

# Court stops 'spy machine'

 By Gregory Gondwe: @Kalipochi

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The High Court judge in Malawi has stopped the Malawi Communication Regulatory Authority ([MACRA](#)) from using the Consolidated ICT Regulatory System ([CIRMS](#)) which has been dubbed as the 'spy machine' by locals.

Between April 2009 and September 2010, MACRA procured CIRMS which according to bid documents issued by MACRA, was to have capacity of lawful interception; internet interception; GSM and CDMA, GPRS interception and equipment identity registry.

Already MACRA has earned public wrath for procuring the CIRM Machine at US\$6.8 million from US-based company, Agilis International and are asking Malawi's newly installed government to investigate the matter.

Upon its acquisition, MACRA requested from mobile operators the subscribers' call detail records (CDRs) which includes information about who called which number; details of calls received; time and duration of calls; locations where call was made or received; SMS sent and received; type of handset used and other detailed subscriber information.

A concerned citizen, Alick Kimu, however went to court to stop operators Airtel, TNM, MTL and Access Communications Limited (ACL) from furnishing MACRA with the CDRs, arguing that it would breach his right to privacy.

Making his judgement in Lilongwe last week, presiding judge Justice Lovemore Chikopa ruled that mobile phone operators in the country should stop complying with MACRA's directives that asked the companies to be submit the authority with subscribers CDRs.

MACRA earlier made a directive for the implementation of the monitoring equipment.

## Injunctions issued

Justice Chikopa also issued a permanent injunction restraining Airtel, TNM, MTL and Access Communications Limited ACL from furnishing MACRFA with the CDRs.

Chikopa disclosed during his ruling that the plaintiff sought two declarations and an injunction.

"The first declaration was to the effect that he is entitled to having his right to privacy safeguarded by the defendants under the constitution, the Act and operating licence. That is granted," ruled Chikopa.

Secondly, he said the plaintiff sought a declaration that compliance with MACRA directive would in the circumstances of this case be a breach if his right to privacy.

"That is granted as well," he ruled further.

Since the plaintiff also sought an injunction restraining the defendants from furnishing MACRA with CDRs which has also been also granted, now Chikopa said the interim injunction granted herein as made permanent.

The judge said after commission CIRMS, MACRA requested from defendants various detailed information. Chikopa observed that the defendants were, to be fair to them, reluctant to comply with the requests.

"They thought compliance would compromise confidentiality and privacy of their subscribers apart from breaching constitutional guarantees of privacy," he said.

The judge observed that this is private information which should only be disclosed at the discretion of the owner thereof.

## The right to privacy

"The right to privacy is provided for under Section 21 of the Constitution and was quick to note that the right is not absolute, saying Section 44 (1) and (2) provides for instances in which the right can be limited," explained the judge before adding:

"For the record, the right can be limited if the limitation is prescribed by law, is reasonable, is recognised by international human rights standards and is necessary in open and democratic society."

In this case, he said a limitation does not become legal merely because it came from MACRA [or] indeed any regulator.

"It is because it complies with the test set out in Section 44 above mentioned. Does it? The answer is in the negative. No legislation has been pointed out which allows the defendant to limit the right," he said.

Chikopa ruled that if the defendants complied with the directive from MACRA "they would, in our view, be in breach of the plaintiff's right to privacy as provided for under the Constitution from MACRA, they would, in our view, be in breach of the plaintiff's right to the privacy as provided for under the Constitution, the Act and licenses. The directive is incapable of being saved by section 44."

## ABOUT GREGORY GONDWE: @KALIPOCHI

Gregory Gondwe is a Malawian journalist who started writing in 1993. He is also a media consultant assisting several international journalists pursuing assignments in Malawi. He holds a Diploma and an Intermediate Certificate in Journalism among other media-related certificates. He can be contacted on [gregorygondwe@gmail.com](mailto:gregorygondwe@gmail.com). Follow him on Twitter at @Kalipochi.

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