

LONDA

MALAWI DIGITAL RIGHTS AND INCLUSION

A PARADIGM INITIATIVE PUBLICATION



2020 REPORT

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Published by Paradigm Initiative

374 Borno Way, Yaba, Lagos, Nigeria

Email: media@paradigmhq.org

www.paradigmhq.org

Published in April 2021

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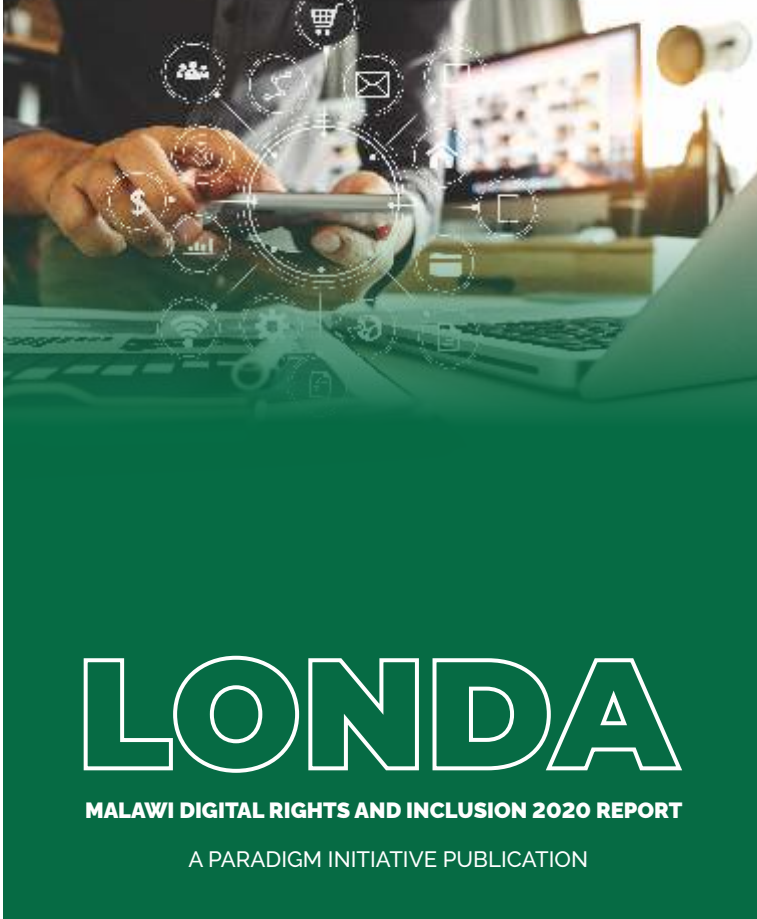
Design & Layout by Luce Concepts

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Civil society organizations continue to work to advance digital rights and inclusion in Africa, ensuring best practices are adopted into policy and legislation. This report analyses the state of digital rights and inclusion in Malawi, examining violations and gaps, investigating the use and application of policy and legislation, highlighting milestones and proffering recommendations for the digital landscape in Malawi. This edition captures among other issues, the digital divide worsened by the COVID-19 pandemic and unearths infractions on different thematic areas such as privacy, access to information, and freedom of expression with the legislative and policy background well enunciated.

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Malawi is a landlocked country that borders Tanzania, Zambia and Mozambique. The country has an estimated population of 17.7 million people, of which 85% live in rural areas.¹ The Gross Domestic Capital (GDP) per Capita is estimated at USD \$516.80.²

INTRODUCTION

DIGITAL RIGHTS AND INCLUSION IN MALAWI

Most women work in the agricultural sector which is a backbone of Malawi's economy. Of those in non-agricultural waged employment, 21% are women and 79% are men and the numbers have remained the same over the years. In spite of various structural reforms in recent years, Malawi continues to rank as one of the least developed countries in the world, constantly affected by high levels of poverty and climate change vulnerabilities such as flooding and excessive rain.

The advent of internet and exponential growth of access to it and other Information and Communication Technologies (ICTs),³ have made digital rights become indispensable to the way people around the world exercise and enjoy their fundamental human rights.⁴ Malawi, like other African countries, has enacted a number of laws that contain provisions on digital rights.⁵ These provisions recognise that the same rights that people have offline, such as freedom of expression, access to information, and the rights to privacy, must also be protected in digital spaces.



**Access to
Information**

1. World Bank. (2020). World Bank Indicators. <http://data.worldbank.org/indicator/SP.POP.TOTL>

2. World Bank. (2019). World Bank Indicators. <http://data.worldbank.org/indicator/SP.POP.TOTL>

3. <https://www.gp-digital.org/wp-content/uploads/pubs/african-declaration-a-positive-agenda-for-rights-online.pdf>

4. https://cipesa.org/?wpfb_dl=287

5. <https://africadigitalrightshub.org/wp-content/uploads/2020/03/Data-Protection-Code-of-PracticeEnglish-Soft-Copy.pdf>

This article aims at assessing the status of digital rights in Malawi for 2020. The study uses a literature review and key informant interviews to generate an understanding on the current debates and issues surrounding the state of digital rights in Malawi. The article analyses the laws and policy frameworks on digital rights particularly those that govern the telecommunication sector, the media, social media, privacy and security and law enforcement. The article discusses thematic areas related to internet access and infrastructure; impact of covid-19 regulations on digital rights; and privacy, digital IDs and surveillance.

POLITICAL LANDSCAPE AND DIGITAL RIGHTS

Malawi is a multi-party state and has been a relatively peaceful country. In May 2020, the country made history when a rerun of presidential elections was conducted after the first results of the May 2019 were annulled by the Constitutional court. The opposition candidate, Dr. Lazarus Chakwera, under the political umbrella “Tonse Alliance”, won the presidential election with a 58.9% majority. The annulment came after months of sustained citizen protests against electoral fraud marred with systemic irregularities. Most of the protests were led by the Human Rights Defenders Coalition (HRDC).⁶ They organised and spread their messages using social media such as WhatsApp, Facebook, and Twitter. Consequently, Malawi received international praise as a beacon of democracy for being the second in Africa to re-run its presidential election after a court annulment, and the very first time in history for an opposition presidential candidate to win the election.



INTERNET AND ICT ACCESS

Despite momentous victory for democracy in the country in 2020, Malawians still face systemic threats of human rights in the digital space.

International Telecommunication Union (ITU) statistics show that 14% of the population use the internet in Malawi while 52% have mobile phones. Access to mobile broadband is estimated at 25.5% and fixed line broadband is 0.06%.⁷

There are also gender disparities when it comes to ICT ownership in the country. About 34.2% of women own a mobile phone, 3.9% own a desktop computer, while just 5.2% of them have internet access compared to their male counterparts.⁸

Likewise, 3.0% of the population have access to internet access in rural areas compared to 24.3% in urban population. Computer access in rural areas remains at 2.1% against 19.2% in urban areas. In Malawi, Airtel (Mw) and Telecom Networks Malawi remain the two dominant mobile operators in Malawi, while Malawi Telecommunication Limited (MTL), remains the only fixed service provider.

6. <https://afrobarometer.org/publications/ad354-malawians-support-2019-post-election-demonstrations-split-government-power-limit>

7. <https://www.itu.int/net4/ITU-D/idi/2017/>

8. https://giswatch.org/sites/default/files/gisw2019_web_malawi.pdf

The Malawi Communication and Regulatory Authority (MACRA) regulates the telecommunication sector in the country.

Poor access to ICT services such as the internet are largely attributed to poor ICT infrastructure and high tariff charges imposed on ICT services. These include 16.5% value added tax (VAT) on internet services, 17.5% VAT on mobile phone and services, and 10% on excise duty on mobile text messages and mobile data transfers.⁹ Access to the Internet is cost-prohibitive to the majority of Malawians. For instance, a monthly data bundle of 10 Gigabytes (GB) costs \$21 with both Airtel and Telecom Networks Malawi (TNM). This cost is equivalent to half the minimum monthly wage of the majority of Malawians. In addition, the Inclusive Internet Index 2020, which measures internet affordability, availability, relevance of content and readiness, ranks Malawi 97 out of 100 countries.

FREEDOM OF EXPRESSION AND ONLINE SURVEILLANCE

The Electronic Transactions and Cyber Security Act of 2016 restricts citizen participation in the digital space.¹⁰ Section 24(2)(e) of the Act states that online communication may be restricted in order to “protect order and national security,” while Section 24(2)(f) states that online communication may be restricted in order to “facilitate technical restriction to conditional access to online communication.”¹¹ Further, Section 31(1) of the Act requires that “online content providers to conspicuously display on their webpage the full name, domicile, telephone number, email address of the editor if a natural person; and in the case of a legal entity, the

corporation name, postal and physical address of the registered office, telephone number and email address and registration number of the editor”.¹² This provision gives penalties of fines or a maximum of 12 month prison sentence, and places restrictions on encryption.

This provision is also similar to Section 3 of the Printed and Publication Act, 1947. Although, no one has been charged with this provision, its presence limits citizens’ rights to anonymity, more so that the provision carries a hefty punishment-custodial sentence of 12 month and a heavy fine of MWK 5000,0000 (\$6,600).

In addition to these pieces of legislations, there are also other adverse laws that were inherited from the British colonial rule (1891-1964) and during the one party system dictatorial government era (1964-1994), which threaten participation of Malawian citizens both offline and online. For instance, Sections 50 and 51 of the Penal Code, which establishes the offence of sedition, while Section 4 of the Protected Flag, Emblems and Names Act, makes it an offence to “do an act or utter any words or publish or utter any writing calculated to insult, ridicule or to show disrespect” to “the president, the national flag, armorial ensigns, the public seal or any protected emblem or protected likeness”.¹³ These laws combined have in one way or the other perpetuated digital rights violations in Malawi. The digital rights violations have taken many forms including access restriction to the internet, criminalisation of some forms of online communication, and state online surveillance.¹⁴

9. Kaiyatsa.M.(2020, August). Digital rights remain under threat in Malawi despite historic win for democracy. <https://advoc.globalvoices.org/2020/08/05/digital-rights-remain-under-threat-in-malawi-despite-historic-win-for-democracy/>
 10. <https://crm.misa.org/upload/web/e-transactions-act-2016.pdf>
 11. <https://crm.misa.org/upload/web/e-transactions-act-2016.pdf>
 12. <https://crm.misa.org/upload/web/e-transactions-act-2016.pdf>
 13. <https://crm.misa.org/upload/web/17-laws-of-malawi-protected-flag-emblems-and-names.pdf>
 14. <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/malawi/>



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DATA PRIVACY, PROTECTION AND DIGITAL IDENTITY

Data privacy and protection remains an elusive issue in the country. Government departments such as the Immigration, Road Traffic Directorate, National Registration Bureau (NRB), Malawi Electoral Commission (MEC), National Statistics Organisation (NSO), and service providing institutions such as hospitals and education institutions, as well as the banks continue to collect vast amount of personal data.¹⁵ Recently, telecom companies in the country have also been collecting large amounts of a lot of personal data, more so with the introduction of mandatory SIM card registration as entailed in the Malawi Communication Act of 2016 entails. However, there is no available data on how much information each of these bodies collects or how

well they are complying with existing laws such as the Electronic Transaction Act, 2016 and Access to Information Act, 2016. In addition, the majority of ordinary Malawians are not even aware of the implications of digital identity collection on their privacy.

Moreover, Malawi does not have a stand-alone privacy and protection law.¹⁶ Consequently, data privacy and protection of citizens continues to be at risk, which is in itself a violation of digital rights violations. Moreover, a lack of comprehensive data protection laws in the country, also means that there is no single body mandated to regulate the collection of personal data in the country.

15. https://www.researchgate.net/publication/341151585_State_of_Internet_Freedom_in_Malawi_2019_Mapping_Trends_in_Government_Internet_Controls_1999-2019

16. https://www.researchgate.net/publication/335136113_State_of_Internet_Freedom_in_Malawi_Privacy_and_Personal_Data_Challenges_and_Trends_in_Malawi?_sg=eL8QxUyOjicWRRsr_lcfz8lwzG9-NEJiXsxeSvke9x4uoR3VNhfC_Y0jYHfad9B07TtbQivjH2nyA3spuZjO-11Q_Qvpe4PaaOWnzCOX.gJBACMVxEB4mFX1tfP8Q6QILtFBHKf1s-Q9CVzPz1Tm--E6eu1CY7lkvXhSsJo8ogQErUf9g4UJwzetsAWYqX

IMPACT OF COVID-19 REGULATIONS ON DIGITAL RIGHTS

Like other countries in the world, Malawi was not spared of the COVID-19 pandemic. Mobile phones, internet, social media, and other digital platforms which were supposed to be enablers of women and girls empowerment, instead became weapons against them. Due to restrictive movements and other measures imposed by government, many women and girls were victimised online in the form of cyberstalking, online harassment, online defamation and cyber bullying among others.¹⁷ Consequently, little attention is paid to address this issue which is increasing at an unprecedented rate in the country.¹⁸

Although digital rights violations continue to take center stage at both national and global agenda, in 2020, we have seen the Malawi government making some notable commitments to promote human rights in the digital space in this regard. Soon after President Chakwera was inaugurated as the 6th President of the Republic of Malawi, he categorically promised to operationalise the Access to Information Act of 2016.¹⁹ Indeed on 30th September, the Act was operationalised.²⁰ Civil society and international government organisations applauded the government for taking this decisive action. The operationalization of this Act will eliminate the culture of secrecy, and will make the government more transparent and accountable to its citizens. However, there are still other challenges that need to be addressed before the Act can be fully operational. For instance, Section 7 of the same Act demands “*the establishment of a Public Information Commission to oversee the implementation of this Act*”. However, no such body has been commissioned to perform such oversight functions.²¹

**Digital platforms became weapons
against women.**

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17. https://africaninternetrights.org/sites/default/files/Donald_Flywell-1.pdf

18. <https://www.apc.org/en/pubs/tackling-gender-based-cyber-violence-against-women-and-girls-malawi-amidst-covid-19-pandemic>

19. <https://malawi24.com/2020/09/19/cso-hails-govt-for-operationalizing-ati/>

20. <https://www.nyasatimes.com/un-commend-malawi-for-operationalization-of-access-to-information-law/>

21. https://www.right2info.org/laws/malawiaccessinfo.pdf/at_download/file

Equally important, Malawi's leading telecoms TNM and Airtel reduced data prices of internet.²² Airtel announced new prices with reductions of up to 40% with increased profit of 588% in 2019,²³ while TNM also reduced data prices on July 30, 2020, despite the company recording 10% profit reductions in 2019 compared to 2018.

While some citizens considered data price reductions as a welcome development, others criticized the move as cosmetic in nature since little positive impact change is being felt by the citizens. Nevertheless, there has been improvement in participation of citizens online due to this reduction in data prices of the internet.

CONCLUSION AND RECOMMENDATIONS

From the foregoing, it is evident that 2020 was a mixed bag in the context of digital rights in Malawi. Digital rights violations such as costly internet access, cyber violence and against women and girls, state online surveillance, absence of online personal privacy and data protection continue to threaten freedom of expression of citizens in the digital space. This is further exacerbated by weak policy and regulatory frameworks, and use of draconian laws inherited from both the colonial era and during the one party's dictatorial era (1964-1994) which have yet to be repealed. Nevertheless, the current government leadership under President Chakwera, has also shown some political commitments to ensure that internet and ICTs devices become affordable and accessible to all Malawians. This has been demonstrated by scaling down the prices of internet bundles, continued establishment of telecentres in rural areas, operationalization of the Access to Information Act of 2016, among others. Of recent, there have been no reported cases of civic space crackdowns as compared to the same year in 2019.

Based on this conclusion, the recommendations are as follows:

- Government should urgently develop a stand-alone data protection law to ensure that citizens' personal data are protected both in the physical and online spaces.
- Government should repeal draconian laws which infringe the freedom of expression of citizens online such as the Sedition Act, Penal code, and the Electronic Transaction and Cyber security Act.
- Government should review the National Action Plan to Combat all forms of gender based violence and integrate online gender based violence issues. This will ensure women and girls' online safety and security, and where such misconduct occurs proper due process must be complied with.
- Government needs to remove high tax charges imposed on importation of ICT gadgets to ensure accessibility and affordability of ICT services for the marginalised population. This will narrow the digital inequality that currently exists in the country.

22. <https://cipesa.org/2020/08/malawi-telcos-reduce-data-prices-in-response-to-cipesa-chrr-campaign-2/>

23. <https://times.mw/airtel-profit-up-by-588/#:~:text=Malawi%20Stock%20Exchange%20recent%20entrant,by%20the%20company%20has%20shown.>

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