

Court stops govt's from snooping phone records

 By [Gregory Gondwe](#)

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The High Court in Blantyre on Friday 14 October 2011 stopped government from using equipment of the Consolidated ICT Regulatory Management System (CIRMS) Project to access phone records of subscribers.

The court gave an order to government's telecommunication regulating arm, Malawi Communication Regulatory Authority (MACRA) restraining it from getting Call Details Records (CDRs) from the country's telephone operators.

Politicians and human rights activists challenged implementation of what is locally called a 'spy machine' which MACRA planned to silently switch on amidst vehement protest from telecommunication companies and subscribers.

The 'spy machine' is a violation

Ralph Kasambara, a lawyer was hired to challenge the rolling-out of the machine that would monitor phone calls, text messages and internet usage.

"I argued in my challenge that the rolling-out of the 'spy machine' is not justifiable as it is a violation of human rights, privacy and confidentiality," said Kasambara.

A Blantyre High Court judge granted the injunction pending an inter parte hearing. MACRA bought the machine from a US-based company Agilis International at, according to reports, US\$6.8 million.

From the onset, the [project met resistance](#) from telecommunication operators in Malawi who said this will violate and compromise obligation and duty they have to their subscribers. It is also against the laws of Malawi.

Right to personal privacy

Section 21 sub-section C of the Malawi Constitution states that: 'Every person shall have the right to personal privacy, which shall include the right not to be subject to interference with private communications including mail and all forms of telecommunications.'

Despite all the resistance, the country's telecommunications companies issued a statement last week confirming the regulator has informed them of the imminent implementation of the system. MACRA maintains the system cannot enable listening to people's conversations, arguing the system has no audio out-put.

"The system has no audio monitoring or recording capacity, hence poses no threat to people," said MACRA spokesperson Zadziko Mankhamba. "The machine is aimed at monitoring performance of the services providers."

Kasambara told Bizcommunity that he had instructions to seek a court order restraining MACRA from implementing the system and the telecommunications services providers from giving private information without consent from their clients.

The kind of information CDRs provide include who called which number; details of calls received; time and duration of calls; location where call was made or received; SMS sent and received; type of handset used and other detailed subscriber information.

Malawi telecommunication operators provide summarized data from the CDRs and MACRA is not able to access detailed subscriber information but the latest decision will equip MACRA who will now be able to eavesdrop on conversations of anyone in the country.

Newly appointed Minister of Information and Civic Education, Patricia Kaliati repeated what her predecessor said as she insisted that the machine will only be used to improve the quality of services being offered by the operators and manage traffic.

Government has backed MACRA's intention to implement the CIRMS Project, arguing that it will help the Malawi Revenue Authority recover lost revenue.

Former Minister of Information and Civic Education, Symon Vuwa Kaunda said the project will help government monitor revenue generated by the operators. He also said the intention is not to listen to phone conversation of subscribers.

"Tax was removed on handsets and imposed on airtime. Government has no mechanism to monitor revenue generated by these operators. We are at their mercy. They declare at the end of the year how much they have generated. They can give any figure. The facility is to do with revenue generation to help MRA (Malawi Revenue Authority) tax accordingly," Kaunda said. He also added that operators are against the project because it concerns money.

There are however, many reasons than just reluctant to release money if what is in another leaked letter to MACRA director general from the four operators, Malawi Telecommunication Limited (MTL), Telecom Networks of Malawi (TNM), Airtel Malawi and Access Communications Limited (ACL) is anything to go by.

Operators show reluctance

The operators started showing their reluctance in October 2010 when they refused MACRA's request to submit sample data for the project.

A letter written by the four operators, dated 17 September 2010 and signed by the then TNM acting CEO David Chetty, Airtel MD Saulos Chilima, Faizal Okhai ACL CEO and MTL CEO Bernd Flack, says all telecommunication operators have an obligation and duty to act in the best interest of their subscribers and the request by MACRA could lead to a compromise and violation of this.

"Further, the data requested is voluminous and, in order for the operators to be able to comply with the request, it will require a great deal of time and resources expected on the part of operators. We are also constrained by confidentiality provisions with numerous third parties, which make the provision of such information difficult," argued the four companies.

The letter then declared that the consensus of the telecommunications operators, that until MACRA address the concern raised in this letter and at earlier meetings or correspondence, the operators are not obliged at this time to submit the information as requested.

Leaked minutes of the meeting held at MACRA House on 1 October 2010 chaired by Richard Chisala, board chairperson

of MACRA technical sub-committee, indicate that government says the CIRMS Project is aimed at enhancing the monitoring, verification and validation of quality of service, revenue assurance, fraud management and spectrum management.

MACRA argues that subscribers' call records will be monitored and known by authority, something that telecommunication operators question as they say subscribers will be intimidated to use their networks since they will be monitored by the authority through records.

The operators further wondered if the consumer protection is considered in the whole project, considering that the information about subscribers will be given to the authority without the consent of the consumers.

Operators also questioned how confidential and secure will the information collected by the authority through the CIRMS equipment be and challenge MACRA that they have internal quality teams, quality assurance teams and fraud management teams who are dedicated to their work and wondered why the regulator should be engaged in the same. They also argued that for revenue assurance, they use the services of external auditors.

ABOUT GREGORY GONDWE

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