



INTERNET RIGHTS AND FREEDOMS IN UGANDA

AN ASSESSMENT OF UGANDA'S COMPLIANCE WITH THE PRINCIPLES OF
THE AFRICAN DECLARATION ON INTERNET RIGHTS AND FREEDOMS

2019

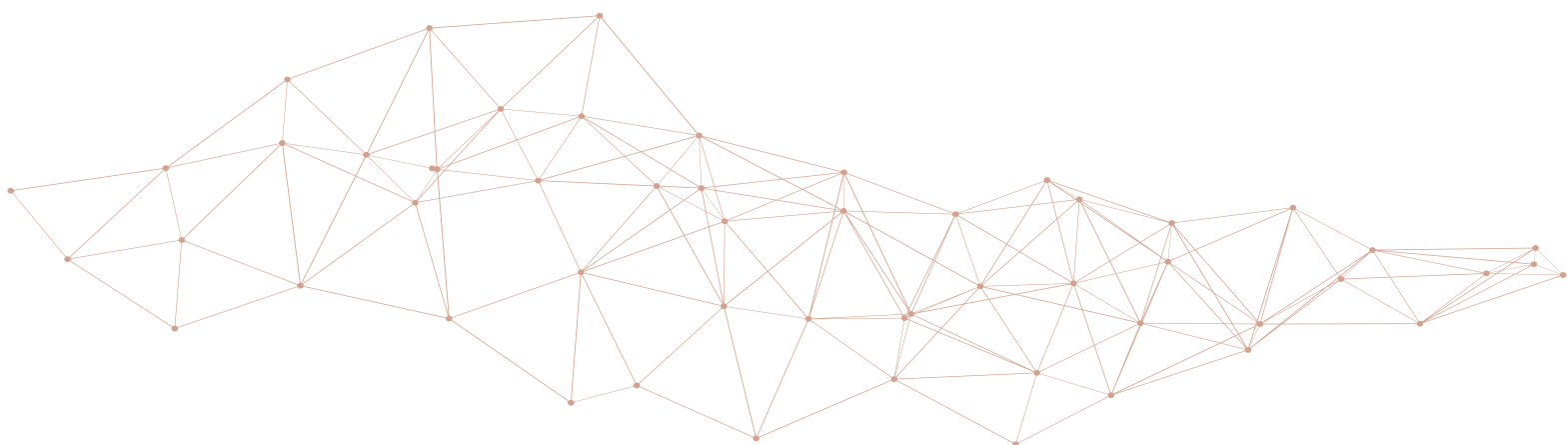


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List of acronyms

- ACHPR – African Charter on Human and Peoples’ Rights
- AfDEC – African Declaration on Internet Rights and Freedoms
- AFIC – Africa Freedom of Information Centre
- CIPESA – Collaboration on International ICT Policy for East and Southern Africa
- ICCPR – International Covenant on Civil and Political Rights
- ICT – Information and Communication Technologies
- ISPs – Internet Service Providers
- IXP – Internet Exchange Points
- NITA-U – National Information and Technology Authority of Uganda
- UCC – Uganda Communications Commission
- OTT – Over the Top Tax
- RCDF – Rural Communication Development Fund
- WCAG – Web Content Accessibility Guidelines
- W3C – World Wide Web Consortium



Introduction

The Internet is considered the most disruptive information and communication technology that has revolutionized the free flow of information between individuals by offering anyone with an Internet connection, the ability to gather and disseminate news, information, and opinions.¹

In the light of its accessibility and its capacity to store and communicate vast amounts of information, the Internet plays an important role in enhancing the public's access to news and facilitating the dissemination of information in general.²

As of December 2018, Uganda had an estimated 19 million internet users, about 42% of the total population.³ This growth in internet penetration has partly been aided by the increase in mobile telephony penetration which stood at 22 million subscribers, with almost 10 million accessing the internet through the mobile as of June 2018.⁴

The internet is helping develop spaces that can empower people, helping them communicate, collaborate and exchange views and information, and this represents, the 'democratization' of freedom of expression as it is no longer necessary to rely upon professional journalists or gatekeepers to act as public spokespeople for our views.⁵

Uganda has passed several laws and policies, some of which contain progressive provisions that advance the rights to freedom of expression. Principally, the right to freedom of expression and access to information is constitutionally guaranteed under Articles 29 (1) (a) and 41, respectively. Other legal framework include;

the Access to Information Act, 2005 that seeks to promote an efficient, effective, transparent and accountable government as well as to give effect to Article 41 of the Constitution by providing the right of access to information held by organs of the State; the Computer Misuse Act, 2011 that seeks to make provision for the safety and security of electronic transactions and information systems; to prevent unlawful access, abuse or misuse of information systems⁶; the Uganda Communications Commission (UCC) Act, 2013 that mandates the Commission, under Section 5(L) to promote research into the development and use of new communications techniques and technologies, including those which promote accessibility to communications services for persons with disabilities, as well as the Uganda National Vision 2040 which clearly identifies ICT access and utilization not just as a cross-cutting development enabler but also as a major business opportunity, providing the highest policy level underpinning to the imperative for universality of ICT in Uganda.⁷

Unfortunately, even with these progressive legal frameworks, there are a number of other laws, policies, and practices that have been adopted and have had a negative effect on the citizens' enjoyment of their rights to freedom of expression and online expression; for example, the Anti-Terrorism Act of 2002, under which interception of communications may be conducted on grounds such as safeguarding of the public interest; prevention of the violation of the fundamental and other human rights and freedoms of any person from terrorism; prevention or detecting the commission of any offence; and safeguarding the national economy from terrorism,⁸ the 2011 Computer Misuse Act, which criminalised cyber harassment (section 24) and "offensive communication under section 25.

¹ ARTICLE 18, Digital Rights <https://www.article19.org/issue/digital-rights/> accessed on December 5th 2019

² Times Newspapers (Nos 1 and 2) v. UK 2009, see, <https://www.5rb.com/case/times-newspapers-ltd-nos-1-and-2-v-the-united-kingdom/> Accessed on December 5th 2019

³ <https://www.internetworldstats.com/africa.htm#ug> accessed on December 20th 2019

⁴ UCC Quarterly Market Report Q2 2018 <https://www.ucc.co.ug/wp-content/uploads/2017/09/Communication-Sector-Performance-for-the-Quarter-ending-June-2018.pdf> accessed on 20th December 2019

⁵ A. Puddephatt, 'Freedom of expression and the internet', UNESCO, 2016 at p 19 <http://unesdoc.unesco.org/images/0024/002466/246670e.pdf> on December 5th 2019

⁶ <https://ulii.org/ug/legislation/act/2015/2-6>

⁷ MoICT (2018) RCDF Operational Guidelines 2017/18–2021/22 (RCDF III) at <https://www.ucc.co.ug/wp-content/uploads/2017/09/RCDF-Operational-Guidelines.pdf>

Additionally, several provisions within these laws have been used to increasingly put pressure on private actors to censor content which the state deems illegal or simply “harmful to national security.”⁹

In 2016, UCC ordered the shutdown of internet access on the eve of the presidential elections voting day in February, citing “national security”, as well as during the inauguration in May 2016, affecting social media platforms including Facebook, Whatsapp, Twitter, and mobile money transfer services.¹⁰

In April 2018, the Ugandan communications regulator directed online data communication service providers, that include; online publishers, online news platforms and online radio and television operators, to apply and obtain authorisation from the commission within a period of one month or risk having their websites and/or streams being blocked by Internet Service Providers (ISPs).¹¹ The regulator later published a list of the licenced providers, who were each required to pay USD 20.

On 29, April 2019, UCC ordered internet service providers to shut down all unauthorized news sites following a directive requiring online data communication service providers, including publishers, news platforms, radio and television operators to obtain authorization.¹²

Later in 2019, another directive was issued by UCC requiring all “online publishers and influencers who have reached a capacity of sharing communication content and also using the online publication for commercial business” to register with regulator and pay a USD 20 levy.¹³

In May 2017, a famous movie translator, Marysmats Matovu alias VJ Junior and his colleague, Geoffrey Bbosa, were arrested and charged with cyber harassment and offensive communication based on allegedly provocative messages sent in a group message chain about the Uganda Film Producers Association.¹⁴

International Legal Framework on Internet Rights and Freedom

The right to freedom of expression (including on the internet) has been provided for under Article 19 of the Universal Declaration of Human Rights, that states that; “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas **through any media and regardless of frontiers.**”¹⁵

This right is further articulated within Article 19 (2) of the International Covenant on Civil and Political Rights (ICCPR), stating that; Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, **regardless of frontiers**, either orally, in writing or in print, in the form of art, or **through any other media of his choice.**

The General Comment 34 on State parties’ obligations under Article 19 of the International Covenant on Civil and Political Rights adopted on July 21, 2011 holds that the same rights an individual enjoys on line must be the same rights enjoyed online¹⁶.

In 2016, the United Nations passed a non-binding resolution on “the promotion, protection, and enjoyment of human rights on the Internet.”¹⁷ The resolution specifically condemns measures to prevent or disrupt access and calls on all States to refrain from and cease such measures. It further recognizes the importance of access to information and privacy online for the realization of the right to freedom of expression and to hold opinions without interference.¹⁸

Although there is no express right of access to the internet under international law, the 2016 United Nations Resolution urges states to “consider formulating, through transparent and inclusive

¹⁵ Universal Declaration of Human Rights https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf

¹⁶ Also see: General Comment no. 34 on Article 19 of the ICCPR <https://bangkok.ohchr.org/programme/documents/general-comment-34.aspx>

¹⁷ https://www.article19.org/data/files/Internet_Statement_Adopted.pdf accessed on 20th December 2019

¹⁸ <https://www.osce.org/fom/250656> accessed on 20th December 2019

processes with all stakeholders, and adopting national Internet-related public policies that have the objective of universal access and enjoyment of human rights at their core.”

On the African continent, Article 9 of the African Charter on Human and Peoples’ Rights (ACHPR) states that; “Every individual shall have the right to receive information” (9(1); and “Every individual shall have the right to express and disseminate his opinion **within the law.**” (9(2).

The ACHPR has also adopted several resolutions aimed at promoting the right to information and freedom of expression in Africa amongst which include; ACHPR/Res. 362 (LIX) 2016, adopted in Banjul on 4 November 2016. The resolution reaffirms the fundamental right to freedom of information and expression enshrined under Article 9 of the African Charter on Human and People’s Rights and in other international human rights instruments and recognizes the role of the internet in advancing human and people’s rights in Africa. This resolution came at a critical time when the region was witnessing regular internet shutdowns which impacted directly on freedom of expression and access to information.

Limitations on the Right to Freedom of Expression

Both the ICCPR and ACHPR have within their provisions, limitations to the rights to freedom of expression. Specifically, Article 19 (3) of the ICCPR notes that; the exercise of the rights provided for in paragraph 2 of this Article carries with it special duties and responsibilities. It may, therefore, be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.¹⁹

On 21 July 2011, the UN Human Rights Committee adopted General Comment 34 on States parties’ obligations under Article 19 of the (ICCPR), with guidance to States on what the freedoms of opinion

and expression mean in practice, and therefore strengthens the protection provided by international law. In reference to any restrictions, General Comment 34 (para 35) highlights that “When a State party invokes a legitimate ground for restriction of freedom of expression, it must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat”.²⁰

In Uganda, the right to freedom of expression, like other rights are also limited within the Constitution by Article 43(1) which states that; (1) In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest. But as noted above, any limitation must pass the three-part test as provided for under Article 19(3) of the ICCPR.

As a signatory to various international human rights instruments such as the International Covenant on Civil and Political Rights, the African Charter on Human and Peoples’ Rights and having incorporated progressive articles within the Constitution, specifically on the Bill of Rights, Uganda has a duty to promote and advance peoples’ fundamental human rights online, including access to and use of the internet through progressive legislation and practices.

About the African Declaration on Internet Rights and Freedoms

The African Declaration on Internet Rights and Freedoms (AfDEC) is a Pan-African initiative to promote human rights standards and principles of openness in internet policy formulation and implementation on the continent. The Declaration is intended to elaborate on the principles which are necessary to uphold human and people’s rights on the Internet, and to cultivate an Internet environment that can best meet Africa’s social and economic development needs and goals.

The Declaration builds on well-established African human rights documents including the African Charter on Human and Peoples’ Rights of 1981, the

¹⁹ ICCPR <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> accessed on 20th December 2019

²⁰ General Comment No. 34 on Article 19 of the ICCPR, Accessed on 13th January 2020 @ <https://bangkok.ohchr.org/programme/documents/general-comment-34.aspx>

Windhoek Declaration on Promoting an Independent and Pluralistic African Press of 1991, the African Charter on Broadcasting of 2001, the Declaration of Principles on Freedom of Expression in Africa of 2002, and the African Platform on Access to Information Declaration of 2011.

The Declaration has identified 13 key principles that

include; Openness; Internet Access and Affordability; Freedom of Expression; Right to Information; Freedom of Assembly and Association on the Internet; Cultural and Linguistic Diversity; Right to Development and Access to Knowledge; Privacy and Personal Data Protection; Security, Stability, and Resilience of the Internet; Marginalised Groups at Risk; Due Process; Democratic Multi-stakeholder Internet Governance; and Gender Equity.

This report, therefore, provides an assessment of Uganda's Compliance with 11 out of the 13 Principles of the African Declaration on Internet Rights and Freedoms. The report examines both the legal environment (laws and policies) and practices by the state regarding internet freedom and rights.

Findings: Uganda's Compliance to the AfDEC Principles

Openness

The AfDEC Principle on Openness requires that the Internet should have an open and distributed architecture and should continue to be based on open standards and application interfaces and guarantee interoperability so as to enable a common exchange of information and information.

In 2014, the government, through the National Information Technology Authority, issued guidelines for developing government websites that emphasized the need to use open standard-based tools and technologies for the development of websites as well as content to ensure interoperability and accessibility of websites. The web guidelines adhered to the Web Content Accessibility Guidelines (WCAG) of the World Wide Web Consortium (W3C). W3C is an international body working towards defining standards in web technologies and formats for publishing content on the web.²¹

Section 1.4 of Guidelines on Development and Management of Government Websites requires all government MDAs to "consider the needs of a broad spectrum of visitors, including the general public, specialised audiences, people with disabilities, those without access to advanced technologies, and those with limited English proficiency and ICT skills."

However, a 2007 survey on Web Accessibility in Uganda²² established that 100% of the government websites whose webmasters responded to the survey were not accessible to users with visual disabilities. Additionally, the majority of government MDA websites are in English, making them inaccessible to many Ugandans who cannot read and write in this language.²³

The Openness principle also seeks to advance the principle of network neutrality, which requires that all data on the Internet must be treated in an equal and non-discriminatory manner, and shall not be charged differentially, according to user, content, site, platform, application, type of attached equipment, and modes of communication.

However, it has been reported that Uganda does not

²¹ NITA-U (2014) Guidelines for Developing and Managing Government Websites at <https://www.nita.go.ug/sites/default/files/publications/GOU-Website-Standards-2014-06-11-Ver-final.pdf> accessed on December 18 2019

²² Baguma et al (2007) Web Accessibility in Uganda: A study of Webmaster Perceptions at http://www.cit.mak.ac.ug/iccir/downloads/SREC_07/Rehema%20Baguma,%20Tom%20Wanyama,%20Patrick%20van%20Bommel%20and%20Patrick%20Ogao_07.pdf accessed on 13th January 2020

²³ State of Open eGovernment Index in Uganda at https://cipesa.org/?wpfb_dl=255 accessed on 13th January 2020

What is net neutrality and why is it important?

<https://www.consumeraffairs.com/news/what-is-net-neutrality-and-why-is-it-important-110117.html> accessed on 13th January 2020

²⁵ Global Voices;

<https://advox.globalvoices.org/2018/07/19/access-denied-how-ugandas-social-media-tax-is-turning-news-and-information-in-to-luxury-goods/#>

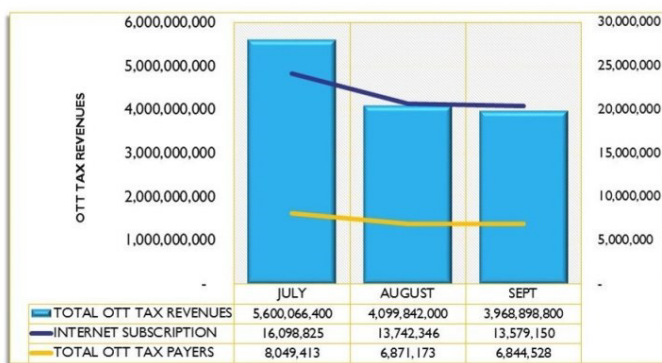
have robust and implementable legal protections for net neutrality²⁴, and because of this, both the government and telecom companies have violated the principle in the past, with tiered pricing of the communication services and social media blocking.²⁵ In 2005, UCC passed the Telecommunications (Tariffs and Accounting) Regulations,²⁶ to regulate the pricing of telecommunications services and accounting by telecommunications operators. Unfortunately, as noted earlier, the regulations are largely unenforceable.

The AfDEC Principle on Openness also demands that there should be no special privileges for, or obstacles against, the exchange of information online or any party or content on economic, social, cultural or political grounds.

There have been a number of policies and practices that have however served to undermine these principles. Specifically, the passage of the Uganda Excise Duty (Amendment) Bill 2018, which introduced taxation of “over-the-top” (OTT) services, and raised taxes on other telecommunications services violated this principle which requires service providers to treat all internet traffic equally, and not block or throttle access to online content and services.

According to figures from the UCC, the number of subscribers reduced by two and a half million from 16 million to 13.5 million subscribers between July and September 2018. The same trend was noted in the amount of revenue falling from Uganda Shillings (UGX) 5.6 billion in July 2018, to UGX 3.96 billion in September 2018 (see table below).

Trend in total OTT subscriptions & revenues



Source: Licensees

In the last three months of the quarter under review, both the number of OTT taxpayers and the figures for the OTT revenues were in a declining trend.

The figures indicate subscribers those who have used OTT services at least once in the quarter. 50.4% of the internet subscribers were enjoying OTT services by the end of September 2018.

Recommendations

1. The Government of Uganda should consider the expansion of the scope of the guidelines²⁷ for developing and managing government websites to cover the private sector.
2. Given the negative impact that the OTT tax has had on the ability of the majority of users to access and use the internet, the government should consider amending the Excise Duty (Amendment) law to consider other avenues of raising revenue rather than imposing a tax on the internet.

Internet Access and Affordability

²⁶ Telecommunications (Tariffs and Accounting) Regulations, 2005 at <https://ulii.org/ug/legislation/statutory-instrument/2005/27>, accessed on 13th January 2020

²⁷ NITA-U (2014) Guidelines for Developing and Managing Government Websites at <https://www.nita.go.ug/sites/default/files/publications/GOU-Website-Standards-2014-06-11-Ver-final.pdf>

Access to the Internet plays a vital role in the full realization of human development and facilitates the exercise and enjoyment of a number of human rights and freedoms, including the right to freedom of expression and information, the right to education, the right to assembly and association, the right to full participation in social, cultural and political life and the right to social and economic development.

Accordingly, access and affordability policies and regulations that foster universal and equal access to the Internet, including fair and transparent market regulation, universal service requirements and licensing agreements, must be adopted, according to the AfDEC.

The government has put up various policies and strategies in place in order to foster a conducive environment through which users can maximize the social and economic benefits enabled by ICT.

In 2014, the government passed the National Information and Communications Technology Policy, with broad policy objectives of; building a knowledge-based human capital; promoting innovation in economic and social systems; expanding ICT infrastructure and its integration throughout the country; deepening utilization of ICT services by government, private sector, Non-Government Organizations and citizenry; enhancing research and innovation in ICT products, applications, and services; and improving ICT governance and environment in Uganda.²⁸

Additionally, Uganda's National Vision 2040 very clearly identifies ICT access and utilization not just as a cross-cutting development enabler but also as a major business opportunity. This provides the highest policy level underpinning to the imperative for universality of ICT in Uganda.²⁹

The AfDEC principle also calls for the establishment of national and regional Internet exchange points

(IXPs) to rationalize and reduce the cost of Internet traffic at national, local and sub-regional levels, as well as addressing the gender digital divide, with factors such as level of employment, education, poverty, literacy and geographical location resulting in African women having lower levels of access than men.

In 2016, the government is reported to have embarked on the provision of "free internet access" to residents within the capital city, Kampala through the MYUG, a new application that has been developed by the National Information and Communications Technology (NITAU).³⁰ The services have however experienced some challenges and don't cover all the intended hotspots as had been envisaged.³¹

Additionally, in December 2019, MTN, the largest telecommunication service provider in Uganda also announced the introduction of a range of data bundles that do not expire³², after many complaints from clients for loss of unused internet bundles. Previously, customer internet bundles would expire after 24 hours.

It is also refreshing to note that within the new guidelines for the Rural Communication Development Fund (RCDFII)³³, the government has committed to improving on the Connectivity, Access, Affordability, and Equity for the target groups.

To date, UCC through RCDF has implemented [ICT Computer Labs](#) in over 1000 Secondary Schools, Tertiary institutions and Universities.³⁴ The schools with Computer laboratory infrastructure have also acted as a platform to provide digital literacy skills to the communities around the schools, which has dramatically reduced the digital divide in the country

The National Broadband Strategy for Uganda³⁵ (2016-2020) defines the minimum requirements for high-speed transmission and access for voice, data,

²⁸ MoICTNG (2014) Uganda National ICT Policy http://ict.go.ug/wp-content/uploads/2018/11/ICT_Policy_2014.pdf

²⁹ MoICT (2018) RCDF Operational Guidelines 2017/18–2021/22 (RCDF III) at <https://www.ucc.co.ug/wp-content/uploads/2017/09/RCDF-Operational-Guidelines.pdf>

³⁰ Govt to offer free internet in Kampala and Entebbe, https://www.newvision.co.ug/new_vision/news/1435155/govt-offer-free-internet-kampala-entebbe accessed on 21st December 2019

³¹ Where is Kampala's free wireless internet? <https://www.monitor.co.ug/Business/Prosper/Where-is-Kampala-s-free-wireless-internet/688616-5143242-nx9952z/index.html> accessed on 21st December 2019

and video to homes and businesses and sets the target to be achieved within the five-year period. Some of the key targets defined for the five-year period include raising the minimum broadband speeds from 512kbps (in 2014/15) to 3Mbps and reducing the cost per Mbps of broadband in relation to average income by 10%. The strategy also seeks to achieve 100% broadband connectivity at all district and sub-county headquarters, health centre IVs, tertiary institutions and secondary schools by 2020.³⁶

Unfortunately, internet access and affordability is still a challenge for large sections of the population especially the poor, rural populations, women, and persons with disabilities. This is because while internet access has become more affordable, particularly on mobile phones, costs are still expensive for many Ugandans.³⁷ Within East Africa, Ugandans are reported to be paying the highest prices to access mobile internet, at an average of \$4.69 (Shs 17, 231) for 1GB [gigabyte] of data, compared to her neighbors in Rwanda who are paying an average of \$0.56 or (Shs 2,057) for 1GB of data, with Burundi and Kenya, paying \$2 (Shs7,344) and \$2.73 (Shs10,024) for 1GB, respectively.³⁸ The introduction of a daily UGX 200 (USD \$0.05) tax on social media use in July 2018 is reported to have left millions unconnected due to the increased costs.³⁹

Other factors that have affected access and affordability include limited access to electricity as it is mostly concentrated in urban areas and further impedes access to ICTs.⁴⁰

Recommendations

1. The government should review and expedite the full implementation of the National Broadband Strategy, which expires within less than a year, 2020.
2. The government should expand the free Wi-Fi program to other areas outside of Kampala and Entebbe.
3. The government should work with and incentivize telecommunication companies to provide special rates for the rural poor so as to reduce the costs of mobile internet in the country.
4. Review the revenue collection concept as the OTT tax has definitely had a negative effect on both revenue and internet access and affordability.

Freedom of Expression

Principle 3 of the African Declaration on Internet Rights and Freedoms notes that; “Everyone has the right to hold opinions without interferences. Everyone has a right to freedom of expression which includes the freedom to seek, receive, impart information and ideas of all kinds through the internet and digital technologies, regardless of frontiers”. The principle acknowledges the non-absoluteness of the rights but however notes that any restrictions must be provided for by law, pursue a legitimate aim as expressly listed under international law.

In Uganda, the right to freedom of expression, and

³² MTN Uganda unveils data bundles that don't expire at <https://www.mtn.co.ug/mtn-uganda-unveils-data-bundles-that-dont-expire/> accessed on 13th January 2020

³³ Ibid

³⁴ The Rural Communications Development Fund (RCDF) Project Brief at <https://uccinfo.blog/2019/07/09/the-rural-communications-development-fund-rcdf-project-brief/> accessed on 13th January 2020.

³⁵ 2018 National Broadband Strategy, at <http://goo.gl/cU7hUi>

³⁶ NITA-U (2018) National ICT Survey

³⁷ Freedom House (2018) Freedom on the Net/Uganda at <https://freedomhouse.org/report/freedom-net/2018/uganda>

³⁸ Ugandans paying highest for mobile data in E. Africa – survey, <https://www.monitor.co.ug/News/National/Ugandans-paying-highest-for-mobile-data-in-E--Africa/688334-5282268-s90bmv/index.html>, accessed on 19th December 2019

³²

<https://www.theguardian.com/global-development/2019/feb/27/millions-of-ugandans-quit-internet-after-introduction-of-social-media-tax-free-speech>

³⁸ Ibid – op-cite 10

access to information are provided for under the Constitution⁴¹, and although not explicitly defined within the constitution, this right includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media (including the internet) of his choice.”⁴²

Although the right to freedom of expression, especially online, like many others is not absolute, under both international law and the Ugandan Constitution, the AfDEC notes that “Content blocking, filtering, removal and other technical or legal limits on access to content constitute serious restrictions on freedom of expression and can only be justified if they strictly comply with international human rights law, which says that any restrictions should be; (a) Prescribed by law; (b) Serve a legitimate purpose for the protection of reputation, national security, public order, public health or morals; and, (c) It must be necessary to achieve the prescribed purpose.”⁴³

However, at the height of what came to be known as the Arab Spring, the government is reported to have ordered Telecom companies to block and regulate text messages that could instigate hatred, violence, and unrest during the presidential election period, February 2011.⁴⁴ A few months later, in April 2011, UCC instructed ISPs to temporarily block access to Facebook and Twitter for 24 hours “to eliminate the connection and sharing of information that incites the public.” The order came in the heat of the ‘walk to work’ protests in various towns over rising fuel and food prices.⁴⁵

In 2016, there were to be two additional episodes of internet shutdowns, in February 2016 during the elections and May 2016, during the swearing-in of the President. In ordering the shutdowns, the government cited national security concerns as the main reason. The president is reported to have told journalists that he ordered the shutdowns because; “Steps must be taken for security to stop so many getting in trouble, it is temporary because some

people use those pathways for telling lies,”⁴⁶

The AfDEC principle on Freedom of Expression also requires that “No-one should be held liable for content on the Internet of which they are not the author” and seeks to limit the liability of intermediaries. Under section 29 of the 2011 Electronic Transactions Act, intermediaries are protected from any liability on content shared by third parties, stating that “a service provider shall not be subject to civil or criminal liability in respect of third-party material which is in the form of electronic records to which he or she merely provides access.”⁴⁷ This is a positive provision that should be protected by the state.

The AfDEC Principle on Freedom of Expression also emphasizes the important role that a safe and secure operating environment for internet users if they are to meaningfully participate in online expression – sharing opinions and ideas. The government has put in place a number of commendable measures to curb online, safety especially among children and youths. The Computer Misuse Act (2011) under section 23 criminalizes child online sexual exploitation. This scope covers any person who participates in the development, sharing, transmission or storage of child sexual abuse material.⁴⁸

In addition, the National Information Technology Authority – Uganda (NITA-U) in collaboration with the Internet Society Uganda Chapter led to the development of an Online Safety Education Toolkit as a useful and convenient learning resource for children and youth on how best to stay safe online in their daily use of the internet.⁴⁹

The same Act also criminalizes cyber harassment (Art. 23), offensive communication (Art. 24) as well as cyberstalking (Art. 26). Specifically, Article 26 states that; “Any person who willfully, maliciously, and repeatedly uses electronic communication to harass another person and makes a threat with the intent to place that person in reasonable fear for his or her safety or to a member of that person's immediate

⁴¹ Article 29 (1) (a) and Article 41 of the Constitution, respectively at

http://www.statehouse.go.ug/sites/default/files/attachments/Constitution_1995.pdf

⁴² Article 19(2) of the International Covenant on Civil and Political Rights at

<https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf>

⁴³ Article 19(3) of the ICCPR

⁴⁴ CIPESA (2014) State of Internet Freedom in Uganda 2014 at https://cipesa.org/?wpfb_dl=181

⁴⁵ Ibid

family commits the crime of cyberstalking and is liable on conviction to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both.”

Unfortunately, the majority of those affected, especially the victims whose pictures and videos have been leaked online are the first persons to be interrogated by law enforcement agencies. In 2018, when Ugandan model Judith Heard had her pictures published without her consent, she not only found herself under arrest but also under attack in the media and online.⁵⁰

Recommendations

1. The government should ensure that any orders to shut or slow down the internet must be done in accordance with the law and due process should be followed as laid down in Article 3 of the AfDEC Principle and other international human rights laws.
2. The government should amend laws, such as the Computer Misuse Act, to bring them into line with Uganda’s constitution and its obligations under international law regarding freedom of expression and access to information.

Right to Information

This AfDEC principle notes that “The Internet offers new opportunities to access information, and for governments to communicate with people, using open data. Open data and new forms of online consultation can empower people to take a more active part in public affairs.

Data and information held by governments should be

made publicly accessible, including being released proactively and routinely, except where legitimate grounds for restricting access comply with the rule of law, including relevant freedom of information legislation.

Freedom of information is an integral part of the fundamental right of freedom of expression, as recognized by Resolution 59 of the United Nations General Assembly adopted in 1946, as well as by Article 19 of the Universal Declaration of Human Rights (1948), which states that *Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.*

Although the 1995 Constitution of the Republic of Uganda guarantees the right of access to information,⁵¹ with an enabling Act and regulations providing for the same, the spirit of the current legislation is more restrictive, with citizens required to submit information requests as opposed to requiring information officers to proactively disseminate information.

In 2014, the Government of Uganda with support from civil society (AFIC and CIPESA) established an online portal for receiving and responding to information requests⁵². However, despite being a great initiative, AFIC’s recent analysis of the platform indicated that since 2014, the platform has 6,123 users registered, 4,059 requests were made to 110 MDAs. Of 4,059 requests, 80.9% were awaiting a response, 5.2 % were under review, and only 4.5% had been partially responded to, while 4.3% were successful, in that order.

The AfDEC requires existing obligation on public bodies to share all information produced with the

⁴⁶ A Will Uganda shut down the internet as opposition heats up for 2021 elections?

<https://advoc.globalvoices.org/2019/11/26/will-uganda-shut-down-the-internet-as-opposition-heats-up-for-2021-elections/>, accessed on December 21st 2019

⁴⁷ Section 29 subsection (1) (a) (b) of the Electronic Transactions Act 2011.

⁴⁸ NITA-U Promoting online child safety <https://www.nita.go.ug/media/promoting-child-online-safety> accessed on December 21st 2019

⁴⁹ Ibid

⁵⁰ I was arrested and shamed for leaked nudes': Ugandan model Judith Heard; @

<https://www.bbc.com/news/av/world-africa-47612896/i-was-arrested-and-shamed-for-leaked-nudes-ugandan-model-judith-heard> accessed on 13th January 2020

support of public funds, subject only to clearly defined rules set out in law, as established by the Declaration of Principles on Freedom of Expression in Africa, shall extend to the proactive release of such information on the Internet in openly licensed, freely re-usable formats.

According to section 3 (d) of the Access to Information Act, every citizen is supposed to access information easily and in a timely manner. The Act provides for a maximum of 21 days within which a citizen's information request is responded to. However, the delayed release of information due to fear and/or bureaucracy coupled with ignorance have made the right to information impracticable in some circumstances.⁵³

Additionally, while article 41 of the Ugandan Constitution provides for the right of access to information with two exceptions: where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to privacy of any other person, the Access to Information Law, itself in Part III (section 23 - 34) lists exemptions which are too wide in scope and contradict the constitution. These exemptions, which include cabinet minutes and those of its committees, limit the enjoyment of the right to information by restricting access to vital records.⁵⁴

Recommendations

1. The government should amend the retrogressive restrictions within the enabling laws such as the Access to Information Act, and the Official Secrets Act that undermine proactive disclosure of information, especially online.
2. The government should equip their staff with the skills and knowledge as well as tools to proactively use online platforms to share data held by government public bodies.
3. Parliament should amend the Access to Information Act to provide for online information requests
4. Government should undertake promotional

measures for the effective implementation of the Access to Information Act

5. The Uganda Human Rights Commission should undertake measures to promote citizens' enjoyment of their right to information through online and offline channels.

Freedom of Assembly and Association and the Internet

This AfDEC principle states that; "Everyone has the right to use the Internet and digital technologies in relation to freedom of assembly and association, including through social networks and platforms. It further notes; "The Internet can augment the opportunities and capabilities of individuals and groups to form associations and to manage organizations and associations."

Additionally, "It can increase the membership and reach of associations by allowing groups of people to communicate despite physical boundaries. It provides new tools for those organizing assemblies offline, as well as the possibility of conducting assemblies and protests online."

African states are therefore called upon to limit the shutting down or blocking of access to social networking platforms, and in fact, the Internet in general, as these actions constitute direct interference with this right.

But as highlighted above, under Freedom of Expression, the government has on several occasions been reported to have ordered the shutdown of the internet and access to other social media platforms such as Facebook, Twitter, and WhatsApp, greatly affecting citizens access and use of the internet.

Recommendations

1. Any attempts by the Government should be done within the parameters of international human rights law - (a) Prescribed by law; (b) Serve a legitimate purpose for protection of reputation, national security, public order,

⁵¹ Article 41 of the Uganda Constitution

⁵² Askyourgov portal www.askyourgov.ug

⁵³ State of Access to Information in Uganda; at https://cipesa.org/?wpfb_dl=241 accessed on 13th January 2020

public health or morals; and, (c) It must be necessary to achieve the prescribed purpose.⁵⁵

2. The government should continue with efforts to expand access and affordability of the internet and digital technologies to a wider majority of the population for them to enjoy the benefits brought about by these technological advances, including freedom of assembly and association.

Cultural and Linguistic Diversity

This AfDEC Principle is cognizant of the rich linguistic and cultural diversity which exists on the African continent and calls for its promotion, especially online. Specifically, the principle calls upon states to put in place comprehensive policies, and allocation of resources, to support the development and use of tools to facilitate linguistic diversity on the Internet. This includes the promotion of technology and content required to access and use domain names, software, services, and content in all languages and scripts.

In 2006, Uganda passed the National Culture Policy that sought to among other things; To promote and strengthen Uganda's diverse cultural identities; enhance social cohesion, collaboration, and participation of all people in cultural life; promote community action on cultural practices that promote and that impinge on human dignity; and conserve, protect and promote Uganda's tangible and intangible cultural heritage.⁵⁶

Government also committed to foster the creation of varied local and national content, including that available in the language of users, and give recognition and support to ICT-based work in all artistic fields through public/private partnerships as well as support efforts to develop and use ICTs for the preservation of natural and, cultural heritage, keeping ICT accessible as a living part of today's culture through the National ICT Policy of 2014.⁵⁷

The government also committed to developing systems that ensure continued access to archived digital information and multimedia content in digital repositories, and support archives, cultural

collections, and libraries⁵⁸

There has however been very slow progress in the promotion of indigenous languages online as only a few local languages are represented online. For example, news on websites owned by the Vision group is only available in four local languages (out of 40 languages and 56 native dialects) Bukedde (Luganda); Etop (Ateso); Rupiny (Acholi) and Orumuri (Runyankore).⁵⁹

According to the 2018 Freedom House report on Internet freedom in Uganda, the Google Uganda domain is available in five local languages, while the Firefox web browser can be accessed in two languages, Luganda and Acholi. The report notes that as of early 2018, Wikipedia can be accessed in Luganda, with about 1,000 articles translated.⁶⁰

Recommendations

1. The government should work with key providers – Google, Firefox and others to have more local languages on their domains
2. The government should expedite the implementation of National ICT Policy, 2014, especially the provisions of culture diversity

Right to Development and Access to Knowledge

The AfDEC Principle notes that “Developing media and information literacy is essential in ensuring that consumers of media products have the skills to find evaluate and engage with various types of information, including those relevant for their social, economic, cultural and political development.

The principle also calls upon the government to priorities policies that improve girls' access to quality education and ICT, gender mainstreaming in Science, Technology, Engineering and Mathematics (STEM) policies, and family-friendly policies in STEM workplaces.

In 2017, the Ministry of ICT and National Guidance embarked on the Digital Vision Uganda initiative⁶¹

54 Ibid

that aims to leverage technological innovations to meet various national and international goals including universal inclusion, sustainable development, economic progress, and poverty eradication.

This campaign aims to achieve a unified action plan that draws on various initiatives from all sectors and focuses on technology-based empowerment, thus fostering relevant ICT use⁶². While the Digital Vision Uganda campaign aims to address pertinent ICT development issues that will improve ICT access, usage and, penetration, the strategy is still under development with implementation yet to start.⁶³

Recommendations

1. The government should fully implement the Digital Vision Uganda campaign and other policy frameworks, including the ICT policy, broadband policy.

Privacy and Personal Data Protection

The growth and penetration of information and communication technologies, especially the internet partly aided by an increase in mobile phone subscriptions and increased use of smartphones has resulted in increased collection, processing and sharing of personal biometric data, including by business enterprises. Unfortunately, many internet users are not aware of the implications of their use of the web and how their rights are compromised by their internet usage or how their data is automatically gathered or processed without their knowledge and sold or linked with other sources to produce a complex record of several aspects of their lives.⁶⁴

AfDEC Principles requires that “Personal data or information shall only be collected and/or processed

by states and non-state actors such as access providers, mail providers, hosts, and other intermediaries, in compliance with well-established data protection principles, including the following: personal data or information must be processed fairly and lawfully; personal data or information must be obtained only for one or more specified and lawful purposes; among others.

Although the Uganda Constitution provides for the right to privacy and data protection⁶⁵, it wasn’t until December 2018 that parliament passed the Privacy and Data Protection Act that was assented to by the President in February 2019.⁶⁶

The principle notes that “Mass or indiscriminate surveillance of individuals or the monitoring of their communications, constitutes a disproportionate interference, and thus a violation, of the right to privacy, freedom of expression and other human rights”.

It is further noted that “targeted surveillance of online communications must be governed by clear and transparent laws which, at a minimum, comply with the following basic principles: first, communications surveillance must be both targeted and based on reasonable suspicion of commission or involvement in the commission of serious crime; second, communications surveillance must be judicially authorized and individuals placed under surveillance must be notified that their communications have been monitored as soon as practicable after the conclusion of the surveillance operation; third, the application of surveillance laws must be subject to strong parliamentary oversight to prevent abuse and ensure the accountability of intelligence services and law enforcement agencies.”

Unfortunately, once again the legal environment and practices regarding communication surveillance and interception of communication in Uganda go against the provisions of the principle.

⁵⁵ Article 19(3) of the ICCPR

⁵⁶ MoGSD (2006) The Uganda National Culture Policy 2006

https://ocpa.irmo.hr/resources/policy/Uganda_Culture_Policy-en.pdf accessed on December 5 2019

⁵⁷ MoICT (2014) National ICT Policy http://ict.go.ug/wp-content/uploads/2018/11/ICT_Policy_2014.pdf accessed on December 21 2019

⁵⁸ Ibid

⁵⁹ Freedom House (2018) Freedom on the Net/Uganda <https://freedomhouse.org/report/freedom-net/2018/uganda> accessed on December 5 2019

⁶⁰ Bid

The Regulation of Interception of Communications Act, 2010⁶⁷ provides for lawful interception and monitoring of communications in the course of their transmission through telecommunications, postal or any other related services or systems in Uganda. Specifically, Section 8 of this Act requires service providers to ensure that their telecommunication systems are always technically capable of supporting lawful interception.

The right to privacy is further limited by the Anti-Terrorism Act, 2002, which provides for interception of communications, specifically, section 19 (1) which states that "... an authorized officer shall have the right to intercept the communications or a person and otherwise conduct surveillance of a person under this Act."

Recommendations

1. Expedite the implementation of the Data Protection Act
2. Reduce the opportunities for mass surveillance to guard against infringement on peoples' right to privacy and protection of their personal data.
3. Review and harmonize the laws that provide for the surveillance and interception of communication in view of the new data protection law provisions.

Security, Stability and Resilience of the Internet

The principle requires that everyone has the right to enjoy secure connections to and on the Internet including protecting from services and protocols that threaten the security, stability, and resilience of the Internet.

States are therefore urged to recognize in their legislation and practices that encryption is a basic requirement for the protection of the confidentiality and security of information. States should promote

end-to-end encryption as the basic standard for the protection of the rights to freedom of expression and privacy online and promote the use of open-source software.

However section 10 of the Regulation of Interception of Communications Act 2010, provides for disclosure of protected (encrypted) information with failure to comply with the disclosure notice attracting a fine not exceeding one hundred and twenty currency points or to imprisonment for a period not exceeding five years, or both upon conviction.

Although a January 2019 report on the State of Privacy in Uganda⁶⁸ by Privacy International notes that there does not appear to be any restriction on the use of encryption in Uganda. And that the use of end-to-end encrypted messaging applications, particularly WhatsApp, are popular.

Recommendations

1. The government should consider repealing section 10 of the RICA that criminalizes the failure to disclose encrypted information.

Marginalized Groups and Groups at Risk

Despite the recent advances in the ICT and internet, with a greater number of people now having access to and using these, many marginalized groups of people, including persons with disabilities, rural communities, the elderly, and women still find it hard to access and use digital technologies and thus continue to miss out on the benefits that the technologies bring.

Several factors, including high literacy levels, the still-high costs of the internet, poor implementation of enabling policies among others.

Under this principle, states and non-state actors are required to respect and protect the right of all

⁶¹ A MoICT (2017) Digital Vision Uganda, <http://goo.gl/fKvvs6>

⁶² NITA-U (2018) National ICT Survey at

<https://www.nita.go.ug/sites/default/files/publications/National%20IT%20Survey%20April%2010th.pdf>

⁶³ Ibid

⁶⁴ CIPESA (2018) State of Internet Freedom in Africa at https://cipesa.org/?wpfb_dl=278

individuals to have access to and use the Internet. However, recent practices, including the introduction of the OTT tax have instead served to widen the digital divide gap. It has been reported that the social media tax has raised the internet connection costs by 10% for Uganda's poorest residents, and in turn left them with less access to information.⁶⁹

The situation is however much worse for persons with disabilities, as the costs of assistive technologies that would aid them access to and use the internet and other ICT is quite high.⁷⁰

Recommendations

1. Review and consider amending the social media tax to reduce the exclusion
2. Reduce ICT access costs for marginalized groups, especially the elderly and persons with disabilities
3. Introduce incentives to services providers to expand their networks to rural areas

Gender Equality

As earlier discussed, women are among the marginalized groups that continue to lag behind when accessing and using ICT, especially the internet. A survey carried out in 2014 by the Uganda Communications Commission found that only 6% of women in Uganda are online. And only 21% of women reported having used the internet, versus 61% for men.⁷¹

Like the other marginalized groups, the gender gap in internet access is also perpetuated by several factors including limited access to the internet, lack of digital skills and empowerment of women, affordability of ICT services especially broadband connectivity,

relevant content as well as safety of women online.⁷²

The AfDEC principle on gender equity calls upon key stakeholders to ensure that the processes and mechanisms that enable the full, active and equal participation of women and girls in decision making about how the Internet is shaped and governed are developed and strengthened.

Recommendations

1. The laws enacted and any bill to be passed must-have women's unique perspectives and views integrated to produce a robust law that is gender-sensitive⁷³
2. Women should be trained and skilled in how to access and use the internet safely and securely
3. The government should set up a Monitoring and Evaluation Framework for all gender and ICT policies so that actual benefit accrues to the common person⁷⁴

Conclusion

There indeed some positive steps, especially the legal framework that Uganda has adopted to ensure compliance to the key principles as laid out in the African Declaration on Internet Rights and Freedoms – including the ICT Policies, the Access to Information Laws, the Constitutional provisions, the Data Protection Act, the Income Tax Act of 2018 that introduced the social media tax among others. There are however other laws whose provisions are quite retrogressive and these need to be amended, especially those that infringe on privacy and personal data protection such as the Regulation of Interception of Communications Act, the Computer Misuse Act among others.

⁶⁵ Article 27 of Uganda Constitution

⁶⁶ <https://www.nita.go.ug/media/president-museveni-signs-data-protection-privacy-bill-law>

⁶⁷ Regulation of Interception of Communications Act, 2010,

<http://www.ulii.org/content/regulation-interception-communications-act-2010>

⁶⁸ <https://privacyinternational.org/state-privacy/1013/state-privacy-uganda>

⁶⁹ Global Voices (2018) Access denied:

<https://advox.globalvoices.org/2018/07/19/access-denied-how-ugandas-social-media-tax-is-turning-news-and-information-into-luxury-goods/>

⁷⁰ CIPESA (2019) Removing Barriers to ICT Accessibility for Persons with Disabilities in Kenya, Tanzania and Uganda:

https://cipesa.org/?wpfb_dl=312

⁷¹ WOUNET (2016) Uganda's ICT Laws from a Gender Perspective

<https://www.apc.org/sites/default/files/uganda-s-ict-laws-from-a-gender-perspective.pdf>

⁷² Ibid

⁷³ Ibid

⁷⁴ Ibid



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