

Malawi: President's office defends repressive media law

 By [Gregory Gondwe](#)

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President Bingu wa Mutharika, through his office of the president and cabinet, has defended the amendment of Section 46 of the Penal Code. Media practitioners however, are demanding its repeal. Since 25 February 2011 to date, the president's office has been running a full paged advert where it has detailed facts which justify the endorsement of the new law that President Mutharika assented to early last month.



"The government has noted, with concern, that despite previous explanations by the government on the amendment of Section 46 of the Penal Code, there is lingering apprehension on the part of the media and other groups in Malawi as to the true intent and purpose of the amendment," said Bright Msaka who, as chief secretary to the government, is head of the office of the president and cabinet.

Government motivation for amending Section 46

Msaka said that the government of Malawi wishes to reiterate that the amendment of Section 46 of the Penal Code was motivated by the desire to improve the law in line with the Constitution of the Republic of Malawi, the rule of law, and precepts of democracy.

"This was why the previous Section 46 was amended - to take away the absolute discretion of the minister in the exercise of his powers," says Msaka, who is himself a lawyer of high repute. He argued that the government wishes to reiterate that the amended Section 46 of the Penal Code applies the test of reasonableness to the minister's decision.

He says unlike under the previous Section 46, which provided the minister with absolute discretion or unfettered authority to prohibit or restrict publications without due recourse to the courts, the amended Section 46 requires that the minister provides reasonable grounds for any decision to prohibit or restrict publications without due recourse to the courts and in accordance with Section 43 of the Constitution, the minister is required to give reasons in writing for his decision.

Ministerial power subject to judicial review

The president's office justified its cause further, saying the exercise of ministerial power under the new Section 46 of the Penal Code is subject to judicial review by the courts in Malawi, and any aggrieved person may challenge a decision taken by the minister.

"In addition, there are other constitutional provisions that provide a robust safeguard against the abuse of the new Section 46 by the minister," he says.

Unlike in all arguments where there was no explanation on how government is expected to use the law, this time round the office of the president explained how they expect to make use of it. Msaka said government will only use Section 46 of the Penal Code in cases of publication of material that is repulsive or pernicious to the public in Malawi, such as child pornography, incitement of violence or promotion of hatred, genocide or terrorism.

"Surely Malawi, like all democracies, must have laws to address such matters," he said.

Challenge amendment in court - lawyer

Considering this position, the president the Media Council of Malawi (MCM) says if dialogue with government fails, it will consult legal experts to establish if they can challenge it on constitutional grounds. MCM chairperson Rev. Patrick Semphere said since this issue is for all Malawians there is need to consult widely and come up with the best way forward.

"This does not concern the media only but the nation at large," he said.

University of Malawi lecturer who is also a constitutional lawyer Edge Kanyongolo told the media last week that repealing Section 46 through talks is a lengthy process.

"Challenging it in court will be the best course of action," he advised.

ABOUT GREGORY GONDWE

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