

Policy Brief



Advocating for Women's Rights and Privacy Online in Uganda:

A Case for Legal, Policy and Practice Reforms

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Women of Uganda Network



WOMEN OF UGANDA NETWORK



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Introduction

This policy brief presents an analysis of the legal, policy and practice on women's rights online and proposes policy reforms to inform advocacy initiatives towards challenging online gender-based violence in Uganda. The analysis is presented along the relevant thematic fundamental rights and freedoms as outlined in the Constitution of the Republic of Uganda. The rights and freedoms addressed in this brief include equality and freedom from discrimination, personal liberty, human dignity and the protection from degrading treatment, right to privacy of person and the freedom of expression.

Online gender-based violence is one of the most widespread violations of human rights online and an apparent expression of unequal gender relations in a society. Abusers and perpetrators of gender-based violence online use it to attack, oppress and silence women and girls in private and public spaces. With the emergency of information and communication technologies (ICTs), gender-based violence increasingly occurs online as part of a continuum that is connected to offline violence, with devastating consequences on the abilities of women to use ICT tools to advance equal participation of women in public and political life.

In a 2022 Report,¹ the UN Women notes that while there continues to be significant gaps in data, a global report suggests that prevalence of online gender-based violence ranges from 16 percent to 58 percent. In a study of 5 countries in sub-Saharan Africa, it was revealed that 28 percent of women have experienced online gender-based violence. The forms of violence include sexual harassment, stalking, zoom bombing, intimate image abuse, misogynistic hate speech, among others.

According to the said UN Women report, the most common forms of online violence included misinformation, defamation, cyber harassment and hate speech, with most respondents expressing concern about online abuse escalating to offline threats. The impact of online gender-based violence can be as harmful as offline violence, with negative effects on the health and wellbeing of women and girls. The women and girls who are at heightened risk include women in public life, women journalists, gender justice advocates, women rights activists, women human rights defenders, young women and girls and women with intersecting identities.

In Uganda, several publications and media reports have reported other forms of online gender-based violence including impersonation, doxing, blackmail and extortion, non-consensual distribution of intimate images, surveillance, and rape/death threats.

¹ UN Women (2022), *Accelerating efforts to tackle online and technology facilitated violence against women and girls (VAWG)*, https://www.unwomen.org/sites/default/files/2022-10/Accelerating-efforts-to-tackle-online-and-technology-facilitated-violence-against-women-and-girls-en_0.pdf

1 Equality and Freedom from Discrimination

1.1. Background

The Constitution of the Republic of Uganda² establishes rights that guarantee the equality of women and men in a number of Articles. Under this section, the core Articles are presented to establish the core legal framework for equality and freedom from discrimination, in particular on the ground of sex.

Article 20 provides that fundamental rights and freedoms of the individuals are inherent and not granted by the State. It further states that it is the duty of the government of Uganda and all persons to respect, uphold and promote the said rights and freedoms. While these rights may be limited, Article 43 states that such limitation of the enjoyment of rights and freedoms shall not exceed what is acceptable and demonstrably justifiable in a free and democratic society.

Article 21 commands that all persons are equal before and under the law in all spheres of life and shall enjoy equal protection of the law. No person shall be discriminated against on the ground of sex, disability and other grounds as detailed under Article 21 (2). Discrimination is defined under Article 21 (3) to mean giving “different treatment to different persons attributable only or mainly to their respective descriptions” by sex, disability and other listed grounds.

Article 33 further requires that “women shall be accorded full and equal dignity of the person with men.” Article 33 (3) requires the government to “protect women and their rights, taking into account their unique status...”

² The Constitution of the Republic of Uganda,
https://ulii.org/akn/ug/act/statute/1995/constitution/eng%402018-01-05#chp_Four_sec_43

If the woman has a disability, Article 35 (1) requires that the government and society take all “appropriate measures to ensure that they realise their full mental and physical potential,” including ability to safely express themselves online. If the woman is part of a minority group, Article 36 requires that they must have “a right to participate in decision-making processes, and their views and interests shall be taken into account in the making of national plans and programmes.”

1.2. Policy Concerns

Despite the above elaborate legal guarantees on the right to full and equal dignity of the person of a woman with men, several practices have fallen short. The existent law and policies fail to ensure a framework that enables “full and equal dignity” of women.

Limited gender-sensitive and current laws and policies

In the quest to have gender-neutral laws on regulations of activities online, the framers of the law failed to enact laws that address the abuse and violence that women and girls face online because of their gender. For instance, while Uganda has criminalised cyber stalking and cyber harassment under the Computer Misuse Act of 2011, the sections have not been used to address the many cases of harassment and stalking of women and girls online in the country. Instead, the offences have been used to harass and prosecute people who express dissent or criticize speech online, including women like Dr. Stella Nyanzi.

The legal framework further does not precisely and adequately address some ingredients that are essential for establishing new forms of online attacks against girls and women because of their gender.

Discriminatory practices at police stations

During the WOUGNET engagement with civil society leaders and women human rights defenders on February 9, 2023, the participants expressed concern with the way in which some women are treated when they go to report cases of online gender-based violence. Some of the discriminatory responses include mocking and belittling victims and survivors of online gender-based violence. The complaints are not regarded as serious enough by some police officers to warrant filing of a complaint to open up a case.

1.3. Policy Recommendations

- a) The Parliament of Uganda should enact a law or introduce a part in the Penal Code Act or the Computer Misuse Act seeking to particularly and precisely criminalise the various forms of online gender-based violence. This is important in ensuring the ingredients of the offence are accurate to what we need to criminalise.
- b) Police officers and prosecutors should be sensitised, trained and closely supervised to ensure human rights-centred and gender-sensitive handling of online gender-based violence cases.
- c) The police and prosecutors should use the available laws on online abuse, for example offences of cyber harassment and cyber stalking under the Computer Misuse Act, to prosecute perpetrators of online gender-based violence.



2 Protection of Personal Liberty

2.1. Background

Women, like men, have a right to exercise the freedom of expression online. That freedom is more critical when it involves critical speech or expression of dissent. If women and girls are targeted for such expression, that undermines their right to freedom of expression as protected by the Constitution. In the context of the arrests, physical restriction or detention, the standards of the right to personal liberty are triggered. This section addresses that standard.

The Constitution of Uganda provides under Article 23 that no person shall be deprived of personal liberty except in specific circumstances listed under the Article. The Article further provides for the following critical rights:

- that where a person is arrested, restricted or detained, they shall be kept in a place authorised by law.
- where a person is arrested, his or her next-of-kin shall be informed as soon as practicable of the restriction or detention.
- a person arrested or detained shall, if not released, be brought to court as soon as possible but in any case, not later than forty-eight hours from the time of his or her arrest.
- a person restricted or detained shall be allowed reasonable access to his or her next-of-kin, lawyer and personal doctor.
- a person unlawfully arrested, restricted or detained shall be entitled to compensation.

2.2. Policy Concerns

Despite the above legal guarantees on circumstances under which personal liberty can be restrained and how a person should be handled while in detention, there have been incidents where women are arrested because of their expression online and their rights have not been respected.

One of the prominent cases of this is the attack on personal liberty of Dr. Stella Nyanzi. Around March 2017, Ms. Nyanzi started an online campaign to criticise President Yoweri Museveni and the First Lady and Minister of Education Janet Museveni for backtracking on an electoral promise to provide free sanitary pads to schoolgirls. Instead of listening to her message, she was targeted. On 7 April 2017, she was waylaid under the cover of darkness by armed individuals in private and civilian vehicles, arbitrarily and forcibly arrested and detained incommunicado for 18 hours. During this period, she was assaulted, her next-of-kin was not notified about her arrest and where she was being kept, she was denied access to her family, her lawyers, personal doctor and her sanitary towels. She was later produced in court on 10 April 2017 and charged with two criminal charges of cyber harassment for referring to the president as a 'pair of buttocks' and offensive communication for using Facebook to disturb or attempt to disturb the peace, quiet or the right of privacy of the presented with no purpose of legitimate communication.³

2.3. Policy Recommendations

- a) The Parliament of Uganda should review the Computer Misuse Act and repeal all offences that are vague and those that fail to pass the three-part test of legality, necessity and proportionality.
- b) The Uganda Police Force and the Director of Public Prosecutions should end all forms of arbitrary arrests and prosecution of women on frivolous charges because of their expressions online.
- c) The Uganda Police Force should end all forms of incommunicado detention and assault of women in detention and take action to transparently and publicly investigate all related incidents that happened in the past.

³ Read more about the case as documented in a petition to the UN Working Group on Arbitrary Detention by Chapter Four Uganda and the Robert F. Kennedy Human Rights (April 24, 2017).

[https://chapterfouruganda.org/sites/default/files/downloads/Nyanzi-UNWGAD-Petition-April-24-2017-Public.p df](https://chapterfouruganda.org/sites/default/files/downloads/Nyanzi-UNWGAD-Petition-April-24-2017-Public.pdf)

3 Respect for Human Dignity and Protection from Degrading Treatment

3.1. Background

The Constitution of Uganda provides under Article 24 the freedom from cruel, inhuman or degrading treatment. Under human rights law, treatment may be considered degrading if it is humiliating or undignified – whether or not it is inflicted on purpose. Whether treatment qualifies as degrading depends on the effects and gender identity. Cruel and inhuman treatment is considered degrading, while degrading treatment which has a slightly lower threshold may not amount to cruel and inhuman treatment. Article 44 (a) of the Constitution prohibits derogation by stating that there shall be no derogation from the enjoyment of the freedom from cruel, inhuman or degrading treatment.

3.2. Policy Concerns

When women and girls come online to express themselves or when they go to the police and authorities to report incidents of abuse or violence, they have a right to be treated with dignity and in a humane way. When they are treated in an inhuman or degrading way whether because of their gender or for whatever reason, that is in violation of the Constitution.

Several attacks such as gender-based slurs or offensive name-calling, slut-shaming and sexual objectification subject girls and women to degrading and potentially inhuman treatment. It is a direct attack on their dignity.

Girls and women are sometimes also subjected to degrading treatment when they report complaints of online gender-based violence. This manifests through mocking and belittling of victims and survivors, interrogating victims and survivors in abusive ways, and ridiculing the victims and survivors by passing the images or abusive content around the police station for their own 'entertainment'.

3.3. Policy Recommendations

- a) Police officers and prosecutors should be sensitised, trained and closely supervised to ensure human rights-centred and gender-sensitive handling of online gender-based violence cases.
- b) Police officers or prosecutors who are implicated in complaints of degrading treatment of victims and survivors of online gender-based violence should be investigated and held to account.



4 The Right to Privacy of Person

4.1. Background

The Constitution of Uganda guarantees under Article 27 that no person shall be subjected to interference with the privacy of that person's "correspondence, communication or other property." The right to privacy entails the right of individuals to think, communicate on a platform or space of choice, share information and ideas without unlawful monitoring, surveillance, censorship or authorised access to information. Individuals have a right to be left alone to exercise control of their information. The developments in information technology have made the right to privacy to be closely intertwined with the new technologies / expression online and data protection.

4.2. Policy Concerns

Over the past few years, there has been an increase in concerns of surveillance of human rights defenders and journalists, who increasingly include women. The enforcement of the Regulation of Interception of Communications Act, 2010⁴ provides room for a broad spectrum of circumstances where information can be intercepted by the government with limited oversight or safeguards.

In 2015, Privacy International published a report with evidence of the sale of intrusion malware FinFisher by Gamma International GmbH to Uganda for a secret operation codenamed "Fungu Macho". The malware was spread through set up of fake Local Area Networks (LANs), fake wireless hotspots, and fake Wi-Fi portals within Parliament, key government institutions, 21 hotels in Kampala, Entebbe and Masaka and some homes of persons of interest. The malware was used to infect communication devices of key opposition leaders, media and human rights defenders access information for purposes of blackmail.⁵

⁴ 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>

⁵ Privacy International, For God and My President: State Surveillance in Uganda, https://privacyinternational.org/sites/default/files/2017-12/Uganda_Report_1.pdf

In 2021, the government of Uganda deployed the powerful Israeli cyberespionage tool known as Pegasus to target journalists, human rights activists and lawyers. The spyware was developed to remotely compromise the iPhone associated with a target Apple ID. These attacks expose women human rights defenders directly if their phones are hacked, or indirectly when their communications with the hacked devices are unlawfully accessed and exposed.⁶

The Regulation of Interception of Communications Act, 2010 does not provide for the process of seeking redress for individuals who are subjected to a warrant for interception of communication. The law further does not provide for a right to notification of individuals who are subjected to communication surveillance.

The Regulation of Interception of Communications Act, 2010 further requires telecommunications and internet service providers to enable lawful interception without notifying the target of the interception. If the data intercepted is encrypted, the law requires that person to disclose the key to the encrypted information upon request, failure of which the person would face jail time or a fine.

While the Data Protection and Privacy Act, 2019⁷ provides for generally progressive provisions, there is still limited awareness about the Act and inadequate effort to ensure the Act is urgently enforced. The Personal Data Protection Office is still understaffed compared with the responsibility at hand.

Under section 16 and 28 of the Act, the right to erasure (commonly referred to as the right to be forgotten) is established. This right is critical for the right of privacy in this digital age. In addition to personal data shared willingly by data subjects, there are many incidents where an individual's personal data is accessed and made public without consent. For instance, over the past few years, Uganda has witnessed a rise in incidents of Non-Consensual Sharing of Intimate Images (NCII), commonly known as “revenge pornography”. Women are often the victims of malicious attacks, blackmail, revenge and other criminal activities.⁸ The images, videos, audios and other intimate materials or information (data) shared stay online indefinitely and can easily be accessed on websites, social media sites and search engines.

The narrow grounds limit complaints for an order of erasure of personal data. Under section 28, the Act provides for power to order for “rectification, blocking, erasure and destruction of personal data” if a complaint under the Act is successful. Women who have concerns with abuse of their personal data, for example in an incident of NCII, can lodge a complaint and seek to have their images, videos or audio blocked, erased or destroyed so that they are not accessible by other members of the public.

⁶ The New York Times, Spy tool was deployed in State-sponsored hack of Ugandans, <https://www.nytimes.com/2021/12/04/world/africa/uganda-hack-pegasus-spyware.html>

⁷ 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>

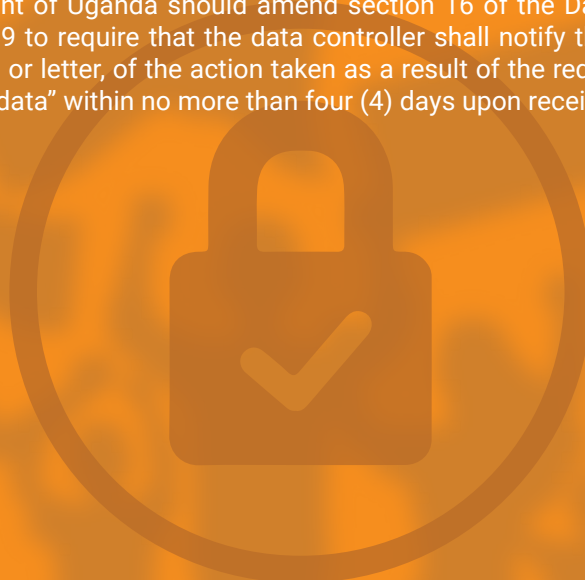
⁸ The Daily Monitor, Revenge porn is rising and it should be addressed, <https://www.monitor.co.ug/uganda/lifestyle/reviews-profiles/revenge-porn-is-rising-and-it-should-be-addressed-1603628?view=htmlamp>

While the provision is progressive, it provides for one narrow ground of “inaccuracy” of the personal data as a basis for applying for erasure. This denies complainants who may seek an order of rectification, blocking, erasure or destruction of personal data against a data controller on other legitimate grounds such as withdrawal of consent for processing of the personal data or where the data was obtained unlawfully.

The section further does not provide for a timeframe within which a data controller is required to notify the data subject of the action it has taken as a result of a request to correct or delete personal data about the data subject. It also doesn't expressly require the notification to be in writing. This denies women and other data subjects the right to have their personal data erased without undue delay.

4.3. Policy Recommendations

- a) The Parliament of Uganda should review the Regulation of Interception of Communications Act, 2010 and other surveillance laws, policies and practices to ensure that they adhere to the Constitution and international human rights standards, including the principles of legality, necessity and proportionality.
- b) The Personal Data Protection Office should do more to popularise the Data Protection and Privacy Act, 2019, with a special program for girls and women, and take necessary steps to enforce the law.
- c) The Parliament of Uganda should amend section 28 of the Data Protection and Privacy Act, 2019 to provide for withdrawal of consent on processing personal data and processing of unlawfully obtained personal data among the grounds to secure an order for rectification, blocking, erasure and destruction of personal data.
- d) The Parliament of Uganda should amend section 16 of the Data Protection and Privacy Act, 2019 to require that the data controller shall notify the data subject, in writing via email or letter, of the action taken as a result of the request to “correct or delete personal data” within no more than four (4) days upon receiving the request.



5 The Right to Freedom of Expression

5.1. Background

Uganda's legal framework on freedom of expression online is progressive. Article 29 (1) (a) of the Constitution of Uganda provides that "[e]very person shall have the right to freedom of speech and expression which shall include freedom of the press and other media". Article 43 (1) of the Constitution further provides in the enjoyment of the rights and freedoms, no person shall prejudice the fundamental or other human rights and freedoms of others beyond what is acceptable and demonstrably justifiable in a free and democratic society. On July 5, 2012, the UN Human Rights Council approved a resolution⁹ recognising freedom of expression on the internet as a human right.

5.2. Policy Concerns

The Computer Misuse Act, 2011¹⁰ was enacted to ensure the safety and security of electronic transactions and information systems, including online communications on mobile devices and computers. In addition to other provisions, the Act creates a number of offences. This section focuses on two of the offences created under the Act because of their impact on the right of women and other critical female voices to exercise their freedom of expression online. The two offences are cyber harassment and offensive communication.

Under section 24, the Act creates the offence of "cyber harassment" by making it an offence to make "any request, suggestion or proposal which is obscene, lewd, lascivious or indecent" using a computer. Section 25 creates the offence of "offensive communication" by criminalising communication that "wilfully and repeatedly uses electronic communication to disturb or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication."

⁹ APC, *The UN recognises freedom of expression on the internet as a human right*, <https://www.apc.org/en/news/un-recognises-freedom-expression-internet-human-right>

¹⁰ *The Computer Misuse Act, 2011* [Laws of Uganda], https://chapterfouruganda.org/sites/default/files/downloads/Computer-Misuse-Act-2011_0.pdf

The two offences have been used to target a prominent academician and feminist, Dr. Stella Nyanzi. She was first arrested and charged with the cyber harassment offence in April 2017 after she repeatedly posted criticism of President Yoweri Museveni and his wife on Facebook.¹¹ During the trial, the State sought to force a mental examination on her to declare her an idiot so they delegitimize a legitimate form of expression and send her to a mental health hospital. This was successfully challenged by her lawyers.

In November 2018, Dr. Nyanzi was again arrested and charged with cyber harassment and offensive communication after she allegedly posted a Facebook post abusing President Museveni and his deceased mother.¹² On August 1, 2019, she was found guilty of the offence of cyber harassment and acquitted of the offence of offensive communication. Dr. Nyanzi's ordeal and conviction demonstrates the dangers that structurally silenced women face when they use obscenity, crude language, and radical rudeness to resist authoritarianism, patriarchy and homophobia.¹³

The two offences are the most enforced insult laws in Uganda. They criminalise the infringement of another person's "honor and dignity" by means of expression. The UN Human Rights Committee has guided that "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties".¹⁴ Article 19 of the International Covenant on Civil and Political Rights (ICCPR) "includes the right of individuals to criticise or openly and publicly evaluate their governments without fear of interference or punishment".

The UN Working Group on Arbitrary Detention (WGAD), in an opinion it rendered to Uganda following a petition by Chapter Four Uganda and Robert F. Kennedy Human Rights, noted a number of concerns on the two offences. On the principle of legality, the WGAD observed that "[l]aws that are vaguely and broadly worded may have a chilling effect on the exercise of the right to freedom of expression, as they have the potential for abuse". The WGAD requested the government of Uganda to bring the offences of cyber harassment and offensive communication under the Act "into conformity with the commitments of Uganda under international human rights law".¹⁵

In the landmark Supreme Court decision in *Charles Onyango Obbo and Another v Attorney General*,¹⁶ JSC Mulenga noted, "[a] democratic society respects and promotes the citizens' individual right to freedom of expression, because it derives benefit from the exercise of that freedom by its citizens. In order to maintain that benefit, a democratic society chooses to tolerate the exercise of the freedom even in respect of demonstrably untrue and alarming statements, rather than to suppress it".

¹¹ Aljazeera, Academic Stella Nyanzi charged with 'cyber harassment',

<https://www.aljazeera.com/news/2017/4/10/academic-stella-nyanzi-charged-with-cyber-harassment>

¹² The Daily Monitor, Stella Nyanzi arrested for insulting Museveni's mother,

<https://www.monitor.co.ug/uganda/news/national/stella-nyanzi-arrested-for-insulting-museveni-s-mother-1787340?view=htmlamp>

¹³ Annenberg School for Communication (University of Pennsylvania) Digital Radical Rudeness: The story of Stella Nyanzi,

<https://www.asc.upenn.edu/research/centers/center-on-digital-culture-and-society/the-digital-radical/digital-radical-rudeness>

¹⁴ United Nations, General Comment No. 34 on Article 19 – Freedom of opinion and expression,

<https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

¹⁵ Human Rights Council, Working Group on Arbitrary Detention, Opinion No. 57/2017 concerning Stella Nyanzi (Uganda),

https://chapterfouruganda.org/sites/default/files/downloads/A_HRC_WGAD_2017_57_0.pdf

¹⁶ Constitutional Appeal No. 2 of 2002, <https://ulii.org/ug/judgment/supreme-court-uganda/2004/81>

5.3. Policy Recommendations

- a) The Parliament of Uganda should amend sections 24 (1) and (2)(a) of the Computer Misuse Act, which has been used to restrict the right to freedom of expression of women, to bring them into conformity with Articles 29 (1)(a) and 43 (2)(c) of the Constitution and Uganda's commitments under international and regional human rights law.
- b) The police should refrain from arbitrarily arresting women because of their critical speech or expression of dissent online.



About WOUGNET

Women of Uganda Network (WOUGNET) is a non-governmental organization initiated in May 2000 by several women's organizations in Uganda to develop the use of information and communication technologies (ICTs) among women as tools to share information and address issues collectively. The organization envisions an inclusive and just society where women and girls are enabled to use Information Communications Technologies (ICTs) for sustainable development.

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