

Policy Brief

Advancing an Enabling Framework for Internet Governance in Uganda

December 2022

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I. Executive Summary

This policy brief presents an analysis of the state of Internet governance through the legal, policy and practice lens and offers recommendations on how Internet governance can be further advanced in Uganda.

In the analysis and considerations, particular emphasis was placed on assessing the commitment to gender equality, state of civic space, inclusion and affirmative actions that are deliberately developed to protect and enable participation of structurally silenced women on the Internet. The term “structurally silenced women” is adopted for this brief to include sex workers, LBT people, women human rights defenders, young women, feminist activists, feminist organisations and the broader women’s movement. Their experiences are central to the construct of this policy brief.

Internet governance has been defined variously by different scholars and institutions that work on the subject. According to the Tunis Agenda for the International Society adopted during the 2005 World Summit on the Information Society, Internet governance refers to the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures and programmes that shape the evolution and use of the Internet.¹

The Internet is defined² as a vast network of independently managed networks, woven together by globally standardised data communication protocols, primarily Internet Protocol (IP), Transmission Control Protocol (TCP),³ User Datagram Protocol (UDP),⁴ Domain Name System (DNS)⁵ and Border Gateway Protocol (BGP).⁶

The School of Public Policy notes that Internet governance refers to the rules, policies, standards and practices that coordinate and shape global cyberspace.⁷ Therefore, the laws and policies in place and practices that coordinate and shape experiences of cyberspace are central to any analysis of Internet governance. This framework is adopted to assess the state of Internet governance in Uganda in this policy brief.

¹ United Nations, Department of Economic and Social Affairs, “Internet Governance,” <https://publicadministration.un.org/en/internetgovernance>

² School of Public Policy: Internet Governance Project, “What is Internet Governance,” <https://www.internetgovernance.org/what-is-internet-governance/>

³ Read more about TCP here: <https://www.rfc-editor.org/rfc/rfc793>

⁴ Read more about UDP here: <https://www.ietf.org/rfc/rfc768.txt>

⁵ Read more about DNS here: <https://www.ietf.org/rfc/rfc1034.txt>

⁶ Read more about BGP here: <https://www.rfc-editor.org/rfc/rfc4271>

⁷ School of Public Policy: Internet Governance Project, “What is Internet Governance,” <https://www.internetgovernance.org/what-is-internet-governance/>

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The findings indicate that while Uganda has a generally progressive legal framework, several laws curtail rather than enable inclusive access to critical devices, the Internet and its benefits. Analysis of laws such as the Computer Misuse Act, 2011 (as amended) and the Regulation of Interception of Communications Act, 2010 reveal several sections that provide for vague and ambiguous laws. These vague laws are concerning because they fail to warn a person about a clear offence and they encourage arbitrary and discriminatory enforcement by delegating statutory interpretation to individual government officials. Beyond the vague laws, the legal framework also provides for outrightly repressive sections that offend several important values and freedoms as established under the Constitution.

Analysis of the policies and practices related to Internet governance in Uganda reveals that while Uganda has a National Cyber Security Strategy (2022-2026), there are significant concerns about the protection of data among citizens, especially structurally silenced women. Most women do not possess sufficient digital literacy and cybersecurity awareness to navigate the pitfalls of using the Internet. Gender-based violence online is also commonplace. Incidents of sporadic non-consensual distribution of intimate images continue to occur and many women live in fear of their intimate images or videos being leaked by their estranged partners or through targeted hacks and data leaks.

Facebook remains banned in Uganda, two years on. This ban has negatively affected the ability of young women to engage in digital marketing on the platform, which is still the most used social media platform in the country. As a result, the ban is impeding innovation and small-scale business development by structurally silenced women.

Uganda's taxation policies further continue to negatively impact the costs of smartphones, laptops, computers and other ICT-enabling devices. It also affects the cost of Internet data. These affordability concerns affect the ability of people, especially structurally silenced women, to access the Internet. As a result, they cannot harness the power of the Internet of Things to improve efficiency, productivity, effective exchange of information and ideas, and market connectivity.

II. Context Analysis and Recommendations

This section analyses Internet governance along two broad pillars – the legal framework and the policies and practices.

Analysis of legal framework on Internet Governance

The Constitution of the Republic of Uganda provides for the right to privacy of person, the freedom of speech and expression – both offline and online, and a strict demand that all persons are equal before and under the law in all spheres of life and shall therefore enjoy equal protection of the law. Article 33 of the Constitution further requires the State to provide the facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement and to protect women and their rights while taking into account their unique status in society.⁸

These guarantees are established under international and regional human rights standards that Uganda has ratified. At the international level, the Universal Declaration of Human Rights (UDHR), the International Covenant on Economic Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) provide for the freedom of expression, equality and freedom from discrimination, and the right to privacy.⁹ The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Uganda ratified in 1985 and domesticated in 1995, further augments the protection of women's rights.¹⁰

On 7 July 2021, the UN General Assembly adopted a Resolution calling upon all States to accelerate efforts to bridge digital divides, including the gender digital divide and to enhance the use of information and communications technology to promote the full enjoyment of human rights for all, including fostering an enabling online environment that is safe and conducive to engagement by all.¹¹

These same freedoms are protected under the African Charter on Human and Peoples' Rights.¹² On 4 November 2016, the African Commission adopted a Resolution on the Right to Freedom of Expression on the Internet in Africa to recognize and re-affirm "the importance of the Internet in advancing human and peoples' rights in Africa, particularly the right to freedom of information and expression."¹³

⁸ ULII, "The Constitution of Uganda, 1995 (as amended)," See Articles 20, 21, 27, 29(1)(a) and 33, <https://ulii.org/akn/ug/act/statute/1995/constitution/eng%402018-01-05>

⁹ United Nations Human Rights, "International Bill of Human Rights," <https://www.ohchr.org/en/what-are-human-rights/international-bill-human-rights>

¹⁰ CEDAW, <https://www.ohchr.org/sites/default/files/Documents/ProfessionalInterest/cedaw.pdf>

¹¹ UN General Assembly – A/HRC/47/L.22, "The promotion, protection and enjoyment of human rights on the Internet," <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G21/173/56/PDF/G2117356.pdf?OpenElement>

¹² African Commission on Human and Peoples' Rights, "African Charter on Human and Peoples' Rights," <https://www.achpr.org/legalinstruments/detail?id=49>

¹³ African Commission on Human and Peoples' Rights, "362 Resolution on the Right to Freedom of Information and Expression on the Internet in Africa – ACHPR/Res. 362(LIX)2016," <https://www.achpr.org/sessions/resolutions?id=374>

Despite the progressive guarantees under the Constitution and the international obligations acceded to by ratifying the international and regional bill of rights, the laws that provide for critical aspects of Internet governance are deeply concerning. The Parliament of Uganda has enacted several laws that curtail, rather than enable, a progressive state of Internet governance. These repressive laws have had worse impacts on structurally silenced women. For example, the Computer Misuse Act, of 2011,¹⁴ which was enacted to provide for the safety and security of information systems and to prevent unlawful access, abuse or misuse of information systems; contains problematic provisions such as the offence of offensive communication and cyber stalking and harassment which have been repeatedly used by law enforcement agencies to arbitrarily target women who express themselves online.

Under Section 25, the law established the offence of “offensive communication” which was rampantly used to arrest and prosecute many people, including structurally silenced women, because of the content of their expression online. Dr. Stella Nyanzi, an award-winning feminist and queer rights advocate was targeted severally for her “radical rudeness” language aimed at calling the powerful to account through public insult. Because of a high-risk profile, Dr. Nyanzi was forced to relocate to Germany on a writers-in-exile programme run by PEN Germany with her three children. On 9 September 2022, Teddy Nalubowa, a Ugandan TikTok was charged with the offence of offensive communication for criticising the problematic legacy of the late General Elly Tumwine.¹⁵

While the offences of cyberstalking and harassment ordinarily should be good provisions, the sections are described in overly broad and vague terms that they have been used subjectively to targeted critical voices and dissent.

In a victory for free speech and digital freedoms, the Constitutional Court struck down Section 25 of the Computer Misuse Act, 2011 on 10 January 2023. This means that no one can be arrested under the offence of “offensive communication”. In a unanimous decision, the Constitutional Court held that the words under the Section are vague, overly broad and ambiguous to the effect that what constitutes an offence is unpredictable and thereby gives the police discretion to pick and choose what qualifies as offensive. Justice Kakuru further held that “in a democratic and free society, prosecuting people for the content of their communication is a violation of what falls within guarantees of freedom of expression.”¹⁶

While the court’s decision is welcome, we note with concern that the Attorney General has preferred to appeal to the Supreme Court rather than implement the decision. This points to limited political will to guarantee the freedom of expression beyond the political interests of the authorities.

¹⁴ Chapter Four Uganda, “Computer Misuse Act, 2011 [Laws of Uganda],” https://chapterfouruganda.org/sites/default/files/downloads/Computer-Misuse-Act-2011_0.pdf

¹⁵ Global Voices, “Ugandan TikTok jailed for criticizing the problematic legacy of a dead general,” <https://globalvoices.org/2022/09/14/ugandan-tiktok-jailed-for-criticizing-the-problematic-legacy-of-a-dead-general/>

¹⁶ Chapter Four Uganda, “Uganda: A victory for free speech, digital freedoms and media rights,” <https://chapterfouruganda.org/sites/default/files/downloads/Uganda%20-%20A%20victory%20for%20free%20speech%2C%20digital%20freedoms%20and%20media%20rights.pdf>

Indeed, as freedom of expression advocates were in court battling to challenge Section 25, the Parliament of Uganda was busy debating a new law that contained worse provisions. In October 2022, the Computer Misuse (Amendment) Act¹⁷ was enacted and assented to by the President. The law is littered with overly broad and vague descriptions that cannot stand the test of court. For instance, it criminalises unauthorised voice or video recording of any person even if they are in a public place, criminalises sending or sharing “unsolicited information” unless it is in the public interest, and criminalises sending or sharing of “malicious information”, among others. The law does not even attempt to define these vague words and descriptions.

In the past, other women have been targeted by law enforcement agencies because of their expression online. In April 2017, Gertrude Uwitware, a TV news anchor and reporter at the time, was kidnapped, beaten and had her hair cut off for publishing a blog supporting activist Dr. Stella Nyanzi’s criticism of the government’s failure to provide free sanitary pads in schools despite a campaign pledge.¹⁸ In November 2016, Ugandan journalist Joy Doreen Biira was arbitrarily arrested for “circulating graphic photos to a widely subscribed WhatsApp group” in the aftermath of the deadly military raid on the Rwenzururu Kingdom in Kasese district leaving over 100 people dead.¹⁹

The Parliament further enacted the Regulation of Interception of Communications Act, 2020²⁰ to provide for the lawful interception and monitoring of certain communications in the course of their transmission through telecommunication or any other related service or system in Uganda. The law lacks adequate safeguards to ensure the protection of freedom of expression and the right to privacy. It further contains a range of vague and overly broad terms and excessive provisions for intercepting communications in unjustifiable circumstances in contravention of Uganda’s obligations under international standards and Constitutional guarantees of the right to privacy.²¹ These provisions have a significant impact on structurally silenced women who are often considered criminals because of who they are or their identity.

The Parliament has however enacted progressive Acts of Parliament. Notable on the subject of Internet governance is the Data Protection and Privacy Act, 2019.²² The law, for the first time in Uganda, establishes the principles of data protection, provides for the protection of privacy of data, establishes minimum standards of security measures to be adopted by data collectors, requires notification in case of a data security breach, establishes the rights of data subjects and provides for data collectors, data processors and data controllers. These provisions are fundamental for the protection of Internet governance in this age of information and digital platforms.

¹⁷ Chapter Four Uganda, “Computer Misuse (Amendment) Act, 2022 [Laws of Uganda],”

<https://chapterfouruganda.org/sites/default/files/downloads/The-Computer-Misuse-%28Amendment%29-Act-2022.pdf>

¹⁸ Reporters Without Borders, “TV reporter kidnapped and beaten over post about First Lady,”

<https://rsf.org/en/news/tv-reporter-kidnapped-and-beaten-over-post-about-first-lady>

¹⁹ Sandra Aceng, “Women journalists in Uganda carry ‘double burden’ with online attacks and harassment”

<https://globalvoices.org/2020/05/15/women-journalists-in-uganda-carry-double-burden-with-online-attacks-and-harassment/>

²⁰ Chapter Four Uganda, “The Regulation of Interception of Communications Act, 2010 [Laws of Uganda],”

<https://chapterfouruganda.org/sites/default/files/downloads/Regulation-of-Interception-of-Communication-Act-2010.pdf>

²¹ Unwanted Witness, “Repressive: Uganda’s worst cyber laws threatening free expression and privacy,”

<https://www.unwantedwitness.org/download/uploads/REPRESSIVE-UGANDA-WORST-CYBER-LAWS.pdf>

²² The Data Protection and Privacy Act, 2019 [Laws of Uganda], <https://ict.go.ug/wp-content/uploads/2019/03/Data-Protection-and-Privacy-Act-2019.pdf>

Recommendations

- a) The Attorney General should implement the unanimous decision of the Constitutional Court in the case of Andrew Karamagi and Anor v Attorney General by ending the enforcement of Section 25 of the Computer Misuse Act, 2011.
- b) Repeal the Computer Misuse (Amendment) Act, 2022 and ensure that any subsequent laws on free expression online are consistent with the Constitution, Uganda's obligations under international and regional human rights standards, and are gender sensitive.
- c) Amend the Regulation of Interception of Communications Act, 2020 to remove and clarify all vague and ambiguous terms and provisions that provide for excessive interference on the right to privacy on the Internet.
- d) Implement/enforce the Data Protection and Privacy Act, 2019 fairly and in accordance with the law to avoid the unintended consequences of curtailing freedoms in the pretext of enforcing data protection and privacy rights.
- e) The Parliament of Uganda should ensure that all new laws that impact Internet governance are consistent with the Constitution, Uganda's obligations under international and regional human rights standards, are gender-sensitive, and adhere to the best practices.
- f) End arbitrary arrests, detention and prosecution of women because of their critical or dissenting expression online.

Analysis of Policy and Practices on Internet Governance

At the onset, Internet governance referred to the governance of Internet identifiers such as domain names, and IP addresses, among others. However, due to its critical prominence, stakeholders in the military, economic, political and social spheres impacted the definition of the policy concerns that shape Internet governance. As a result, the concept of Internet governance now includes several key concepts such as cybersecurity, free expression online, privacy and surveillance, Internet of Things, Internet Identifiers, Geopolitics of Internet Governance, digital trade and Internet Governance institutions.

Cybersecurity refers to the practice of defending computers, servers, mobile devices, electronic systems, networks and data from malicious attacks. It is also known as information technology security or electronic information security. The term entails several categories such as network security, application security, information security, operational security and end-user security. Global cyber security continues to evolve at a rapid pace.²³ A report by RiskBased Security revealed that as a result of 5,183 breaches in nine months, 7.9 billion records were exposed by data breaches in 2019 alone.²⁴ The Year-End 2020 Data Breach Report revealed a significant increase – over 37 billion records were compromised as a result of data breaches.²⁵ The types of cyber threats include cybercrime, cyberattack and cyberterrorism. These threats can occur through malware attacks through viruses, spyware, ransomware, adware or trojans; phishing attacks; man-in-the-middle attacks; denial-of-service attacks; among others.

In 2022, Uganda adopted a National Cybersecurity Strategy to create a safe cyberspace and protect Uganda by ensuring a secure and resilient cyberspace that supports the adoption and innovation of ICT in all sectors. The Strategy recognises that the protection of cyberspace is a shared responsibility across three levels of government measures, measures by companies and the private sector, and measures to ensure secure online behaviours and informed decisions by the community. In recent years, and in particular during the global pandemic crisis, Uganda witnessed an increase in malware distribution, business email compromises, the spread of fake news and mobile money network fraud. The Strategy emphasises proactive measures of threat intelligence, risk awareness, incident management and incident recovery.²⁶

In Uganda, 1 in 3 women have experienced a form of online gender-based violence, including incidents such as cyber-harassment, trolling, doxing, non-consensual image distribution, and compromising of their information and data, among others. Some of the women targeted in non-consensual image distribution attacks include TV producer Annie Nixon,²⁷ TV presenter Kleith Kyatuhairé²⁸ and TV personality Anita Fabiola.²⁹ In September 2021, dancer and YouTube personality Catherine Nagawa was targeted in a deep fake attack involving a sex tape allegation.³⁰

²³ Kaspersky, "What is Cyber Security?" <https://www.kaspersky.com/resource-center/definitions/what-is-cyber-security>

²⁴ Security Magazine, "7.9 billion records exposed so far in 2019," <https://www.securitymagazine.com/articles/91267-9-billion-records-exposed-so-far-in-2019>

²⁵ Security Info Watch, "Risk Based Security releases its Year-End 2020 Data Breach Report,"

<https://www.securityinfowatch.com/cybersecurity/press-release/21207207/riskbased-security-risk-based-security-releases-its-yearend-2020-data-breach-report>

²⁶ The Republic of Uganda, "Cyber Security Strategy, 2022 – 2026," <https://ega.ug/wp-content/uploads/2022/08/Ugandan-national-cybersecurity-strategy.pdf>

²⁷ Sqoop, "NTV's Annie Nixon issues statement on leaked nude photos,"

<https://www.sqoop.co.ug/2021/10/four-one-one/ntvs-annie-nixon-issues-statement-on-leaked-nude-photos.html>

²⁸ Campusbee, "How jilted lover leaked Kleith Kyatuhairé's nudes," <https://campusbee.ug/news/gossip/how-jilted-lover-leaked-kleith-kyatuhaires-nud3s/>

²⁹ Global Voices, "Ugandan TV personality sacked after her nude photos appear online,"

<https://globalvoices.org/2015/06/01/ugandan-tv-personality-sacked-after-her-nude-photos-appear-online/>

³⁰ Mbu, "Someone is impersonating me, don't be scammed – Catherine Nagawa speaks amid sextape allegations,"

<https://mbu.ug/2021/09/14/catherine-nagawa-someone-is-impersonating-me-dont-be-scammed/>

As more women transition to online spaces in this digital age, the number of vulnerable and exposed women continues to increase. Inadequate digital safety skills among women, particularly the structurally silenced women, is identified as one of the major concerns.³¹ In the Kabale district, a study revealed that there was a connection between poor use of the internet with early marriages and early pregnancies among women and girls during the COVID-19 lockdown.³²

The tax policies that impact the final cost of ICT devices such as smartphones and laptops and the costs of the Internet remain largely unfavourable in Uganda. This has a negative effect on the ability of structurally silenced women to access the devices to be able to connect to the Internet stably and regularly. Ms. Irene Kaggwa, the Executive Director at the Uganda Communications Commission (UCC) noted in November 2022 that “the challenge we are dealing with is how to bring this price down so that everybody can have an internet-enabled device.” The cost of accessing stable and regular Internet is also high which negatively affects the ability of structurally silenced women to access technology-driven products and services.³³

In January 2021, Uganda banned Facebook access in Uganda for apparently “blocking National Resistance Movement message centres.” The ban came shortly after Facebook shut down a slew of accounts and pages belonging to Ugandan government officials accused of seeking to manipulate public debate by engaging in coordinated inauthentic behaviour (CIB) ahead of the elections.³⁴ As of 31 December 2022, Facebook remains blocked in Uganda. Many young businesswomen in Uganda were known to be active users of Facebook pages to promote their merchandise such as clothes, jewellery, and shoes, among others. The ban has affected digital marketing,³⁵ leaving many with no option but to use WhatsApp status updates and Instagram which have fewer followers/viewership.

Uganda has also in the past indiscriminately blocked social media platforms and the Internet during presidential elections and one of the swearing-in ceremonies.³⁶ These actions had a significant impact on the ability of citizens, including structurally silenced women to use digital technologies to communicate, express their opinions and share information during the critical election time. This negatively impacts on the state of democracy in Uganda and the level of involvement of young women and other people.

The various developments described above have presented several challenges to the development of the Internet of Things (IoT) ecosystem in Uganda. Structurally silenced women are among the most affected communities because of their context. The presence of the IoT ecosystem of web-enabled smart devices among structurally silenced women is low and this denies them the ability to tap into digital technologies beyond the ordinary use of smartphones to make calls and text.

³¹ WOUNET (May 2022), “The significance of digital safety training for women in Uganda during the Covid-19 pandemic,” <https://wougn.net/wp/the-significance-of-digital-safety-training-for-women-in-uganda-during-the-covid-19-pandemic/>

³² Watchdog Uganda (June 2022), “Kigezi: Women, girls trained on cyber security, proper use internet,” <https://www.watchdoguganda.com/news/20220619/138487/kigezi-women-girls-trained-on-cyber-securityproper-use-of-internet.html>

³³ Daily Monitor, “Costs of devices, data impeding uptake of technology, says UCC,” <https://www.monitor.co.ug/uganda/business/markets/cost-of-devices-data-impeding-uptake-of-technology-says-ucc-4030098>

³⁴ Daily Monitor, “Facebook accuses blocked top Ugandan officials of engaging in ‘inauthentic behaviour,’” <https://www.monitor.co.ug/uganda/news/national/facebook-accuses-blocked-top-uganda-officials-of-engaging-in-inauthentic-behaviour-3253498>

³⁵ Nile Post, “Ugandan Facebook ban is killing digital markets, civic space,” <https://nilepost.co.ug/2021/07/28/ugandan-facebook-ban-is-killing-digital-markets-civic-space/>

³⁶ WOUNET, “Internet shutdown of social media in Uganda: Threats to online expression,” <https://wougn.net/wp/internet-shutdown-of-social-media-in-uganda-threats-to-online-expression/>

Recommendations

- a) Develop and securely implement digital identity to scale up the e-service industry.
- b) Prioritise cybersecurity support for Micro, Small and Medium Enterprises (MSME) and ensure that women groups in the MSME sector are beneficiaries.
- c) Raise public awareness about cybersecurity and conduct capacity-building programs about cyberspace, risk assessments and proactive risk management for structurally silenced women.
- d) Incorporate cybersecurity in the curriculum of primary and secondary school education, ensure mandatory study, and promote specialised cybersecurity courses at the tertiary level and universities for young women professionals.
- e) Enhance knowledge about the experiences of structurally silenced women through research, documentation, knowledge management and development.
- f) Recognize and promote projects of young women innovators, incubators and other start-ups that focus on cybersecurity.
- g) Enhance the use of the Internet of Things (IoT) in the agriculture, transport, healthcare, finance, retail business, and other sectors where women carry out their activities to improve their ability to tap into the benefits of gender-sensitive Internet Governance.
- h) Reduce or remove taxes on smartphones, computers, laptops and other ICT enabling to scale up ownership of the devices among structurally silenced women.
- i) Take action to lower the costs of data to enable structurally silenced women to access affordable, stable, fast and regular Internet data.
- j) Enhance the policing structures to ensure that women enjoy a safe space online and that in incidents of gender-based violence online, swift and appropriate action is taken in accordance with the law to hold the abuser to account to discourage impunity for the attacks.
- k) Immediately lift the ban on Facebook to promote digital marketing and expression online.
- l) End indiscriminate / blanket social media and Internet shutdowns in Uganda.

III. Conclusion

Uganda has made strides in advancing Internet governance, despite the challenges. Several laws, policies and strategies have been enacted to regulate how the Internet can be used by individuals, organisations and government agencies and departments. The government recognizes that information and communication technology systems are a key element in advancing efficiencies in production and service delivery to spur development and prosperity for all as set out in the Uganda Vision 2040, the Third National Development Plan 2020/21-2024/25, and the Sustainable Development Goals (SDGs).

Despite these progressive trends, Uganda has laws that provide for arbitrary and repressive clampdowns on freedom of expression on the Internet. These laws affect the exchange of ideas which is the cornerstone of a vibrant internet space. Limited digital literacy and cybersecurity awareness further expose individuals, particularly structurally silenced women to several risks during online engagements. Structurally silenced women further struggle to afford devices such as computers, smartphones and other equipment that is important for access to the Internet.

There is a need to address these bottlenecks as detailed in the two sections of recommendation for a more progressive state of Internet governance, one that is capable of spurring Internet access, innovation, self-determination and development.

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