

Legal and Policy Gaps Affecting Digital Rights in Malawi

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Abstract

Digital rights are human rights in the digital era, specifically on the internet. Digital rights are becoming critical as people increasingly spend a lot of time online, accessing different services and information that are key to human survival and well-being. Resolution 362 (on the Right to Freedom of Information and Expression on the Internet in Africa) of The African Commission on Human and Peoples' Rights, and resolution on the Promotion, Protection, and Enjoyment of Human Rights on the Internet of the United Nations Human Rights Council affirmed that same rights that people enjoy offline must also be protected online. This paper assesses legal and policy gaps affecting digital rights in Malawi, thereby making a critical contribution to scholarship in this area. In addition to the literature and policy review of digital rights in Malawi, the study used a questionnaire as a data collection tool, targeting purposefully selected key informants from Malawi's telecommunication sector, media associations, NGOs, and telecommunication regulators to assess challenges affecting digital rights in Malawi. The study found that achieving digital rights in the country remains a distant dream for most people due to the expensive cost of the internet, insufficient telecommunication and electricity infrastructure, restrictive legal framework, and low digital literacy. These factors make access to the ICTs and the internet inaccessible for most people, denying them access to and participation in political, social, and economic activities enabled by digital platforms.

Keywords

Malawi;
Digital Rights;
Internet,
Digital Technologies,
Digital Literacy

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Introduction

Due to increased digitalisation, many people use Information Communication Technologies (ICTs) worldwide. In addition to easing communication, the ICTs enable people to access social, financial, health, and educational services, among other things. The Covid-19 Pandemic, which necessitated the closure of businesses, workplaces, schools, and limited local and international travel, has highlighted the fundamental place of ICTs in society. Societies with better, affordable, and accessible ICT, especially the internet, coped much better during the Pandemic because some socioeconomic provisions were accessible online. The Pandemic has highlighted that ICTs, particularly the internet, are not a luxury but a necessity.

The increased usage of ICTs has also made digital technologies central to improved livelihoods and the enjoyment of people's rights; access to ICTs facilitates the enjoyment of some fundamental rights. It is for this reason that the 32nd Session of the United Nations Human Rights Council (UNHRC) (2016) stressed "the importance of applying a human rights-based approach when providing expanded access to the internet and for the internet to be open, accessible, and nurtured by multistakeholder participation" (United Nations Human Rights Council, 2016, p.3). The 32 Sessions of the UNHRC also affirmed that people's offline freedom must be promoted and protected online. This is commonly called digital rights – human rights in the digital age.

However, the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) (2019) observed that instead of promoting digital rights, many African governments are taking steps that undermine internet access and affordability. CIPESA noticed an increase in digital rights violations, including arrests and intimidation of internet users, internet taxes, internet throttling and shutdowns, and a proliferation of laws and regulations that undermine the significant uptake of ICT and thus undercut the potential of ICTs to drive socioeconomic development, improve governance and political development in Africa.

This study aims to assess legal and policy gaps affecting digital rights in Malawi. It makes an original contribution to this emerging scholarly field in the country. In addition to the review of literature and policy framework, the study also used a questionnaire to collect data, purposefully selecting key informants conversant with the subject and knowledgeable about ICTs in Malawi and elsewhere. These key informants were drawn from Malawi's telecommunication sector, media associations, NGOs, and telecommunication regulators to assess challenges affecting digital rights in Malawi.

What are digital rights?

The basic definition is that digital rights are human rights in the digital age, specifically on the internet; the internet must be affordable, accessible, open and reliable. Yet, there are also overarching definitions, which are also necessary to explore for a broader understanding of the term. In her essay "What are digital rights?" Azali (2020) identified at least eight definitions of digital rights. The outstanding issues captured in these definitions include terms such as one's right to express oneself in a safe, private, secure, and sustainable digital space; one's right to free speech or expression, association and assembly; access to the internet devices; rights and access to information; access to online platforms, online safe space, security and safety; privacy and data protection; gender-responsiveness and anti-discrimination, and equality.

It is clear from terminologies that digital rights take the human rights approach. Yet, these terminologies also show that digital rights are a means to an end; it enables internet users to achieve desired goals through digital technologies of which the internet is primary. Thus, digital rights are an indirect but critical means of accomplishing societal goals through personal advancement. As Pangrazio and Sefton-Green, (2022, p.19) rightly observe, "[d]igital rights are not a set of rights in and of themselves but are related to other human rights, particularly freedom of expression and the right to privacy in the online and digital environment". The two authors add that "a focus on digital rights encourages policymakers to develop

the technological and legal frameworks to ensure individuals enjoy the same rights online as when offline” (p.19).

This understanding is supported by the UNHRC’s 32 Session (2016), which affirmed that the same rights people have offline must also be protected online, particularly the freedom of expression, which applies regardless of frontiers and through any media one’s choice. This means that the internet and digital communication platforms do not bring new human rights—they are the only alternative means to enjoy human rights, freedom of expression, and access to information. According to Mathiesen (2014), human rights are those legal/or moral rights that all persons have, simply as persons; “to have a right is to have the standing to claim something as due to one as a particular individual” (2014, p.3). A claim to something has an element of ownership and, therefore, a duty to protect. In this case, Mathiesen asserts that “human rights obligate states first and foremost because states have the power to create the conditions and institutions necessary to protect human rights by, for instance, creating laws and setting up a law enforcement system” (2014, p.3).

This understanding is necessary for the discussion on digital rights because achieving digital rights requires a multistakeholder approach in which every stakeholder has a role. At a primary level, the critical stakeholders are the government—creating a conducive legal and policy framework; service providers—ensuring the quality and safety of the services; and users—using and enjoying their rights responsibly. Under section 15(1) of the Constitution of Malawi, the government is responsible for protecting human rights and freedoms enshrined in Chapter IV. In the digital age, ensuring human rights and liberties includes facilitating people’s access to affordable ICT services and availability of infrastructure; ensuring fair tax regimes; providing a conducive legal environment and trade policies that ensure affordable access to ICT gadgets required to access spaces and platforms such as the internet; and ensuring that the telecommunication industry is competitive to spur creativity and value for money for the services users.

Digital rights in Malawi

The Malawi Communications Regulatory Authority (MACRA) is mandated by the Communications Act, No. 34 of 2016 (The Malawi Gazette, 2016) to ensure that as far as it is practicable, every citizen in Malawi must have access to good, reliable, and affordable communication services. However, literature shows that so far, MACRA has fallen short of fulfilling this mandate, as the country has one of the lowest ICT usage and internet penetration in the world, lagging behind its regional neighbours (see Freedom House, 2021; Kainja, 2020; Mdedza, 2020; and Paradigm Initiative, 2021). Likewise, on the 2022 Inclusive Internet Index, a global index measuring internet availability, affordability, readiness, and relevance in a given country, Malawi ranks in the bottom 10%, ranking 19th among 26 sub-Saharan African countries and 93rd out of 100 countries worldwide.

According to a study by National Statistical Office (NSO) (2019), only 14.6% of Malawians had access to the internet by 2019. It is important to note that the mention of the 14.6% of Malawians with access to the internet does not indicate the quality of access. In Malawi, like in most African countries, the internet is sold in packages, referred to as bundles; the bundled internet means that some of those in the 14.6% can only afford specific social media bundles such as WhatsApp, which means their access to the internet is limited to WhatsApp only.

The NSO (2019) survey established that most people with access to the internet in the country are in urban areas. Only 9.3% of internet users live in rural areas, where most of Malawi's population lives. Of the 14.6% with access to the internet, 12.4% are female, and 15.4% are male, showing that men dominate the internet in Malawi. Further, many Malawians (46%) do not use the internet because they do not know what it is. According to the survey, only 2.4% of Malawians do not use the internet because it is too expensive.

Improving access to the internet requires infrastructure—reliable electricity and reliable mobile network connectivity across the country. A USAID report (2022) shows that approximately 85% of Malawians cannot access electricity. Those

with access to electricity face constant, persistent, and long hours of electricity blackouts (Gausi, 2022). Further, a GSMA report (2021) shows that only 78.9% of Malawi has mobile network coverage, and the Freedom House report, “Freedom on the Net” (2021, n.p.), found that mobile connectivity in Malawi is usually “slow, sluggish and unreliable.”

Apart from infrastructure, there is also a need for relevant legal frameworks and policies to facilitate the enjoyment of digital rights. In 2013 the Government of Malawi launched the National ICT Policy aimed at developing the ICT sector, promoting the development and use of ICTs in all sectors and enhancing universal access to ICT services to achieve overall socioeconomic development. The policy indicates that the government is aware of ICT policy gaps affecting the country and is willing to address them. However, in their analysis of barriers to the implementation of the National ICT Policy, Makoza and Chigona (2016) observed that outcomes of the national ICT policies have not been realised in most African countries, that one of the reasons is a lack of implementation despite the policy being formulated and written down.

Kunyenje and Chigona (2019) established that one of the problems with policy implementation in most African countries is that policies are mostly initiated and funded by donors. Yet, African governments are the ones to implement policies they do not see as a priority. In his historical analysis of national ICT policy formulation in Malawi, Makoza (2019) found that external influences led to the formulation of the National ICT Policy and the needs of stakeholders were not articulated adequately to come up with realistic policy objectives. He also discovered that more pressing local issues for the Government of Malawi led to the policy not being prioritised and endorsed, leading to delays in policy formulation. Thus, the five-years circle of the National ICT Policy 2013 ended in 2018 without achieving its objectives of developing the ICT sector.

Another critical aspect of digital rights is ensuring people’s safety online and guaranteeing privacy and freedom of expression. Section 21 of the Constitution of the Republic of Malawi (1994) guarantees privacy. It reads: “Every person shall

have the right to personal privacy, which shall include the right not to be subjected to - (a) searches of their person, home, or property; (b) the seizure of private possessions, (c) interference with private communications, including mail and all forms of telecommunication.” However, this provision is limited in the absence of robust data protection legislation, particularly for the digital age, which is necessary to ensure the safety and protection of people online. The Government of Malawi is aware of this policy gap, as seen through its draft Data Protection Bill of 2021, “which seeks to provide a comprehensive legislative framework for the protection and security of personal data, consolidate data protection provisions currently found in various Acts of Parliament, and protect the privacy of individuals without hampering social and economic development in Malawi” (Draft Data Protection Bill, 2021, p 2).

The right to privacy intersects with other fundamental rights, such as freedom of expression, assembly, and association. Without data protection, the safety of people’s data and the right to privacy is not guaranteed. The UNHRC (2016) recognises the centrality of online privacy in realising the right to freedom of expression, to hold opinions without interference, and freedom of peaceful assembly and association. There has been a violation of these freedoms through several arrests and two convictions in Malawi over people’s sentiments online. One thing that stands out from these arrests is that the culprits had allegedly offended influential people, including the State President, a Member of Parliament, and one of the big commercial banks.

Thus, the nature of these arrests suggests abuse of power whereby influential people and institutions use state security against powerless people in society. Some of the cases indicate the use of surveillance to identify culprits. For example, in the case of Chidawawa Mainje, who was arrested over a WhatsApp conversation in which he was accused of insulting the State President under section 86 of the Electronic Transactions and Cyber Security Act, No.33 of 2016 (The Malawi Gazette, 2016). WhatsApp has end-to-end encryption, which means this was a private discussion, yet the culprit was arrested over such a conversation.

This shows the government's willingness to eavesdrop on personal communication online, contrary to section 21 of the country's constitution.

Studies have also shown that in Malawi, there are increasing cases of cyberbullying and harassment against women, suppressing their digital rights, especially freedoms of expression, association, assembly and access to information online. These freedoms are guaranteed in Chapter IV of the Constitution of Malawi. In his study, Malanga (2021, p.10) established that women and girls experience various forms of gender-based cyber violence, "including stalking, harassment, sexual exploitation, bullying and hate speech". Malanga notices that the perpetrators of these crimes use digital platforms such as social media, online personal accounts, smartphones and dating sites to carry out their digital violence. Malanga's study indicates that online gender-based violence worsened during the Covid-19 Pandemic. The Covid-19 preventive measure meant more women and girls turned to the internet, mainly social media platforms, for information gathering and sharing.

Methods

The study used a qualitative approach, adopting non-random sampling through a questionnaire as a data collecting method, purposively targeting key informants to understand digital rights in Malawi. These participants were purposively selected because of their experience and knowledge of the topic. Purposive sampling is when the researcher intentionally targets a group of people believed to be reliable for the study (Kombo and Tromp, 2006). Tracy (2013) mentions that purposive sampling is useful when obtaining data to fit the parameters of a study.

The qualitative approach provides an in-depth understanding of a research problem from the perspectives of the people it involves, Mack et al. (2005). Nachmias and Nachmias (1987) observed that qualitative researchers attempt to understand behaviour and institutions by getting to know the persons involved in their values, rituals, symbols, beliefs, and emotions well. In this way, qualitative research offers

more flexibility and insight into how and why things are the way they are. Thus, in addition to a literature and policy review of digital rights in Malawi, the study also engaged eight participants from media associations, ICT associations, NGO sectors advocating for digital rights, and ICT regulators. Six of the eight targeted participants from the eight institutions returned the questionnaire. All the six that returned completed questionnaires provided sufficient responses.

The data was analysed using thematic analysis (TA). TA is a method for analysing qualitative data in many disciplines and fields and can be applied to different datasets to address various research questions. TA is an appropriate method of analysis when seeking to understand experiences, thoughts, or behaviours across a data set. Kiger and Varpio (2020) say that in addition to describing data, thematic analysis “also involves interpretation in the processes of selecting codes and constructing them” (2020. p,1).

Results

The findings show that digital rights in Malawi face many challenges, which can reasonably be grouped into four thematic areas. In no particular order, these are low access to the internet, insufficient infrastructure, restrictive legal environment, and digital illiteracy.

Low access to the internet

The findings show that low access to the internet is a primary issue affecting digital rights in the country. Most Malawians cannot afford the high cost of internet data, the cost of smartphones and other computerised gadgets required to access the internet. The findings also show that due to the low penetration of fixed internet broadband, most Malawians rely on mobile phones to access the internet. Although Malawi has several internet service providers, the two dominant mobile phone companies, Airtel Malawi and Telekom Networks Limited (TNM), are the primary means of internet connectivity for most Malawians.

One participant from the technology sector noted that the dominance of the two telecommunication companies has contributed to the high cost of the internet.

He believes that the Malawi Communication Regulatory Authority (MACRA) has contributed to the high prices “through lethargic and often dismissive attitude towards cries from consumers regarding expensive and inaccessible internet” (Participant 1, 2022). A participant from a Civil Society Organisation (CSO) focused on the social and economic cost of the lack of access to the internet. He argued as follows:

The high cost put [sic] the majority of the population, which is poor and rural-based, at a huge disadvantage, shutting them out of an increasingly digital world on important services like mobile banking and money services that could help lift them out of poverty, as well as access to essential communications platform (Participant 3, 2022).

Infrastructure

The study also found that inadequate infrastructure is a significant obstacle to digital rights in Malawi. Insufficient ICT infrastructure and low electricity penetration in the country limit access to the internet and digital services for poor people and underserved communities, most of whom are rural. Those with access to the internet, mostly in urban and peri-urban areas, often experience slow, sluggish and unreliable mobile connections. One of the participants emphasised that the unreliable connections partly have to do with Malawi’s overreliance on mobile connectivity, observing that Malawi has fewer than 15,000 fixed broadband connections, which, for instance, is “less than one will find on a single street in Lagos, Nairobi, or Johannesburg” (Participant 1, 2022).

Another participant pointed out that the sector is negatively impacted by low penetration and unreliable electricity in the country. A participant from a CSO asserted that less than 13% of the country’s population has access to electricity. In this case, the importance of electricity goes beyond the need to charge internet-enabled gadgets. ICT infrastructure also requires electricity to operate equipment, such as the mobile signal from the towers. This means that when there is a power interruption, telecommunication operators resort to alternative sources of power

to ensure the availability of mobile networks. In the end, the operators recover the expenses from service users, thereby increasing the cost of the services. One of the participants put it this way:

... those with access to electricity also face frequent blackouts; due to the interrupted power supply, half of Malawi's private businesses rely on heavy backup generators, pushing the cost of production by firms, which in turn are compensated through prohibitive costs of services on the market (Participant 2, 2022).

Punitive laws

The study also established that the existence and application of punitive laws affect digital rights in the country. These laws, for example, make it an offence and criminalise “insulting the president and cyber harassment”. These laws are actively applied, and people are arrested, charged, and convicted for online activities. The arrests have a chilling effect on would-be internet users and induce self-censorship for people who use the internet. This is against freedoms of expression, association, and assembly, as people are afraid to join conversations online. A participant from a journalism institution made the following argument:

These laws have been used several times to arrest and prosecute online users. The result is that many people are afraid to express themselves online due to fear of being arrested. Online users, including online journalists and bloggers, practice self-censorship to avoid arrest and prosecution (Participant 6, 2022).

The findings show that these laws are in two categories: colonial (archaic) laws and recent but punitive legislations, especially the Electronic Transaction and Cyber Security Act (the Act) of 2016. Participant 6 noticed that law enforcers used the Act or other laws left by the colonial authorities, which have been maintained by successive governments, particularly the Penal Code. The Protected Flags, Emblems, and Names Act has also been used to gag the citizenry from commenting on government failures.

Another participant also made a similar observation, saying:

Malawi's legal framework for digital rights is unsynchronised and inconsistent with best practices, at worst, out of date and obstructive. A case in point is the Electronic Transactions and Cyber Security Act (participant 1, 2022).

Digital Illiteracy

Participants also indicated that digital rights are affected by low digital literacy in the country, especially in rural areas. Digital illiteracy is used to denote the inability to use digital tools. It is an antithesis of digital literacy, as defined by Western Sydney University Library (n.d)¹, as skills required to live, learn, and work in a society where communication and access to information are increasingly through digital technologies like internet platforms, social media, and mobile devices. Participants attributed digital illiteracy to general low literacy in Malawi. Digital illiteracy widens the digital divide² and negatively impacts the country's digital rights.

Participants found connections between the country's digital illiteracy and the broader basic illiteracy levels. For example, Participant 1 observed that basic literacy in Malawi is already a problem, contributing to low digital literacy levels in the country (Participant 1). Likewise, another participant cited statistics from a 2019 National Statistical Office survey on ICT usage in Malawi to quantify the extent of digital literacy in the county. He said, "High digital literacy is a problem; 46% of Malawians say they do not use the internet because they do not know what it is, while only 2.4% say they do not because it is too expensive."

1 Western Sydney University Library: https://www.westernsydney.edu.au/studysmart/home/study_skills_guides/digital_literacy/what_is_digital_literacy

2 Stanford Computer Science: <https://cs.stanford.edu/people/eroberts/cs181/projects/digital-divide/start.html>

Discussion of findings

The literature review on digital rights in Malawi and elsewhere shows that most of the writing and research in this area has been done by non-governmental organisations, civil society groups, and activists advocating for human rights. As a result, the digital rights discourse has significantly taken the human rights angle. In particular, questions of access to affordable, reliable, safe, and inclusive ICT services fundamental rights, such as the right to privacy, freedoms of opinion, expression, assembly, and access to information. All these fundamental rights are guaranteed in local and international instruments, such as the United Nations Declaration of Human Rights (1948), the African Charter on Human and Peoples Rights (1981), the Constitution of the Republic of Malawi (section 21) and Chapter IV – Human Rights.

Although the UNHRC (2016) declared that the same rights that people enjoy offline must also be protected online, Pangrazio and Sefton-Green (2021) noticed that digital rights are unlike other human rights, such as digital literacies and digital citizenship, because digital rights strongly rely on institutions and organisations to support the action of the individual. They add that “a focus on digital rights encourages policymakers to develop the technological and legal frameworks to ensure individuals enjoy the same rights online as when offline” (Pangrazio and Sefton-Green, 2021, p.19). These provisions must also be understood from the perspective that no right is absolute and digital rights are no exception. Governments have to protect citizens from harm. However, limitations to human rights must be provided for in the law. Section 44 of the Constitution of Malawi limits human rights provisions.

For instance, section 44(1) provides that no restrictions or limitations may be placed on the exercise of any rights and freedoms provided for in the constitution other than those prescribed by law, which is reasonable, recognised by international human rights standards and necessary in an open and democratic society. Section 44(2) states that restrictions or limitations shall not negate the essential content of the right or freedom in question and shall be of general application. Further limits

are provided for in section 24(2) of the Electronic Transaction and Cyber Security Act, No. 33 of 2016. It provides that online communication may be restricted for the following reasons:

- a. prohibit child pornography;
- b. prohibit incitement of racial hatred, xenophobia or violence
- c. prohibit justification for crimes against humanity;
- d. promote human dignity and pluralism in the expression of thoughts and opinions;
- e. protect public order and national security;
- f. facilitate technical restriction to conditional access to online communication; and
- g. enhance compliance with the requirements of any other written law.

It is worth noting that some of these provisions are vague and may be prone to abuse. A case in point is sections 24(2)(d) and (c) of the Act, which have vague provisions, and lack clear definition, which provides room for the arbitrary application of the law similar to section 87 of the Act, which criminalises “offensive communication” has been used to arrest people, primarily those alleged to have insulted influential people, such as the President, MPs and powerful institutions, see Kainja (2022).

Nonetheless, the provisions of the law, digital illiteracy, insufficient infrastructure and low access to the internet show that digital rights remain a distant dream for most Malawians who cannot afford the cost of ICTs, particularly the internet, live in areas without mobile network coverage and have low digital literacy. By mandating MACRA to ensure that every citizen in Malawi must have access to good, reliable, and affordable communication services (Communications Act, No. 34 of 2016, section 6[1]), the Government of Malawi is aware of its obligation to ensure the availability of the services.

The same applies to the objectives of the National ICT Policy, which, although not fully implemented, identified the need for the country to improve its ICT sector. Through MACRA, the government can set legal and policy frameworks that can enhance or stifle the enjoyment of digital rights in the country. From this perspective, one of the study participants quipped that MACRA has contributed to the country's high prices of the internet and ICTs through a "lethargic and often dismissive attitude" (Participant 1, 2022) in its regulatory approach. Notably, the participant referred to "the duopoly of two service providers", Airtel Malawi and Telekom Network Limited (TNM). Freedom House report (2021) found that in Malawi, access to the internet is costly for average citizens. For instance, it established that as of May 2021, a monthly data bundle for 10 gigabytes (GB) costs 15,500 Kwacha (\$20) with both Airtel Malawi and TNM. This means there was no competition between the two service providers, depriving customers of any choice. Competition is critical to the country's development because it spurs innovation, improves the quality of products and services, and benefits service users.

The high internet prices relate to another finding: the country lacks critical ICT infrastructure and a stable electricity supply. Telecommunications services in Malawi are owned mainly by the private sector, dominated by Airtel Malawi and TNM. The two companies have a market share of 70.1% and 60.1%, respectively (NSO, 2019). Private telecommunication companies are unlikely to invest in rural areas where the companies are unlikely to make big profits. Yet, in Malawi, most people live in rural areas. The Communications Act, No. 34 of 2016, allows Universal Service Fund (USF) to mitigate the problem. Through USF, MACRA collects revenue from telecommunications service providers and is supposed to invest that income in areas that are not economically attractive. This means a certain amount of income is guaranteed. However, there has not been any notable infrastructural investment using USF since passing the legislation in 2016. MACRA now has a 2022–2027 USF strategic plan.

The lack of infrastructure investment in rural areas also reflects the low demand for ICT and the internet in rural areas. One of the findings of this study is high digital illiteracy. The NSO study of 2019 found that over 40% of Malawians do not use the internet because they are unaware of it, while 2.4% said they do not because it is too expensive. This means most Malawians lack digital literacy and thus cannot demand digital rights. Pangrazio and Sefton-Green (2021, p.21) noticed that “digital literacy is perhaps foundational for digital citizenship and rights: individuals cannot participate or claim their digital rights if they are not ‘literate’ in the first place”. This shows that matters of access to affordable internet are more amplified than matters of digital literacy because those who use the internet are knowledgeable about digital rights, unlike those who do not.

Malawi’s draft ICT and Digitalization Policy Roadmap 2022–2026 shows that the Government of Malawi is critically aware of these policy gaps, as seen through the digitalisation policy’s nine priority areas, as follows:

1. Connectivity and ICT infrastructure development
2. Universal access to ICT and ICT-related services
3. Governance for ICT development
4. Cybersecurity, data protection and regulation
5. Private sector and entrepreneurship development
6. Human capital development
7. Research, innovation and development
8. Multistakeholder collaboration
9. Digitalisation

Implementation is critical, and experience, as pointed out by Makoza (2019), has shown that the Government of Malawi has previously failed to implement ICT policies because it was driven by external forces (donors) and the government’s

failure to prioritise ICTs in favour of other competing interests. The government's failure to prioritise the ICT sector shows that digital rights concern the minority, mainly those in urban areas concerned with human rights issues.

Conclusion

The study has found several legal and policy gaps affecting digital rights in Malawi, particularly insufficient infrastructural development, low digital literacy, restrictive legal environment, inadequate access to the internet, and poor policy implementation. These factors have impacted various legal and policy lapses and gaps that fail to promote and protect digital rights. For instance, laws only used to arrest, detain and imprison citizens are deemed to have offended elites, as well as the lack of utilisation of the universal service fund and the National ICT Policy as one way of increasing access to digital technologies. The issue of digital illiteracy requires strategic intervention because this is the primary means that people can enjoy digital rights. Access to digital tools is meaningless if people cannot use them meaningfully. Digital rights may not be seen as an urgent issue as the provision of clean water, school and health services, but digital rights are a means to an end. The Covid-19 Pandemic is a clear example; those with access to affordable internet and ICT facilities coped much better with the Pandemic as social, economic, educational, and other services closed during the Pandemic.

Declaration of Conflict of Interest

The researcher conducted the study and authored the paper without any funding. Therefore, there is no conflict of interest to declare.

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