to the implementation of a secure legal framework regulating the use of ICT.

"The current legal framework applicable in the Republic of Malawi does not provide economic actors and citizens with a secure and reliable legal environment which is however essential to the development of electronic transactions," observes the government in the draft statement.

It says consequently, the Malawian Government hopes once this bill is enacted it will enable the development of the information society in Malawi within a legal framework.

"Whenever possible, current legal and regulatory texts shall remain applicable to situations involving ICT. Nevertheless, ICT

have created new legal issues which require specific legal answers," the draft bill reads.

Major objectives of the bill

In what is called preliminary provisions, the draft bill sketches out three major objectives that compelled government to come up with the bill.

"The objective of the bill is to set up a responsive ICT legal framework that shall facilitate competition, development of ICT and the participation of the Republic of Malawi in the information age and economy," reads the bill, emphasising that it purports to ensure that the development, deployment and exploitation of ICT within the economy and society and related legal provisions balance as well as protect community and individual interests, including privacy and data protection issues.

The other objective is where the bill seeks to address ethical issues in the use of ICT to protect the rights of children and the under-privileged.

It also seeks to define favourable tax policies that promote ICT products and services that originate from within the Republic of Malawi besides providing a responsive and efficient regulatory environment, promote economic subsectors, assets accumulation and tax activities that arise from ICT use.

"Meanwhile, the Malawian public shall be protected from undesirable impacts of ICTs including the spread of pornographic materials, cybercrimes and digital frauds," the bill pledges.

Once it becomes the law, it will put in place mechanisms that will safeguard the public from fraud, breach of privacy, misuse of information and immoral behaviour brought about by the use of ICT, according to government.

The draft bill also points out that even when the bill will be enacted into law, it will need to be updated regularly, taking cognizance of the rapid changes in the ICT industry worldwide.

Download the [first draft of the E-bill](#).

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