

Policy Brief

Movement Building in the Digital Age for Structurally Silenced Women in Uganda:

Policy and Practice Recommendations

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WOMEN OF UGANDA NETWORK



APC
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About WOUGNET

Women of Uganda Network (WOUGNET) is a Non-Governmental Organisation initiated in May 2000 by several women's organisations in Uganda to develop the use of information and communication technologies (ICTs) among women as tools to share information and address issues collectively. The organisation 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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1. Introduction

1.1. Background

Women's movements have significantly contributed to gender equality in Uganda. Although some battles have been partly won, the majority of women are still disproportionately affected by all forms of violence and discrimination in every aspect of their lives. Women's movements and collectives are recognised for addressing gender-based violence by shifting attitudes and behaviours around gender-based violence, challenging gender inequality at institutional levels and advocating for creating environments that foster the achievement of women's rights.

In Uganda, the work of women human rights defenders is governed by a set of laws and protected by several international legal instruments and frameworks – all intended to safeguard and protect the rights of women and girls. At the national level, Article 21 of the 1995 Constitution guarantees freedom from discrimination and equal rights for women and men. Article 33, on the rights of women, provides that the state facilitates and provides opportunities necessary to enhance the welfare of women.

Amidst the existence of these instruments, women human rights defenders and feminist activists are being subjected to arbitrary limitations on their rights to peacefully express themselves, both online and offline. The root cause of this limitation is the patriarchal nature of the Ugandan society and the cultural norms or value belief systems that drive societal and policy agenda hence undermining fundamental rights.

Recognizing the urgency and important role that women's movement and feminist actors have played over the years, WOUGNET facilitated a study leading to the publication of this policy brief to contribute to strengthening the gains and shaping advocacy targets. Our hope as WOUGNET is that the brief will enhance the efforts to champion women's agenda, especially the rights of structurally silenced women such as persons with disabilities, and women human rights defenders, among others. This policy brief aims to study, amplify and unify the voices of women who are historically marginalised to actively drive change in their own lives and communities.

1.2. Conceptualization of the Women's Movement

The women's movement is often viewed and analysed in the context of social movements – collective actions to bring about or resist change using various historically conditioned strategies (Guida West and Rhoda Lois Blumberg, 1990).¹ Implicit in the definition is a significant level of dissatisfaction with the status quo, the level of conviction that the situation can change, and the mobilisation of people for collective action. Therefore, a social movement's characteristics include collective action sustained over time, with the active participation of individuals and/or organisations adequate to generate interest among a relatively large number of people.²

According to Charles Tilly (Tilly C, 1984), the concept of a social movement is a sustained series of interactions between power holders and persons successfully claiming to speak on behalf of a constituency lacking formal representations, in the course of which those persons make publicly visible demands for changes in the distribution of exercise of power, and back those demands with public demonstrations of support.³

According to (Kwesiga, J. (2003), the conglomeration of women's organisations, groups, and activities constitutes the women's movement since they all pursue a common goal.⁴

According to (UWONET, 2016), the key to this conceptualisation of the women's movement is a shared vision and set of values, including a conviction against inequality between men and women, the imperatives of justice, freedom, inclusiveness, and participation for full respect of the rights of all women and girls to inform their work.⁵

¹ Guida west and Rhoda Lois Blumberg (eds). 1990, "Women and Social Protest", New York and Oxford: Oxford University Press

² UN Women, "Assessments of Uganda Women's Movement (1980-2018)," https://africa.unwomen.org/sites/default/files/2023-10/state_of_the_womens_movement_in_uganda.pdf

³ Charles Tilly (1984), "Social Movements and National Politics" in Charles Bright and Susan Harding (eds) *Statemaking and Social Movements*, University of Michigan Press, 306

⁴ (Kwesiga, J. (2003), P. 20) *The Women's Movement in Uganda: Will the twenty first century create a different strand?*, in *The Uganda Journal*, Vol. 49, 20-40

⁵ UWONET (2016), *Synopsis of the impact of the women's movement on the socio-economic and political Uganda* (unpublished presentation), whose contents were validated during the focus group discussions on August 2018

1.3. Brief History of the Women's Movement in Uganda

Women, including structurally silenced women, in Uganda have a long history of movement building and active participation in social life. For example, many women are active participants in social movements and groups at the village level. This history is inextricably linked to the socio-economic account of Uganda and the policy environment for organising and activism. Developments at the global and regional levels relating to women's rights, gender equality and women's empowerment also have an impact on the trajectory of movements in the country.⁶

According to (Tamale, S. 1999), before colonial rule in Uganda, women influenced their political and social leadership through the traditional decision-making systems of the different communities.⁷ (Mwaka Victoria 1996, 454) asserts that women had informal networks and collaborative arrangements, especially during crises, heavy workloads, and family events such as weddings and funerals.⁸

Fast forward, the seeds of modern-day women's movement in Uganda are traceable to the 1940s when women started agitating for better education opportunities for girls, safe motherhood, and women's economic empowerment. Some of the notable movements set up around this time, and the years that followed, include the Mothers' Union, the Young Women's Christian Association (YWCA), the Uganda Catholic Women's League, the Ugandan Muslim Women's Association, the Ugandan Council of Women, the Uganda Association of Women's organisations (UAWO), National Council of Women (NCW), the Uganda Association of University Women (UAUW), the Uganda Association of Women Lawyers (FIDA-Uganda), among others.⁹

⁶ UN Women, "Assessments of Uganda Women's Movement (1980-2018)," https://africa.unwomen.org/sites/default/files/2023-10/state_of_the_womens_movement_in_uganda.pdf

⁷ Tamale Sylvia (1999), *When Hens begin to Crow: Gender and Parliamentary Politics in Uganda*, Fountain Publishers, Kampala, Uganda

⁸ Mwaka Victoria (1996), *Beijing and Beyond: Toward the Twenty-First Century Women*, *Women's Studies Quarterly*, Vol. 24, No. 1/2, pp. 449-464

⁹ UN Women, "Assessments of Uganda Women's Movement (1980-2018)," https://africa.unwomen.org/sites/default/files/2023-10/state_of_the_womens_movement_in_uganda.pdf

2. Legal Framework and its Impact on Movement Building

2.1. Concerns under the Penal Code Act

2.1.1. Introduction

The Penal Code Act (Cap. 120) was enacted in Uganda in 1950¹⁰ to establish a code of criminal law. Among other criminal offences established under the Act, the criminal offences of “prostitution” and having “carnal knowledge of a person against the order of nature” were created. This section analyses the policy concerns of the two criminal offences with respect to the impact of their enforcement, and impact on the freedom of association and expression which is central to movement building, and proposes recommendations.

2.1.2. Policy Concerns

The right to equality and freedom from discrimination form the foundational principles of the Bill of Rights under the 1995 Constitution of Uganda. Under Article 21, the Constitution guarantees that all persons are equal before and under the law in all spheres of life and shall enjoy equal protection of the law. The Constitution defines discrimination as “giving different treatment to different persons attributable only or mainly to their respective descriptions by sex, among others. In the landmark case of *Toonen v Australia*,¹¹ The U.N. Human Rights Committee held that the term ‘sex’ in Article 2(1) of the ICCPR encompasses sexual orientation. The feminist approach to sex work foregrounds the principle of bodily autonomy which is essentially “the right to self-governance over one’s own body without external influence or coercion”.¹² Despite these progressive provisions, Uganda still criminalises sex work and conduct that is related to sexual orientation with significant impact for structurally silenced women.

Criminalising sex work: Analysis of challenges faced by women

Under sections 136, 137, 138 and 139, the Penal Code Act criminalises various activities that are related to sex work including criminalising living on earnings of prostitution, operating brothels, aiding and abetting prostitution, and engaging in prostitution. Under the law, a “prostitute” is defined as “a person who, in public or elsewhere, regularly or habitually holds himself or herself out as available for sexual intercourse or other sexual gratification for monetary or other material gain”. A person who practices or engages in “prostitution” is liable on conviction to imprisonment for seven years.

¹⁰ Penal Code Act, Cap 120 [Laws of Uganda], https://ulii.org/akn/ug/act/ord/1950/12/eng%402014-05-09#sec_136

¹¹ *Toonen v. Australia*, U.N. Human Rights Comm., Communication No. 488/1992, U.N. Doc. CCPR/C/50/D/488/1992 (1994), available at <http://www.unher.org/refworld/docid/48298b8d2.html>

¹² Akina Mama wa Afrika, A feminist approach to sex work, https://www.akinamamawaafrika.org/wp-content/uploads/2021/02/AKINA_feminist-approach-to-sex-work-Technical-Brief-.pdf

As a result of the above legal framework, sex workers in Uganda face numerous challenges including arbitrary and mass arrests, prolonged detention, stigmatisation, exploitation, exposure to abuse in organised criminal networks, limited access to public services such as healthcare¹³ and justice, and vulnerability to sexually transmitted diseases. Sex workers who are arrested are also usually paraded before the media and some are subjected to sexual harassment and rape in exchange for their freedom. These challenges are principally based on the fact that according to the present legal framework, sex workers are perceived to be engaging in criminal activities and therefore cannot seek protection. When they are produced in court, sex workers often plead guilty due to pressure from their handlers, fear of imprisonment, lack of legal representation, and an effort to get lenient sentences.¹⁴

Female sex workers bear the worst brunt of the enforcement of these laws. Most of them are subjected to cruel, inhuman and degrading treatment or punishment as a result of beatings, verbal abuse and sexual assault by police and other law enforcement officers. Sex workers are also charged with antiques legislation in Uganda's law book.

Criminalising unnatural offences: Analysis of challenges faced by women

The Penal Code Act further criminalises having "carnal knowledge of a person against the order of nature" under Sections 145 (a), (c) and 146. This section therefore criminalises acts such as anal sex. While the section doesn't criminalise being or identifying as a lesbian, bisexual or transgender woman, the offence has been repeatedly used to arbitrarily arrest, detain and prosecute lesbian, bisexual and transgender women. On many occasions, the police have subjected the suspects to media parades to deliberately shame and out them and to intrusive forced anal examinations allegedly to determine anal penetration.

Section 145 of the Penal Code Act has also been used to impede the right of lesbians, bisexual and transgender women to exercise the freedom of association and expression like other people. Since 2012, the Uganda Registration Services Bureau (URSB) has declined to register the "Sexual Minorities Uganda" (SMUG) on grounds that the name is undesirable and that the organisation seeks to engage people who are involved in criminal acts under Section 145 of the Penal Code Act. SMUG has so far unsuccessfully petitioned the court, but the matter is still pending in a higher court. In August 2023, the SMUG was shut down for failing to register with the National Bureau for NGOs despite showing proof of attempting to register since 2012.¹⁵

¹³ WHO, *Prevention and treatment of HIV and other sexually transmitted infections for sex workers in low and middle income countries: Recommendations for a public health approach*, http://apps.who.int/iris/bitstream/handle/10665/77745/9789241504744_eng.pdf;jsessionid=4B4CC5C5974C230ABA04BAA16D4253A7?sequence=1

¹⁴ Human Rights Awareness and Promotion Forum, *Legal regulation of sex work in Uganda: Exploring the current trends and their impact on the human rights of sex workers*, https://hrapf.org/images/researchpapers/161228legalregulationofsexworkersinugandastudy_updated-1.pdf

¹⁵ Robert F. Kennedy Human Rights, "International organisations condemn the shutdown of Ugandan Sexual Minorities Uganda (SMUG), call for authorities to reverse the decision immediately", <https://rfkhumanrights.org/international-organizations-condemn-the-shutdown-of-ugandan-organization-sexual-minorities-uganda-smug-call-for-authorities-to-reverse-the-decision-immediately>

This is not an isolated incident, URSB and the National Bureau for NGOs have increasingly refused to register organisations that seek to work with lesbian, bisexual, transgender and queer women. For example, Ubuntu Law and Justice Centre, a women-led human rights organisation providing legal aid has been denied registration by the Bureau.¹⁶

2.1.3. Policy Recommendations

- a) The Uganda Law Reform Commission should review sections 136, 137, 138 and 139 of the Penal Code Act in light of Constitutional and international human rights standards and make appropriate recommendations to the government.
- b) The Parliament of Uganda should repeal sections 136, 137, 138 and 139 of the Penal Code Act that provide “prostitution” and other related offences to decriminalise sex work.
- c) The Parliament of Uganda should repeal sections 145 (a) and (c) and accordingly amend section 146 of the Penal Code Act to end the criminalisation of having “carnal knowledge of a person against the order of nature”.
- d) The Parliament of Uganda should not include repetition of sections 136, 137, 138, 139, 145 (a) and (c) and 146 of the Penal Code Act in other subsequent legislation, such as the Sexual Offences Bill.
- e) The Uganda Police Force should create avenues for sex workers to report crimes voluntarily, including rape or the operation of organised crime, without bias and harassment for engaging in sex work.
- f) The Ministry of Health should do more to prohibit the discrimination and abuse of sex workers and lesbian, bisexual, transgender and queer women when they seek health services, and take more proactive action to extend friendly health services to their communities.
- g) The Director of Public Prosecutions should refrain from sanctioning charges which are often used by the police to intimidate, harass and extort money from sex workers and lesbian, bisexual, transgender and queer women.
- h) The Uganda Police Force should refrain from arresting persons in the absence of credible evidence that one has committed “prostitution” or “unnatural offence” and immediately end all forms of media parades of suspects.
- i) Civil society organisations should engage the police on the rights of sex workers and lesbian, bisexual, transgender and queer women and file constitutional petitions to challenge the criminalisation of sex work.

¹⁶ Open Democracy, “Ugandan charity regulator accused of targeting LGBTIQ groups to avoid austerity”, <https://www.opendemocracy.net/en/5050/uganda-lgbt-austerity-ngo-bureau-investigations-leaked-report-charity-regulator/>

2.2. Concerns under the Anti-Homosexuality Act, 2023

2.2.1. Introduction

The Anti-Homosexuality Act, 2023 (AHA)¹⁷ came into force on May 26, 2023, after President Museveni assented to it. The stated objective of the law is to prohibit any form of sexual relations between persons of the same sex; to prohibit the promotion or recognition of sexual relations between persons of the same sex; and for other related matters. As illustrated in the policy concerns below, the law contains sections that criminalise movement building for lesbian, bisexual, transgender and queer women.

2.2.2. Policy Concerns

Under the law, Section 2 of the AHA establishes the criminal offence of homosexuality and attempted homosexuality. Homosexuality refers to a person performing a sexual act or allowing a person of the same sex to perform a sexual act on him or her. The offence of attempted homosexuality refers to a situation where a person begins to put his or her intention into execution employing an overt act intended to commit the act of homosexuality. The offences for two offences are life imprisonment and imprisonment of up to ten years respectively. The definition of the word “sexual act” includes vague terms such as “stimulation, however slight.”

Under Section 11, the law provides for the offence of “promotion of homosexuality.” The offence is defined using regressive and vague catch-all phrases. For instance, a person who “encourages or persuades another person to perform a sexual act or to do any other act that constitutes an offence” under the AHA is liable. No attempt was made to define what “encourages” or “persuades” means. As it stands, community organising and mobilisation of lesbian, bisexual, transgender and queer women can easily be viewed as encouraging or persuading individuals to commit offences under the AHA.

The same applies to offences such as providing “financial support, whether in kind or cash, to facilitate activities that encourage homosexuality or the observance or normalisation of conduct prohibited” under the AHA. What is “observance”? What is “normalisation”? These vague terms target donors and foundations that provide financial resources to organisations that are led by or that work with lesbian, bisexual, transgender and queer women. This is affecting the ability of these organisations to fundraise and access resources to be able to carry out their work.

¹⁷ The Anti-Homosexuality Act, 2023 [Laws of Uganda]. <https://www.parliament.go.ug/sites/default/files/The%20Anti-Homosexuality%20Act%2C%202023.pdf>

Section 11(2)(d) further criminalises renting out office premises to organisations that are led by or that work with lesbian, bisexual, transgender and queer women. It is now an offence to lease or sub-lease any house, building or establishment for “the purpose of undertaking activities that encourage homosexuality or any other offence” under the AHA. Movement building and campaigning can be viewed as encouraging homosexuality.

Section 11(2)(e) directly criminalises registration and operation of “an organisation which promotes or encourages homosexuality or the observance or normalisation of conduct prohibited” under the AHA. As a result, all organisations that are led by or that work with lesbian, bisexual, transgender and queer women are exposed to a fine of up to USD. 263,400, suspension of the licence of the entity for ten years, or direct cancellation of the licence.

Section 14 of the AHA further requires all people, apart from Advocates of Court of Law, to report to the police if they have reasonable suspicion that a person has “committed or intends to commit the offence of homosexuality or any other offence” under the AHA. This section exposes community organisers, social workers, mobilisers, journalists and other human rights defenders working with lesbian, bisexual, transgender and queer women to possible arrest for failing to report. The sanction, if convicted, is imprisonment for a period not exceeding five years.

2.2.3. Policy Recommendations

- a) The Courts of Law should repeal the AHA in its entirety to stop the discriminatory piece of legislation.
- b) In the event that the Court does not repeal it, the Parliament of Uganda should repeal the AHA and pass progressive legislation that protects the rights and freedom of lesbian, bisexual, transgender and queer women in Uganda.
- c) The Uganda Police Force should cease enforcement of the AHA that is being contested in Court for being unconstitutional and train its staff on policing hate crimes committed against lesbian, bisexual, transgender and queer women.
- d) Civil society organisations and organisers working in movement building should find innovative ways of carrying out their work in accordance with the freedom of association and expression as guaranteed under the 1995 Constitution.
- e) The URSB and the National Bureau for NGOs should respect the freedom of association of lesbian, bisexual, transgender and queer women and organisations that seek to provide professional services to the community and take action to register them for normal operations.

2.3. Concerns under the Computer Misuse Act

2.3.1. Introduction

The Computer Misuse Act, 2011¹⁸ (hereinafter referred to as the “Act”) was enacted to make for the safety and security of electronic transactions and information systems. The definition of a computer under the law includes communication made using a phone, or tablet, among others. In addition to other provisions, the Act creates several offences. This brief focuses on two of the offences created under the Act because of their impact on the rights of feminists and other critical female voices to exercise their freedom of association and expression online in movement-building campaigns. The two offences are cyber harassment and offensive communication.

2.3.2. Policy Concerns

Uganda’s legal framework for 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 that 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 resolution¹⁹ recognising freedom of expression on the internet as a human right.

Despite the above progressive human rights standards, the Computer Misuse Act contains some provisions which are repressive and inconsistent with the Constitution. 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.”

The two offences have been used to target a prominent academic 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.²⁰ 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.

¹⁸ The Computer Misuse Act, 2011 [Laws of Uganda], https://chapterfouruganda.org/sites/default/files/downloads/Computer-Misuse-Act-2011_0.pdf

¹⁹ 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>

²⁰ Aljazeera, Academic Stella Nyanzi charged with ‘cyber harassment’, <https://www.aljazeera.com/news/2017/4/10/academic-stella-nyanzi-charged-with-cyber-harassment>

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.²¹ 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 demonstrate the dangers that structurally silenced women face when they use obscenity, crude language, and radical rudeness to resist authoritarianism, patriarchy and homophobia.²²

The two offences are the most enforced insult laws in Uganda. They criminalise the infringement of another person's "honour and dignity" by employing 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".²³ 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 several concerns about 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".²⁴

In the landmark Supreme Court decision in *Charles Onyango Obbo and Another v Attorney General*,²⁵ JSC Mulenga noted, "[a] democratic society respects and promotes the citizens' 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 freedom even in respect of demonstrably untrue and alarming statements, rather than to suppress it".

²¹ *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>

²² 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>

²³ United Nations, General Comment No. 34 on Article 19 – Freedom of opinion and expression, <https://www2.ohchr.org/english/bodies/hrc/docs/gc34.pdf>

²⁴ 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

²⁵ Constitutional Appeal No. 2 of 2002, <https://ulii.org/ug/judgment/supreme-court-uganda/2004/81>

2.3.3. Policy Recommendations

a) The Parliament of Uganda should amend sections 24 (1) and (2)(a) of the Computer Misuse Act 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 Parliament of Uganda should create a criminal offence in the Computer Misuse Act for the prosecution of suspects in cases of non-consensual dissemination of intimate images and other related offences to provide structurally silenced women with a clear offence under which they can seek accountability and justice.

2.4. Concerns under the Non-Governmental Organisations Act, 2016

2.4.1. Introduction

The Non-Governmental Organisations Act, 2016²⁶ (NGO Act, 2016) and the Companies Act, 2012²⁷ provide for the legal framework that regulates the freedom of association in Uganda. Whereas the laws are generally progressive, they provide for provisions that have been used to curtail the freedom of association and movement building of structurally silenced women, especially lesbian, transgender and queer women and sex workers. This policy brief reflects on some of the policy issues and offers recommendations.

2.4.2. Policy Concerns

Challenges in Securing Company Name Reservation

Under the law, it is a requirement for any association intending to be incorporated into a company to first reserve a name under section 36 (1) of the Act, pending registration of a company. Sub-section (2) provides that no name shall be reserved and no company shall be registered by a name, which in the "opinion of the registrar" is "undesirable." This overbroad power vested in the registrar has been invoked to obstruct LBT women from exercising the freedom of registering a company as a form of association.

²⁶ The Non-Governmental Organisations Act, 2016 [Laws of Uganda],

<https://www.mia.go.ug/sites/default/files/download/The-Non-Governmental-Organisations-Act-2016%20comp.pdf>

²⁷ Companies Act, 2012 [Laws of Uganda], <https://ulii.org/akn/ug/act/2012/1/eng%402015-07-01>

In the case of Frank Mugisha, Dennis Wamala and Ssenfuka Joanita Warry v Uganda Registration Services Bureau,²⁸ The Applicants filed an application in the High Court to challenge the decision of Uganda Registration Services Bureau (URSB) to reject the reservation of the name “Sexual Minorities Uganda” on February 16, 2015. URSB rejected the request on grounds that the name was undesirable and un-registrable because the proposed company was to be formed to advocate for the rights and well-being of lesbians and gay persons, among others (LGBTIs), who are engaged in activities labelled criminal acts under section 145²⁹ of the Penal Code Act. Hon. Lady Justice P. Basaza–Wasswa held that the URSB was justified in rejecting the name “Sexual Minorities Uganda” in the public interest. This case and the actions of URSB illustrate the challenges that LBT women and sex workers face in their quest to exercise freedom of association on an equal basis with others.

Exorbitant NGO Registration Fees

The Non-Governmental Organisations (Fees) Regulations, 2017³⁰ which were made on March 24, 2017, by the Minister of Internal Affairs provided that an indigenous/national organisation is required to pay Ugx. 100,000 (USD. 29) in application fees for registration and an additional Ugx. 60,000 (USD 17) for a one-year NGO permit. Under the repealed law, there was no fee for registration. Organisations were required to only pay for the NGO permits at a fee of Ugx. 20,000 (USD. 6) per year. It is important to note that under international and regional human rights law, whereas a fee may be imposed to cover administration fees, such fees must be modest and not have an effect of deterring associations from registering in practice.³¹ Considering that NGOs are voluntary associations which are often started by individuals without any grant, the said amounts are an impediment to freedom of association of structurally silenced women who may not be in a position to pay the fees promptly.

Exorbitant Express Penalties for Operating without a Valid NGO Permit

Under section 32 (6) of the NGO Act, a CBO whose permit expires, but continues to operate without renewing its permit is to be fined Ugx. 200,000 (USD 57) and Ugx. 2,000,000 (USD 561) for NGOs, for every month of operation in default of renewal of the permit. This penalty is exorbitant, extremely prohibitive, and inconsistent with the Constitution and therefore cannot be justified. It outlaws informal associations and is extremely punitive.

Restrictions on Registration of Organisations

The NGO Act, of 2016 provides for “special obligations” for NGOs under section 44 (f). One of the obligations is a strict requirement for all organisations in Uganda not to engage in any act which is “prejudicial to the interests of Uganda” and the “dignity of the people of Uganda.” These vague and overbroad provisions can be abused to impede the freedom of association of sex worker-led or LBT-led organisations or organisations that seek to work with marginalised groups.

²⁸ Misc. Cause No. 96 of 2016. A copy of the judgment can be accessed via this link: <https://www.hrapf.org/index.php/resources/court-judgements/90-judgement-in-the-smug-case/file>

²⁹ The section provides for the offence of unnatural offences.

³⁰ Statutory Instrument 2017 No. 21, The Non-Governmental Organisations Act, 2016, <https://chapterfouruganda.org/sites/default/files/downloads/The-NGO-%28Fees%29-Regulations-2017.pdf>

³¹ ACHPR, Guidelines on freedom of association and assembly in Africa, See section 18, https://www.achpr.org/public/Document/file/English/guidelines_on_freedom_of_association_and_assembly_in_africa_eng.pdf

2.4.3. Policy Recommendations

- a) The Uganda Registration Services Bureau should ensure that the power provided under section 36 (2) of the Companies Act, 2012 is exercised judiciously and is not used to promote discrimination against structurally silenced women.
- b) The Parliament of Uganda should amend section 36 (2) of the Companies Act, 2012 to provide for clear circumstances under which a registrar at URSB may decline to register the name of an intended company. The law should clarify that lesbian, transgender and queer women and sex workers shall not be discriminated against in the exercise of freedom of association.
- c) The Minister of Internal Affairs to review and amend the Non-Governmental Organisations (Fees) Regulations, 2017 to provide for modest registration and permit fees to enable interested structurally silenced women to register organisations.
- d) The Parliament of Uganda should repeal sections 33 (6) and 44 (f) of the NGO Act, 2016 to protect the right of sex workers and lesbian, transgender and queer women to form and operate non-profit organisations in an enabling environment.

2.5. Concerns under the Data Protection and Privacy Act, 2019

2.5.1. Introduction

In December 2018, the Parliament of Uganda enacted the Data Protection and Privacy Act, 2019³² (hereinafter referred to as the “Act”). The law breathes life into Article 27 of the Constitution of Uganda, which guarantees the right to privacy of the person – including their home, correspondence and communication. The Act, among others, provides for the protection of the privacy of individuals by providing for the rights of the persons whose data is collected and the obligations of the data collectors, data processors and data controllers.

Under the law, a data subject means an individual from whom or in respect of whom personal information has been requested, collected, collated, processed or stored. Information is defined to include data, text, images, sounds, codes, computer programs, software and databases.

In terms of the principles of data protection, the law emphasises data protection principles including accountability, fair and lawful processing of data, specification and purpose limitation, data retention for only specified periods, quality assurance, transparency and participation of the data subject, and observance of security safeguards.

2.5.2. Policy Concerns

Today, we live in a world where there is no such thing as absolute privacy. It is therefore imperative that a proper legal framework is established to protect data subjects and provide clarity on the obligations of data controllers. Although the government has made an effort, several policy concerns still exist.

Limited Awareness and Enforcement of the Act

As data subjects, we are all increasingly required to share information and personal data to access buildings and services. For instance, we are required to sign in books and disclose our personal phone numbers and other personal data when we access public buildings. We are further required to hand over copies of our identification documents when we sign into hotels. Online, we share a lot of information in email archives, social media platforms, web searches, browsing history and other online platforms. This information is left in the hands of the data controllers who often share it with other stakeholders. In practice, data subjects have little or no control over how their information is processed and stored. The Act provides an important legal framework in providing for the rights of individuals as data subjects and regulates personal data collection and processing of personal information. It establishes the obligations of data collectors, data processors and data controllers. It is positive to note that the Personal Data Protection Office has been set up. However, there is limited awareness about the Act and inadequate effort to ensure that the Act is urgently enforced.

³² The Data Protection and Privacy Act, 2019 [Laws of Uganda], <https://media.ulii.org/files/legislation/akn-ug-act-2019-9-eng-2019-05-03.pdf>

Right of Erasure (Right to be Forgotten):**Lack of a Strict Timeline within Which a Data Controller is Required to Respond to a Request**

Under Sections 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 to privacy in this digital age. Under the law, a data subject has a right to request a data controller to correct or delete personal data about the data subject if it is “inaccurate, irrelevant, excessive, out of date, incomplete, misleading or obtained unlawfully” and the data controller is required to “destroy or delete” a record of personal data held by the data controller which the controller no longer has the authority to retain. The data controller is further required to notify the data subject of the action taken in response to the request, stating the reasons for the rejection or the corrective action taken.

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 our 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” in a misleading description. Women are often the victims of the attacks in malicious attacks, blackmail, revenge and other criminal activities.³³ The images, videos, audio and other intimate materials shared stay online indefinitely and can easily be accessed on websites, social media sites and search engines.

The right to erasure helps grant a victim or survivor of such an attack the power to demand that such intimate materials be deleted from all platforms and records managed by data controllers, including online platforms because the personal data was obtained unlawfully. Under section 16 of the Act, the law provides for this right as detailed in the introduction to this section. On receipt of the request, the data controller is required under the law to notify the data subject about the action taken as a result of the request.

Despite these progressive provisions, the section does not provide for a time frame 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.

³³ 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>

Narrow Grounds Limit Complaints for an Order of Erasure of Personal Data

Under section 28, the Act provides for the power to order for “rectification, blocking, erasure and destruction of personal data” if a complaint under the Act is successful. Structurally silenced women who have concerns with abuse of their personal data for example in an incident of NCII, they 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. While the provision is progressive, it provides for one narrow ground of “inaccuracy” of the personal data. This denies complainants who may seek an order of rectification, blocking, erasure or destruction of personal data against a data controller on other grounds such as withdrawal of consent for processing of the personal data or where the data was obtained unlawfully.

Autonomy: Mandate to Handle Complaints

Sections 2, 31 and 32 of the Act provide for all complaints of breaches or non-compliance with the Act to be addressed to the National Information Technology Authority, Uganda (NITA-U). This is problematic because the object of NITA-U principally is to provide high-quality information technology services to the government of Uganda, rather than to protect the right to privacy.³⁴

Cognizant of this fact, the law established the Personal Data Protection Office to promote the protection and observance of the right to privacy and personal data among other functions. In contradiction with the above, the Act under section 5 (e) provides that the Personal Data Protection Officer has powers to receive and investigate complaints relating to infringement of the rights of the data subject. This inconsistency and an attempt to fuse the mandate of protecting the right to privacy with the promotion of the adoption of information technology in government institutions will impede the enforcement of the Data Protection and Privacy Act, 2019 to the detriment of structurally silenced women who may seek to rely on the law to seek accountability and justice.

³⁴ National Information Technology Authority, Uganda Act, 2009 [Laws of Uganda], <https://www.ugandalaws.com/principal-legislation/national-information-technology-authority-uganda-act-2009>

2.5.3. Policy Recommendations

- a) The Personal Data Protection Office should do more to popularise and sensitize structurally silenced women about the Data Protection and Privacy Act, of 2019.
- b) The Parliament of Uganda should amend Section 16 (1) of the Data Protection and Privacy Act, 2019 to provide for the right to seek correction or erasure/deletion where a woman as a data subject withdraws consent on which the processing is based provided there is no other legal obligation to process the data.
- c) 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 receipt of the request.
- d) The Parliament of Uganda should amend Section 28 of the Data Protection and Privacy Act, 2019 to provide for the withdrawal of consent on processing personal data and processing of personal data among the grounds to secure an order for rectification, blocking, erasure and destruction of personal data.
- e) The Parliament of Uganda should amend the Data Protection and Privacy Act, 2019, to grant the Personal Data Protection Office autonomy and independence, instead of placing it under NITA-U as it is now.

3. Structural and Practice Concerns

3.1. Analysis of the concerns

Beyond the law, several structural and practice concerns impede movement building that were identified during the study.

Harassment, Threats and Arrests of Activists

The first concern is in relation to incidents of harassment, threats and arrests of activists. During the study, several incidents were documented. Following the leak of an investigation report from the National Bureau for NGOs, several organisations and individuals working with lesbian, transgender and queer women have been targeted. The staff of Ubuntu Law and Justice Centre have reported harassment of their staff and attempted extortion of money. The Women With A Mission (WWM) received reports of people wanting to burn down the organisation's offices – forcing the staff to start working remotely for their safety. The offices of Sexual Minorities Uganda were raided by government officials from the Ministry of Gender, and a few days later, an ex-gay individual vandalised the windows of the office using stones and assaulted two staff at the organisation.³⁵

Digital Restrictions: Internet shutdowns and blocking of platforms

Digital restrictions and disruptions are common in Uganda, particularly during political participation in elections and protest mobilization. On Wednesday 13 January 2021, the eve of Uganda's general elections, the communication regulator ordered telecom operators and internet service providers in the country to suspect all internet gateways until further notice. President Museveni justified this action on the grounds that the Internet shutdown was in retaliation for Facebook taking down some pro-government accounts. As a result, over 42% of Ugandans who use the Internet and over 2.5 million Ugandans who are active social media users, were denied access to information during the electoral process.³⁶ Internet access was later restored on 18 January 2021 but social media remained blocked for over 30 days. Facebook was quietly restored in June 2021.³⁷

³⁵ Open Democracy, "Uganda charity regulator accused of targeting LGBTIQ groups to avoid austerity", <https://www.parliament.go.ug/sites/default/files/The%20Anti-Homosexuality%20Act%2C%202023.pdf>

³⁶ APC, "Uganda 2021 General Elections: The internet shutdown and its ripple effects", <https://www.apc.org/en/news/uganda-2021-general-elections-internet-shutdown-and-its-ripple-effects>

³⁷ Anadolu Agency, "Ugandan government quietly restores Facebook", <https://www.aa.com.tr/en/africa/ugandan-government-quietly-restores-facebook/2281259>

This was not the first time social media access was shut down during an election. On 18 February 2016 – the election day, social media platforms were disabled due to a “threat to public order and safety.” Access was restored after four days, and later shut down again in May 2016 ahead of the inauguration ceremony of President Yoweri Museveni.³⁸

These actions affect the ability of women to effectively participate in the elections and other movement-building activities. As a result of the continuous deployment of the arbitrary shutdowns, organisers are aware that it is a weapon they can deploy to frustrate organising and movement building.

Gender-Digital Divide: Data Levy, affordability and Network Coverage

According to the 2019 report of the International Telecommunications Union (ITU) on the gender digital gap, the findings show that more than 50% of the world’s women are offline with this being pronounced in developing countries, such as Uganda, where the internet penetration rate for adult women is 41% compared to 53% for men. In 2020, the Wide Web Foundation (WWF) survey found that 43% of men are more likely to be online than Ugandan women. This gender digital divide has a significant impact on addressing inequality and discrimination against women.

The gender digital divide and low internet usage in Uganda can be attributed to concerns about the high internet and connectivity costs, violence against structurally silenced women online, the low internet connectivity, poverty that hinders access to devices such as smartphones and computers, and illiteracy and lack of exposure to internet spaces.

The high internet costs remain a major concern. Globally, out of 230 countries, Uganda’s global ranking on data affordability fell from 70th position in 2020 to 86th position in 2021. It was noted that the cost of 1GB of data package in Uganda can go as high as Uganda Shillings 80,000 (USD 22.71).³⁹ According to a 2018 survey, the National Information Technology Authority of Uganda (NITA-U) reported that 76.6% of respondents named the high cost of data as the main reason why their use of the internet was limited.⁴⁰ The new 12% excise duty on internet data will further raise the cost of data in Uganda to the detriment of structurally silenced women.

³⁸ CIPESA, “Uganda again blocks social media to stifle anti-Museveni protests”,

<https://cipesa.org/2016/05/uganda-again-blocks-social-media-to-stifle-anti-museveni-protests/>

³⁹ TechJaja, The cost of 1GB of data in Uganda vs the world in 2021, <https://techjaja.com/the-cost-of-1gb-of-data-in-uganda-vs-the-world-in-2021/>

⁴⁰ NITA-U, National IT Survey 2018 Final Report, 2018 survey, <https://www.nita.go.ug/sites/default/files/publications/National%20IT%20Survey%20April%2010th.pdf>

Violence against women online is yet another concern. According to the Uganda Demographic and Health Survey, 2016, more than half of Ugandan women (51%) aged 15 – 49 years have experienced physical violence, while 22% of women have ever experienced sexual violence.⁴¹ These offline-gendered acts of violence and harassment are increasingly being witnessed online. Women in online spaces face a range of significant harms such as gendered online violence and insults, hate speech, sexual harassment, offensive name-calling, stalking, trolling, body shaming, and cyberbullying, among others. These harmful online practices are rooted in misogynistic and patriarchal beliefs against women.⁴² Sex workers and lesbian, transgender and queer women face further gendered attacks that are rooted in prejudices and homophobia.⁴³ In response to these gendered attacks, the affected women either use filters, leave the online space, significantly reduce their use of the social media platform or engage in self-censorship.

Women, those residing in rural areas, are further affected by poor internet coverage. Internet access is a critical component of accessing the internet. Even if someone has data and the device, they cannot access the internet without network coverage. In Uganda, while there has been progress over the years from a 2G network to 3G, and now to 4G and 5G, several places – including in urban areas – still have poor internet network coverage. Many other rural areas further have no internet network coverage. These challenges associated with the network coverage affect the ability of women in those areas to access the internet.

Device affordability is also a concern. The high cost of smartphones and computers is among the factors that exclude structurally silenced women such as sex workers and LGBTQ women from the internet spaces. Although the number of smartphones and computer imports continues to rise, signifying an increase in purchases, marginalised groups and women who do not have the ability to purchase phones remain offline. One of the key trigger factors of high device costs is the high taxes. The government currently charges 18% Value Added Tax on smartphones and new computers and 12% Excise Duty.⁴⁴ Uganda's Minister of Investment and Privatisation has indicated that the government is considering imposing a new tax of 10% on imported phones to give an advantage to locally manufactured and assembled smartphones.⁴⁵

⁴¹ Uganda: Demographic and Health Survey, 2016, <https://dhsprogram.com/pubs/pdf/FR333/FR333.pdf>

⁴² NDI, *The impact of online violence against women in the 2021 Uganda General Elections*, <https://www.ndi.org/our-stories/impact-online-violence-against-women-2021-uganda-general-elections>

⁴³ PEN America, *LGBTQ+ Advocate Frank Mugisha discusses the state of free expression in Uganda*, <https://pen.org/lgbtq-advocate-frank-mugisha-state-of-free-expression-in-uganda/>

⁴⁴ *The Daily Monitor*, *Telecoms want smartphone taxes scrapped*, <https://www.monitor.co.ug/uganda/news/national/telecoms-want-smartphone-taxes-scrapped-1817256?view=htmlamp>

⁴⁵ IT Web, *Uganda to impose 10% tax on imported phones*, <https://itweb.africa/content/Gb3Bw7W8yXJM2k6V>

Limited platforms for network building and collaboration

Women and girls have further expressed concern with the availability of safe platforms for network building and collaboration. Due to high surveillance actions by the State coupled with repressive actions of arbitrary arrests and disappearances, many women find it difficult to engage effectively in movement-building activities, particularly those that involve holding the government to account. Further, many civil society spaces have closed down due to the closure of the Democratic Governance Facility (DGF) resulting in limited access to funds. Incidents of sexual harassment, abuse, exploitation and abuse of office in civil society organisations and movements have also affected the ability to safely and effectively organise.

3.2. Policy and Practice Recommendations

- a) The Uganda police Force should end arbitrary arrests, enforced disappearances and detentions in reprisal attacks against critical or dissenting voices; and take action to investigate cases of harassment against women online and offline without any bias.
- b) The Government of Uganda should end internet shutdowns and indiscriminate blocking of social media platforms.
- c) The Parliament of Uganda should amend the Excise Duty (Amendment) Act, 2021 to scrap the 12% excise duty on fees charged for internet data to make data affordable to all people, including the structurally silenced women.
- d) The government should engage private sector players in the telecommunication industry to improve the internet network coverage and infrastructure.
- e) Civil society organisations should scale up awareness sessions and training for structurally silenced women on digital literacy, digital security, and online safety.
- f) The Parliament of Uganda should scrap the 18% Value Added Tax and 12% excise duty on smartphones and new computers to make the devices more affordable.
- g) Development partners and donors should provide financial support to women's movements, whether formal or informal and fund safe spaces and platforms for women and girls to engage in public participation and other civic actions.

4. Conclusion

Civic space in Uganda is generally narrow. A plethora of laws and impeding regulatory actions make it very difficult to register and operate formal organisations and informal associations are outlawed. Structurally silenced women engaged in movement building face further restrictions because of their identity, sexual orientation or place in society. Despite these challenges, women remain resilient. There is an urgent need to consider the recommendations in this policy brief to improve the operating environment to enhance movement building at the grassroots, regional and national levels.



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