

The Women's Rights Online in Uganda

Legal Education Guide for Social Media Users

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WOMEN OF UGANDA NETWORK

ICNL

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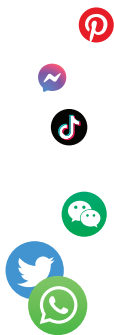
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List of Abbreviations and Acronyms

| | |
|-----------------|--|
| ATI | Access to Information |
| AU | African Union |
| COVID-19 | Corona Virus Diseases-2019 |
| EAC | East African Community |
| FOE | Freedom of Expression |
| ICCPR | International Covenant of Civil and Political Rights |
| ICNL | International Center for Not For Profits Laws |
| KCCA | Kampala Capital City Authority |
| NTV | National Television |
| OTT | Over the Top Tax |
| RICA | Right of Interception of Communications Act |
| SMS | Short Message System |
| UCC | Uganda Communications Commission |
| UDHR | Universal Declaration on Human Rights |
| UMWA | Uganda Media Women Association |
| UN | United Nations |
| USD | United State Dollars |
| VPN | Virtual Private Network |
| WRO | Women's Rights Online |

1.0 Introduction



Social media denotes computer technologies, internet based that facilitate, sharing, dissemination and impartation of information, ideas and thoughts.¹ The most commonly evident social media activities include video sharing, social networks which keep close in touch, business networks which facilitate business through marketing and sales, photo sharing, blogging, social gaming, reviews, and virtual worlds.² Amongst the most common social media sites include; Facebook a social networking site, YouTube, WhatsApp, Facebook Messenger, WeChat, Twitter, Reddit, Instagram used for images and videos, QQ, QZone, Douyin/Tik Tok, Sino Weibo, Pinterest and LinkedIn a social networking site. It should be noted that social media by design promotes participation, openness to feedback from users, conversation, quick formation of communities and connectedness.³



Today, social media has gained relevance with 4.20 billion (53.6% of the global population) users.⁴ In Uganda, there were 12.4 million users accessing OTT in September 2020.⁵ This partly represents the official figures of people accessing and using social media in the country. This however, does not cater for persons using Virtual Private Network (VPN) services. Hence, social media is used for numerous reasons including; individual expression, communication and dissemination of ideas,⁶ solicitation of support,⁷ research,⁸ trade and business,⁹ political opposition and criticism.¹⁰ Notably, some of the roles of social media such as political solicitation and support, mobilisation of political opposition, criticism and information sharing have pushed governments to strategically control and regulate the use and access of social media. The question why there is increased control by governments has been widely and severally sought after with answers readily available. In this guide, Uganda's legal and regulatory framework is explored. It highlights the laws, regulations and institutions that control social media based on women's rights online. It also briefly highlights the reasons fronted for social media regulation and control.

¹ MAYA E. DOLLARHIDE, "Social Media Definition," <https://www.investopedia.com/terms/s/social-media.asp>

² Ibid.

³ Nick Winchester, *what is social media?* https://www.icrossing.com/uk/sites/default/files_uk/insight_pdf_files/What%20is%20Social%20Media_iCrossing_ebook.pdf

⁴ Smart Insights, "Global social media research summary 2021," <https://www.smartinsights.com/social-media-marketing/social-media-strategy/new-global-social-media-research/>

⁵ UCC, Market Performance Report 3Q20, <https://www.ucc.co.ug/wp-content/uploads/2021/01/MARKET-PERFORMANCE-REPORT-Q3-2020-Final-compressed.pdf>

⁶ Marwick, Alice E., and Danah Boyd. "I tweet honestly, I tweet passionately: Twitter users, context collapse, and the imagined audience." *New media & society* 13, no. 1 (2011): 114-133; Robards, Brady, and Andy Bennett. "MyTribe: Post-subcultural manifestations of belonging on social network sites." *Sociology* 45, no. 2 (2011): 303-317.

⁷ Bowie, Sylvester. "Social work and the role of social media best practices." In *Presentation: Association of Caribbean Social Work Educators (ACSWE) 11th Biennial Conference Curacao. July*, pp. 8-12. 2012; Eichhorn, Kristen Campbell. "Soliciting and providing social support over the Internet: An investigation of online eating disorder support groups." *Journal of Computer-Mediated Communication* 14, no. 1 (2008): 67-78.

⁸ Fuchs, Christian. *Social media: A critical introduction*. SAGE publications Limited, 2021; Humphreys, Lee, and Rowan Wilken. "Social media, small businesses, and the control of information." *Information, Communication & Society* 18, no. 3 (2015): 295-309; Mayer-Schönberger, Viktor, and Kenneth Cukier. *Big data: A revolution that will transform how we live, work, and think*. Houghton Mifflin Harcourt, 2013.

⁹ Aral, Sinan, Chrysanthos Dellarocas, and David Godes. "Introduction to the special issue—social media and business transformation: a framework for research." *Information Systems Research* 24, no. 1 (2013): 3-13; Kärkkäinen, Hannu, Jari Jussila, and Jaani Väisänen. "Social media use and potential in business-to-business companies' innovation." In *Proceedings of the 14th international academic mindtrek conference: Envisioning future media environments*, pp. 228-236. 2010.

¹⁰ Benski, Tova, Lauren Langman, Ignacia Perugorria, and Benjamin Tejerina. "From the streets and squares to social movement studies: What have we learned?" *Current sociology* 61, no. 4 (2013): 541-561; Freelon, Deen, Charlton D. McIlwain, and Meredith Clark. "Beyond the hashtags: # Ferguson, # Blacklivesmatter, and the online struggle for offline justice." *Center for Media & Social Impact, American University, Forthcoming* (2016).

2.0 Contextual Nature of Women's Rights Online

Freedom of expression and access to information affects men and women in the country. However, women over the years have been shown to be more affected in terms of exclusion from the online space due to social, economic, and political imperatives. For instance, women have been found to suffer several challenges in accessing and using the internet which have got worse with the prevalent COVID-19 pandemic in Uganda.¹¹ It is further reported that there is a deplorable gender gap in Uganda's internet usage which is at 25%.¹² Moreover with the high poverty levels in the country and with women being most affected, the risks of women being kept out of the digital space is high. In addition to the poverty levels and the related challenges in as far as internet affordability is concerned, the OTT tax introduced by government in 2018 that requires payment of a tax of 200 Ugandan shillings for each day before one can access and use social media has made matters worse.¹³

Online violence against women has not only stopped at threats but gone as far as presenting women as sex objects in various online platforms. For instance, the analysis further, women in rural communities are more challenged than those in urban centres, yet still disparities in affordability arising from disposable incomes aggravate the problem and could extend to women in urban centres.

Additionally, women are more exposed to online crime in comparison to their male counterparts. In 2018, a woman Member of Parliament was consistently harassed using obscene SMS texts and social media messages through WhatsApp.¹⁵ The case was later dismissed over failure of the complainant to testify against the accused.¹⁶ Similarly, women are constantly attacked over their online activities with a number of cases that are aimed at nothing less than demeaning them.¹⁷ The worst of online violence against women is manifested in non-consensual intimate imagery commonly known by the misnomer "revenge porn"¹⁸ which is mainly perpetrated against women with their sexually explicit private and personal information (such as videos and images) shared in the public domain (the internet) without consent of one or more persons in the frame.¹⁹

¹¹ Peace Oliver Amuge and Sandra Aceng, "Women face internet access challenge during the COVID-19 pandemic in Uganda," https://africaninternetrights.org/sites/default/files/Peace_Oliver_0.pdf

¹² Gillwald, Alison, Onkokame Mthobi, Ali Ndiwalana, and F. F. Tsubira. "The state of ICT in Uganda." (2019), https://researchictafrica.net/wp/wp-content/uploads/2019/05/2019_After-Access-The-State-of-ICT-in-Uganda.pdf

¹³ See Peace Oliver Amuge and Sandra Aceng, supra.

¹⁴ Women's Rights and the Internet in Uganda: Stakeholder Report Universal Periodic Review 26th Session – Uganda- Submitted by Women of Uganda Network (WOUNGNET), Association for Progressive Communications (APC) and Collaboration on International ICT Policy for East and Southern Africa (CIPESA), <https://uprdoc.ohchr.org/uprweb/downloadfile.aspx?filename=3118&file=EnglishTranslation>

¹⁵ Alex Esagala, "MP weeps in court over love text messages," Daily Monitor, July 5, 2018, <https://www.monitor.co.ug/uganda/news/national/mp-weeps-in-court-over-love-text-messages-1766456>

¹⁶ URN, "Court dismisses case against MP Rwabwogo admirer," the Observer February 3, 2020, <https://observer.ug/news/headlines/63411-court-dismisses-charges-against-mp-rwabwogo-admirer>

¹⁷ Daily Monitor, "Women and cyber bullying," Daily Monitor, May 30, 2020, <https://www.monitor.co.ug/uganda/magazines/full-woman/women-and-cyber-bullying-1892258>

¹⁸ Esther Nakkazi, "Revenge porn is rising and it should be addressed," <https://www.opennetafrica.org/revenge-porn-is-rising-and-it-should-be-addressed/>

¹⁹ Nyamishana Prudence, "NON-CONSENSUAL DISSEMINATION OF INTIMATE IMAGES AND UNFAIR LAWS: UGANDAN WOMEN CAUGHT IN BETWEEN," <https://www.genderit.org/feminist-talk/non-consensual-dissemination-intimate-images-and-unfair-laws-ugandan-women-caught>

Online violence against women has not only stopped at threats but gone as far as presenting women as sex objects in various online platforms. For instance, the analysis of the Uganda Media Women's Association (UMWA) of the 2016 General elections shows that women contenders including those for the presidential position were widely victimised, a trend which threatens women's participation in political affairs of Uganda.²⁰

²⁰ Uganda Media Women's Association (UMWA), "Media and Elections in Uganda: A Gender Analysis of Print Media Coverage of the 2016 General Elections," <http://www.umwamamafm.co.ug/wp-content/uploads/2016/03/AGender-Analysis-report-on-media-and-Elections.pdf>

3.0 The Purpose of the Guide

This women’s rights online legal education guide walks you through the international, regional, and national human rights instruments governing freedom of expression and access to information online including social media in Uganda. At International and regional level, the guide walks you through some of the instruments that Uganda is a signatory to and the level of adherence and the guide provides recommendations on what needs to be done to promote freedom of expression and access to information online including social media. At national level, the guide walks you through the relevant frameworks, their interpretations and applications, criminal charges and penalties associated to the framework. In addition, the guide provides some tips for social media users to safely and freely navigate online platforms.



4.0 Definitions of Key Terms used in this Guide



4.1 Women’s Rights Online: Women’s Rights Online (WRO) is a research and advocacy network that aims to drive women’s empowerment through the web.²¹ The network is an initiative of the Web Foundation, and currently comprises women’s rights and digital rights groups across 14 developing countries across Africa, Asia, and Latin America, working to bridge the gender gap in technology, data, and policymaking.

The Advocacy network aims at ensuring that everyone, everywhere can (i) afford to connect and (ii) have the skills and opportunities to participate in the digital revolution privately and freely. In this guide, women’s rights online mean women everywhere affording to connect, access, and use the internet and have the skills and opportunities to participate in the digital space privately and freely.

4.2 Legal and Regulatory Frameworks: Legal frameworks in this guide looks at the rule of law, reliability and the degree of enforceability where possible while the regulatory frameworks look at established standards and terms for freedom of expression and access to information, rules, performance of the regulated spaces and arbitration or disputes where possible.

4.3 Social Media: Social media in this guide is used to mean a collective term for websites and applications online that are used to facilitate communication, community-based input, interaction, content-sharing and collaboration.

4.4 Freedom of Expression: This means the right to hold your own opinions and to express them online freely without interference including government interference.

4.5 Right to Access information: Right to access information online without any interference including from the government.

4.5 Soft Laws: International norms, principals, and procedures that lack the requisite degree of normative content to create enforceable rights and obligations but are still able to produce certain legal effects.

²¹ Web Foundation (2020). Women’s Rights Online, <https://webfoundation.org/wro-network/>

5.0 Legal and Regulatory Framework Governing Freedom of Expression and Access to Information in Uganda

5.1 The International Legal Framework

Uganda has signed and ratified numerous international human rights instruments that directly speak to freedom of speech and expression (FoE), access to information (ATI) and the right to know as well as access to the internet. Among these instruments include; the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR) both of which provide in their Articles 19 for the right to freedom of expression and right to access of information. Other instruments include the Convention on the Elimination of All forms of Discrimination Against Women, 1979 under Articles 10(h), 14(2)(b), 16(1)(e), the Convention on the Rights of the Child, 1989 under Articles 13 (1) and 17 and, the United Nations Declaration on the Rights of Indigenous People in Article 15 (1). In addition, there are several international soft laws which provide for FoE, ATI online and offline. Soft laws refer to “...international norms, principals, and procedures that lack the requisite degree of normative content to create enforceable rights and obligations but are still able to produce certain legal effects. Soft law functions as a gap-filer, giving guidance to States and other stakeholders in the absence of binding legal norms.”²²

The international soft laws include; the United Nations (UN) General Assembly Resolution, 59 (1) on freedom of information,²³ the resolution on the promotion, protection and enjoyment of human rights on the Internet.²⁴ The resolution recognises rights of people online, recognises that the internet access facilitates development and calls for enjoyment of human rights including freedom of expression on the internet.

Similarly, the resolution on the promotion, protection, and enjoyment of human rights on the Internet is important since it recognises the Internet as core to the enjoyment of human rights and as well, an important tool for development.²⁵ And the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights which provides guidelines on lawful limitation to fundamental rights and freedoms.²⁶

²² European Center for Not-for-Profit Law (ECNL), “Counter-Terrorism & Human Rights: Soft Law, Hard Consequences,” <https://www.ohchr.org/Documents/Issues/Terrorism/SR/UNSRICTbriefSoftLaw.pdf>

²³ United Nations (UN) General Assembly Resolution, 59 (1) on freedom of information, <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/033/10/IMG/NR003310.pdf?OpenElement>

²⁴ Resolution A/HRC/20/L.13 (HRC, 2012) on the promotion, protection and enjoyment of human rights on the Internet, http://ap.ohchr.org/documents/E/HRC/d_res_dec/A_HRC_20_L13.doc

²⁵ Resolution 26/13 (HRC, 2014), <https://documents-dds-ny.un.org/doc/UNDOC/LTD/G14/059/67/PDF/G1405967.pdf?OpenElement> and http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/L.24

²⁶ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, <http://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>

The above instruments provide a framework for which freedom of expression and access to information can be respected, protected and promoted. Indeed, as earlier observed, Uganda is party to a number of them and is bound to take measures that aim to enable citizens' realisation of the rights especially the rights of marginalized groups such as women and girls who are already sections of the society that generally lack power and those that systemically marginally use the internet to circumvent the difficulties posed by the imbalance of power and social restrictions through respecting and fulfilling the respective rights.

Notably, Uganda is a dualist country that applies both international law and municipal/ national law. The government has shown commitment to international laws through accepting to comply with various regional and international mechanisms such as the Universal Periodic

Review. As a result, government usually takes measures that aim to achieve the various recommendations and obligations that arise from its regional and international commitments. Once fully implemented, the regional and international laws have the potential to promote freedom of expression and access to information online including using social media as one of the platforms.

It should be noted that the right to freedom of expression and access to information o can be effectively achieved through promotion of the principles of non-discrimination of men and women and taking measures that not only promote but also enhance accessibility and affordability to online enabling services like the internet, finances and financial incentives, and establishing strong institutions that seek to protect women online.



5.2 African Human Rights System

At the African level, freedom of expression on social media is greatly impacted by Article 9 of the African Charter on Human and Peoples Rights which provides for every individual's right to receive information, express, and disseminate opinions within the law.²⁷ The other guiding instruments include the African Charter on Broadcasting which provides guidelines on localized, effective, inclusive broadcasting.²⁸

Further, the African Union Convention on Preventing and Combating Corruption requires state powers in Article 9 to adopt measures that promote access to information in corruption and in Article 12(4) to give media, access to information on corruption and related offences.²⁹ Similarly, the African charter on Democracy, Elections and Governance³⁰ in Article 19 guarantees access to information and Article 27(8) guarantees the promotion of FoE especially of the press and fostering professional media. Akin to this charter is the Guidelines on Access to Information and Elections in Africa,³¹ which aims to promote electoral information during the conduct of elections. Other instruments that have similar provisions with bearing on FoE and ATI include the; African Charter on Values and Principles of Public Service and administration (Article 6),³² African Union Youth Charter (Articles 4, 10 (3 a-d), 11),³³ African Charter on Statistics (Para 6 of the Preamble); Article 3, Principle 1),³⁴ Declaration of principles of freedom of expression in Africa (2002) parts I – XVI,³⁵ Resolution on the Situation of Freedom of Expression in Africa, 2006,³⁶ Resolution 71: Special Rapporteur on Freedom of Expression and Access to Information,³⁷ Windhoek Declaration on Promoting of an Independent and Pluralistic African Press, 1991,³⁸ Model law on ATI in Africa, 2013,³⁹ and the African Declaration on Internet Rights and Freedoms.⁴⁰ While in the exercise of digital rights and freedoms, high regard must be made to the African Union Convention on Cybersecurity and Personal Data Protection (AU Cybersecurity Convention) which was formed to guide privacy and personal data protection in Africa.⁴¹



²⁷ African Charter on Human and Peoples Rights, http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

²⁸ Internet Rights and Freedoms, https://en.unesco.org/sites/default/files/african_charter.pdf

²⁹ African Union Convention on Preventing and Combating Corruption, http://www.eods.eu/library/AU_Convention_on_Combating_Corruption_2003_EN.pdf

³⁰ African charter on democracy, elections and governance, http://www.ipu.org/idd-E/afri_charter.pdf

³¹ Guidelines on Access to Information and Elections in Africa, https://www.achpr.org/public/Document/file/English/guidelines_on_access_to_information_and_elections_in_africa_eng.pdf

³² African Charter on Values and Principles of Public Service and administration, <http://www.peaceau.org/uploads/african-charter-values-principles-public-service-administration-en.pdf>

³³ African Union Youth Charter, http://www.un.org/en/africa/osaa/pdf/au/african_youth_charter_2006.pdf

³⁴ African Charter on Statistics, https://www.au.int/web/sites/default/files/treaties/7794-file-african_charter_on_statistics.pdf

³⁵ Declaration of principles of freedom of expression in Africa, <http://hrlibrary.umn.edu/achpr/expressionfreedomdec.html>. This declaration has been replaced by the Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019

³⁶ Resolution on the Situation of Freedom of Expression in Africa, 2006, <http://www.achpr.org/sessions/40th/resolutions/99/>

³⁷ Resolution 71: Special Rapporteur on Freedom of Expression and Access to Information, <http://www.achpr.org/mechanisms/freedom-of-expression/>

³⁸ Windhoek Declaration on Promoting an Independent and Pluralistic African Press, 1991, <http://whk25.misa.org/featured/about-the-windhoek-declaration/>

³⁹ Model law on ATI in Africa, 2013, http://www.achpr.org/files/news/2013/04/d84/model_law.pdf

⁴⁰ African Declaration on Internet Rights and Freedoms,

http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/Events/netconference_march2015_submissions/reference_from_africaninternetrights_org.pdf

⁴¹ African Union, "African Union Convention on Cyber Security and Personal Data Protection,"

https://au.int/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf

Most recently, Africa adopted the Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019⁴² which replaced the Declaration of principles of freedom of expression in Africa (2002). The declaration affirms the principles of freedom of expression and access to information that are laid down in Article 9 of the African Charter on Human and People's Rights. The rights provided for extend to the right to express and disseminate information. It exhaustively covers general principles in relation to the two rights (Part I principles 1-9), freedom of expression (Part II principles 10-25), access to information (Part II principles 26-36), freedom of expression and access to information on the internet (Part IV principles 37-42), and the implementation of the declaration (Part V principle 43). This declaration through the principles buttresses and explains the scope of the rights of access to information and freedom of expression which is key for enjoyment of rights and freedoms as well accountability and transparency of governments including the Uganda government.

Due to the fast-evolving technologies, the rights stressed in the instruments and soft laws extend to freedom of FoE, ATI online including the use of social media. Today information mainly flows across the continent on social media over a short span of time because of technological evolution and advancement.

5.3 East African Community

In the East African Community, the Treaty for the establishment of the East African Community is the main instrument guiding the integration process. Amongst the fundamental principles under treaty in Article 6(d) is among others, the promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights. Further, Article 7(2) requires Partner States to undertake and abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice, and the maintenance of universally accepted standards of human rights.

The two provisions under the EAC treaty can be used to enforce human rights and freedoms including FoE, ATI online and offline as was the decision in *Media Council of Tanzania & 2 others v the Attorney General of the United Republic of Tanzania*,⁴³ which successfully challenged several sections (Sections 7(3)(a), (b), (c) (f), (g), (h), (i), and (U), 13, 14, 18, 19, 20, 21, 35, 36, 37, 38, 39, 40, 50, 52, 53, 54, 58, and 59) of the Tanzania Media Services Act, 2016 for being restrictive of FoE which was a cornerstone of the principles of democracy, rule of law, accountability, transparency and good governance which the respondent State had committed to abide by under the treaty and other international instruments.⁴⁴ Uganda is equally bound under regional and international laws to promote and protect FoE, ATI both online and offline.

⁴² Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019, https://www.achpr.org/public/Document/file/English/Declaration%20of%20Principles%20on%20Freedom%20of%20Expression_ENG_2019.pdf

⁴³ Reference No 2 of 2017, <http://kenyalaw.org/kenyalawblog/encroaching-on-the-freedom-of-expression/> and <http://kenyalaw.org/kenyalawblog/wp-content/uploads/2019/04/Referene-No.2-of-2017.pdf>

⁴⁴ *Ibid.*

5.4 The National Legal and Regulatory Framework

Beyond the regional and international instruments is the Legal and Regulatory Framework at national level on FoE on social media. In the following discussion is an overview of the different legal and policy frameworks with bearing on FoE and ATI on social media.

5.4.1 Constitution of the Republic of Uganda, 1995

The Constitution of the Republic of Uganda, 1995 (Constitution) provides for the right to FoE under Article 29. Article 29 provides inter alia in (1) that every person shall have the right to (a) freedom of speech and expression which shall include freedom of the press and other media. Further, Article 41 provides for the right of access to information to the effect that; (1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.



In respect to women, Article 33 of the 1995 Constitution among others provides for equal dignity, and equal treatment of women with men. Under the article, women should be accorded equal opportunities in political, economic, and social activities. Moreover, Article 33(3) requires the State to protect women and their rights, taking into account their unique status and natural maternal functions in society. This implies that in the enjoyment of rights and freedoms both online and offline, there should never be any form of discrimination against women. They should be accorded full potential to enjoy their rights and freedoms.

However, Article 43 places general limitation on fundamental and other human rights and freedoms including FoE. The limitations are provided and not being beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in the Constitution.

The courts have in some instances upheld the need to enforce the rights speculated in Article 29 as in the case of *Charles Onyango & Anor v Attorney General*⁴⁵ where court held that Section 50 of the Penal Code Act was inconsistent with Article 29(1)(a) of the Constitution in as far as it prohibited the publication of false news.

Despite the ruling on false news, there have been several measures including warnings, threats, and attacks on individuals for spreading false news. For instance, Adam Obec, a former employee of Kampala Capital City Authority was arrested for spreading fake news on COVID-19.⁴⁶ Similarly, pastor Augustin Yiga (RIP) suffered the same fate.⁴⁷

⁴⁵ Supreme Court Constitutional Appeal No. 2 of 2002, <https://ulii.org/system/files/judgment/supreme-court/2004/1/supreme-court-2004-1.rtf>

⁴⁶ Conrad Ahabwe, "COVID-19 CRISIS: KCCA staff arrested over spreading fake news on coronavirus," PML Daily, April 14, 2020, <https://www.pmeldaily.com/news/2020/04/covid-19-crisis-kcca-staff-arrested-over-spreading-fake-news-on-coronavirus.html>

⁴⁷ Daily Monitor, "Pastor Yiga arrested for misleading public on COVID-19," March 28, 2020,

<https://www.monitor.co.ug/News/National/Pastor-Yiga-arrested-misleading-public-COVID19/688334-5507644-1380ounz/index.html>

5.4.2 The Access to Information Act, 2005

The Access to Information Act, 2005 together with the Access to Information Regulations of 2011 provide for the right to information and how it can be realized respectively. According to Section 3 of the Act, the law was enacted to promote an efficient, effective, transparent, and accountable government, to give effect to Article 41 of the Constitution and to protect persons disclosing evidence of contravention of the law. Section 5 provides for every citizen's right to access information. However, part III of the Act provides for information exempted from access. Exempted information extends to information relating to cabinet minutes and those of its committees (Section 25), privacy of the person (Section 26) protection of commercial information (Section 27), protection of certain confidential information (Section 28), protection of safety of persons and property (Section 29), protection of law enforcement and legal proceedings (Section 30), protection of records privileged from production in legal proceedings (Section 31) and information relating to defense, security and international relations (Section 32).

Furthermore, regulation 4 of the Access to Information Regulations provides for electronic requests by an applicant. The request may be by email or in any other electronic form.

Notably, the access to information law provides opportunities which can be utilized to realize the right to information. Users of social media can therefore take advantage of the provisions of the law such as requesting for information and disseminating it. However, they must take precaution to ensure that they do not violate the law provisions by among others, not disseminating information that is exempted under the Act.

5.4.3 The Penal Code Act Cap 120

The penal Code Act⁴⁸ under Section 50 criminalizes the publication of false news. This provision has however been declared unconstitutional by Charles Onyango & Anor v Attorney General (above). However, the law is yet to be amended to strike out Section 50. Under the section, the offence of false news is a misdemeanor and could under Section 22 of the Penal Code upon conviction attract a punishment of imprisonment for a period not exceeding two years. Under Section 50(2), an accused has a defence available to them if they can prove that due diligence was undertaken to verify the accuracy of information before publication. Further to note, while Section 50 of the Penal Code Act was outlawed, Section 171 which provides that; "Any person who unlawfully or negligently does any act which is and which he or she knows or has reason to believe to be likely to spread the infection of any disease dangerous to life commits an offence and is liable to imprisonment for seven years," has been used to arrest, detain and prosecute individuals over fake news on COVID-19 pandemic. This increased criminalization of mis- and disinformation during the pandemic infringed on citizens' rights to freedom of expression and access to information especially on social media platforms.



⁴⁸ Penal Code Act Cap 120, https://ulii.org/system/files/legislation/consolidated-act/120/consolidated_act_2000_120.doc

Further, Section 50(1)(a) and (b) prohibit hate speech to the effect that;

- (1) Any person who, without lawful excuse, prints, publishes or to any assembly makes any statement indicating or implying that it would be incumbent or desirable—
 - (a) to do any acts calculated to bring death or physical injury to any person or to any class or community of persons; or
 - (b) to do any acts calculated to lead to destruction or damage to any property, commits an offence and is liable to imprisonment for three years.

It should be noted that the Penal Code Act can be used to target FoE on social media especially if the information is highly critical of government or is allegedly considered to be constituting hate speech, false or fake or disinforming of the public against a certain group, such as gender, or ethnic groups.

5.4.4 The Computer Misuse Act, 2011

The Computer Misuse Act, 2011⁴⁹ aims to curb cybercrime. Under Section 25; “Any person who 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 whether or not a conversation ensues commits a misdemeanor.” This Section has been used to intimidate, threaten, arrests, detain and prosecute individuals on grounds of spreading false information on social media and other platforms-disturbing the peace and quiet of the affected individuals. Under this Section, it does not matter whether the information circulated is true or false.

Once found guilty under the Section, one could carry a fine not exceeding 24 currency points (\$178) or imprisonment not exceeding twelve months or both.

Moreover, under Section 10 of the Computer Misuse Act, service providers are required to disclose preserved data transmitted or electronic key enabling access to or the interpretation of data to investigating officers upon application to Court. It is important that social media activists are warned of potential storage of their data that could later be used against them especially if they are very critical of government and other politicians. Female social media activists are usually vulnerable in this case for being women and critical to the government.

Furthermore, the Computer Misuse Act prohibits child pornography under Section 23. In Section 24, cyber harassment is prohibited, and cyber stalking is also prohibited by Section 26.

Under the Act, FoE through social media platforms should not exhibit any of the characteristics and content barred by the Act. This consequentially affects FoE in fear of persecution and prosecution.

⁴⁹ The Computer Misuse Act, 2011, [http://www.ulii.org/ug/legislation/act/2010/2/Computer Misuse Act 2011.docx](http://www.ulii.org/ug/legislation/act/2010/2/Computer%20Misuse%20Act%202011.docx)

5.4.5 Uganda Communications Act, 2013

The Uganda Communications Act, 2013 was according to Section 3 enacted to regulate the communications sector including broadcasting and data communication. Among others, Section 5 (1) (a), (b), (k), (x) and (z) empowers the Uganda Communications Commission (UCC) to license, monitor, regulate and set standards for communications services in Uganda and to safeguard public interest and protect consumers. Section 5 grants excessive powers to the UCC to dictate the manner in which the sector operates. For instance, under Section 41 (1)(c), the UCC may suspend and revoke a license including in cases where the service provider is allegedly involved in supporting activities amounting to a treasonable offence under the Penal Code Act.

Under the Uganda Communications (Text, and Multimedia Messaging) Regulations, 2019, the use of text and multimedia messages under regulation 3(d) should comply with the law. Hence regulation 5 prohibits the dissemination of unsolicited messages including SMS or MMS to a subscriber. Under regulation 8, dissemination of content which among others is pornographic, invades privacy or promotes violence, sectarianisms and incites violence is prohibited.

Similarly, regulation 110 of the Uganda Communications (Licensing) Regulations 2019 prohibits the wilful use of a platform of a licensed operator to commit fraud upon the operator, fraud upon a consumer, stealing data, breaching data, publishing fake news; or publishing any other prohibited content. Under the regulation, it is an offence and upon conviction, one is liable to a fine not exceeding forty-eight currency points (USD264) or imprisonment for a term not exceeding twenty-four months or both.

Using the UCC Act and the regulations made thereunder, there have been threats to the sector. Some of the emerging threats and warnings include notices⁵⁰ to media houses warning them against dissemination of false news.⁵¹ In other instances, the UCC has ordered the suspension of journalists from media houses. For instance, in May 2019, the UCC ordered for the suspension of 39 journalists on allegations of unbalanced broadcasting and broadcasting content that is sensational, false, and misrepresenting.⁵²

Users of social media must accordingly guard against use of the available platforms in a manner that would place them in the long arm of the law. Despite this requirement for measures, the exercise of excessive powers through directives and application of threats as well as intimidation and prosecution have had a chilling effect on FoE online for fear of arbitrary arrests and detentions.

⁵⁰ UCC, "Compliance with the minimum broadcasting standards," <https://www.ucc.co.ug/compliance-with-the-minimum-broadcasting-standards/>

⁵¹ UCC, "Uganda Communications Commission Blog," <https://uccinfo.blog/2020/03/22/public-advisory-notice-on-circulation-of-fake-information/>

⁵² The Observer, "Bobi Wine: UCC orders suspension of 39 journalists at 13 media houses," May 1, 2019, <https://observer.ug/news/headlines/60575-ucc-orders-suspension-of-39-journalists-at-13-media-houses>

5.4.6 Press and Journalist Act, Cap. 105

The Press and Journalist Act, Cap. 105⁵³ aims to promote freedom of press and to regulate mass media. Under the Act, there are rights including the right to publish newspapers (Section 2), access to official information (Section 3), registration of editors, their functions and ground for disqualification (Sections 5–7). Further, the media council is established under Section 8 to regulate the conduct and promote good ethical standards and discipline of journalists as speculated in Section 9). There is also the institute of Journalists of Uganda established by Section 13 of the Act. The objects of the institute under Section 14 aim to establish and maintain professionalisms including the standards of journalists. It is important to note that journalists are required to register by Section 26 of the Act and be in possession of practicing certificates in accordance with Section 27.

Notwithstanding the above provisions, there are practices that greatly undermine the application of the law. For instance, under Section 3, publication improperly infringes on the privacy of an individual or which contains false information is prohibited. Furthermore, paragraph 2 of the Professional code of ethics for journalists and editors (Under Sections 40(3) and 42 of the Press and Journalist Act, Cap.105) S.I No.5 of 2014 prohibits publication of information that may be constituted by inaccuracies. Hence, under paragraph 2,

- (1) Journalists and editors must take care not to publish inaccurate, misleading, or distorted information, including pictures.
- (2) Any significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and, where appropriate, an apology should be published.
- (3) A journalist or editor must distinguish clearly between comment, conjecture, and fact.
- (4) Journalists and editors must afford a fair opportunity for reply to inaccuracies when reasonably required.

Thus, while in the exercise of the journalist profession even through social media, journalists must exercise due diligence to ensure that they do not fall in the long arms of the law. Moreover, a disciplinary committee is established by Section 30 to handle disciplinary matters in journalism. In the process, the committee may make decisions under Section 33 subject to appeals to the high court under Section 34.

Astonishingly, intermediaries especially publishers of content considered alarming to an affected person may be ordered under Section 33(c) to pay compensation to the person injured by the journalist's misconduct.

⁵³ Press and Journalist Act, Cap. 105, <https://www.parliament.go.ug/cmis/browser?id=f6852c88-0d0a-4b7b-ad9c-c9c4579f786f%3B1.0>

5.4.7 Data Protection and Privacy Act, 2019

In 2019, Uganda enacted the Data Protection and Privacy Act.⁵⁴ The Act is part of the implementation of Article 27 of the 1995 Constitution in as far as it provides for the right to privacy of the individual including of the persons home and property, unlawful entry, and interference with the privacy of that person's home, correspondence, communication, or other property.

The Act protects the right to privacy of the individual and of personal data by regulating the collection and processing of personal information as well as the rights of data subjects and obligations of data collectors, data processors and data controllers. Under Section 3 of the Act, personal data must be dealt with in a secure, an accountable, fair, lawful, purposively, with quality controls and in a transparent manner. However, the act lacks special protection of women's rights online.

Under Section 35, unlawful disclosure of personal data is prohibited and may upon conviction attract a fine and the offender is liable on conviction to a fine not less than two hundred and forty currency points (USD1317) or imprisonment not exceeding ten years or both. Unfortunately, journalistic works are not exempted under Section 7 of the Act. And, under Section 8, personal data relating to children is prohibited from collection or processing save where consent of the parents or guardians is obtained or is in compliance with the law or for research and statistical purposes.

Despite the national measures, Uganda is yet to ratify the African continent-wide instrument of data protection, the African Union Convention on Cybersecurity and Personal Data Protection. Under the law, FoE is affected with a chilling effect. Further in the exercise of FoE, caution should be taken to ensure that individuals' privacy especially women's privacy on social media is not interfered with.



5.4.8 The Anti-Terrorism Act 2002 as amended 2015 and 2016

The Anti-Terrorism Act 2002⁵⁵ as amended 2015⁵⁶ and 2016,⁵⁷ was enacted to suppress and to punish acts of terrorism. Under Section 7 provides for the act of terrorism and its punishment. An act of terrorism is defined in Section 7(2) but is so wide in scope and application. Similarly, Section 9 prohibits establishment or support to terrorist institutions. Under Part VII (Sections 18–22) interception and surveillance of communications is provided for. As such communications suspected to be involving acts of terrorism may be intercepted and at the same time, surveillance over acts of terrorism may be implemented.

⁵⁴ Data Protection and Privacy Act, 2019, <https://ict.go.ug/wp-content/uploads/2019/03/Data-Protection-and-Privacy-Act-2019.pdf>

⁵⁴ Anti-Terrorism Act 2002, <http://www.ulii.org/ug/legislation/act/2015/2002>, www.vertic.org/media/.../Uganda/UG_Anti-Terrorism_Act_2002.pdf

⁵⁵ <http://chapterfouruganda.com/sites/default/files/downloads/The-Anti-Terrorism-Amendment-Bill-20151.pdf>

⁵⁷ http://www.parliament.go.ug/new/images/Anti-Terrorism_amendment_Act_201621.pdf

5.4.9 Regulation of Interception of Communications Act, 2010

The Regulation of Interception of Communications Act, 2010⁵⁸ (RICA) was enacted as a mirror of the Anti-Terrorism Act of 2002. Under the RICA, interception of communications is permitted once it is conducted within the law (Section 2). Section 3 establishes a monitoring centre for the interception of communications. Notably, all authorized persons must apply for a warrant of interception from the Chief of Defense Forces or his or her nominee; (b) the Director General of the External Security organization or his or her nominee; (c) the Director General of the Internal Security Organisation or his or her nominee; or (d) the Inspector General of Police or his or her nominee. Using the warrant, interception of communication may be conducted.

Notably, Section 8 of the Act requires service providers to ensure that their systems are technically capable of supporting lawful interceptions at all times including through the installation of hard and software.

By the RICA, information circulated on social media may be intercepted. This could have a chilling effect on FoE by instilling fear in individuals especially women and girls. On the other hand, some individuals who may circulate information that is classified as criminal or contrary to national security could be arrested, detained, prosecuted and persecuted.

5.4.10 The Anti-Pornography Act, 2014

The Anti-Pornography Act, 2014⁵⁹ creates the offence of pornography and prohibits it. It also establishes a pornography Control Committee under Section 3 and is by Section 7 mandated to take all necessary measures to detect and prohibit pornography, apprehend perpetrators, promote awareness of pornography, and destroy pornographic materials as well as rehabilitate individuals affected by pornography. This Act also prohibits child pornography under Section 14.

Under Section 11 of the Act, the pornography Control Committee is empowered to among others, close any internet service provider who promotes, publishes, sells or imports pornography, and cause a police officer to arrest any person whom it believes has committed an offence under the Anti-Pornography Act.

Therefore, under the Act, individuals who use social media for information sharing and dissemination should be aware of the likely consequences of information that is potentially categorized as pornographic. Sharing such content may put potentially individual sources of the information in trouble. For instance, Anita Kyarimpa commonly known as Anita Fabiola, the former presenter on NTV Uganda Be My Date, was allegedly fired from her job at NTV Uganda when her nude photos were leaked by her ex-boyfriend on the internet.⁶⁰

⁵⁸ The Regulation of Interception of Communications Act, 2010, http://www.ulrc.go.ug/system/files_force/ulrc_resources/regulation-interception-communications-act-2010.pdf?download=1

⁵⁹ Anti-Pornography Act, 2014, <http://www.ulii.org/ug/legislation/act/2015/1-7>, www.ug-cert.ug/files/downloads/The-Anti-pornography-act-2014

⁶⁰ "Revenge Porn": The Understanding and Impact of Non-Consensual Intimate Images (NCII) Violence <https://impakter.com/revenge-porn-the-understanding-and-impact-of-non-consensual-intimate-images-ncii-violence/>

5.4.11 Excise Duty (Amendment) Act, 2018

Excise Duty (Amendment) Act, 2018, specifically, Sections 3(b) and 6(g) introduced excise duty of UGX 200 (USD 0.05) for each day before accessing over the top (OTT) services.⁶¹ Under this law, each person who intends to use social media must pay a tax before accessing social media platforms. Further implication is to the effect that all those who can't pay OTT are automatically cut off social media access unless they employ circumventing tools like VPN to bypass the tax restrictions.

5.4.12 Copyright Act and Neighbouring Rights Act, 2006

Copyright Act and Neighbouring Rights Act, 2006⁶² provides for the protection of literary, scientific, and artistic intellectual works and their neighbouring rights. Section 5(1) of the Act provides for works worth copyright protection and include among others literal works, musical works, dramatical works, artistic works, cinematograph, sound recordings, broadcasts, computer programmes and electronic data banks and illustrations, maps, plans, sketches, and three-dimensional works.

It should be noted that trivial matters like titles and slogans, ideas, utilitarian goods, methods, systems, and mathematical principles, formulas, and equations, public benefit works under Section 7 like Acts, Statutes, Decrees, statutory instruments, and works produced in the course of employment especially for government or international bodies.



In case of news stories, there is no copyright on the facts contained in the story. However, use of published articles word by word of whether local or international nature despite citation of source amounts to plagiarism.

Accordingly, users of social media should know that plagiarism is theft and should therefore ensure that information circulation does not infringe on copyright of authors of works.

⁶¹ Parliament of Uganda, "Parliament approves tax on mobile money, social media," May 31, 2018, available at <https://www.parliament.go.ug/news/1513/parliament-approves-tax-mobile-money-social-media>

⁶² Copyright Act and Neighbouring Rights Act, 2006, <https://ulii.org/ug/legislation/act/2015/2006>

6.0 Conclusion

The laws and policies in place offer sufficient guidance and simplified understanding in regulating FoE on social media. However, they lack specific provisions and protection of women's rights online on FoE and ATI on social media and the Internet. Accordingly, users of social media should take all measures and steps that seek to ensure that during social media usage, they comply with the laws and policies. However, several of them have curtailed FoE, ATI and other online rights. Indeed, they have a chilling effect on freedom of expression and may also lead to self-censorship of online rights and freedoms of women. Thus, it is imperative that restrictive laws are amended to reflect progressive efforts towards enhancing FoE and ATI. Additionally, all draconian legislations should be repealed so as to promote FoE. In so doing, the government should reflect on its commitments to regional and international human rights obligations especially in light of FoE and ATI of women.

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