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**INTERSECTION BETWEEN WOMEN'S RIGHTS AND INTERNET GOVERNANCE IN
UGANDA**

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1 INTRODUCTION

1.1 Genesis of the issues paper

The United Nations Trust Fund for Gender Equality project entitled “Increasing women's decision making and influence in Internet Governance and ICT policy for the realization of women's rights in Africa” implemented in Uganda and South Africa was conceived with the aim of i) increasing the capacity of women in the two countries to discuss, analyse, respond to and influence policy on gender and internet governance more effectively; and ii) increase the knowledge-base on how internet governance and ICT laws and policies can incorporate a women's rights perspective in order to substantially and materially improve the lives of women specifically in Uganda and South Africa, and in the region more broadly. The project is implemented by Women of Uganda Network (WOUGNET) in Uganda, and the WomensNet in South Africa.

The internet is recognized as a potentially transformative space. However, lack of integration of women's rights and sexual rights perspectives in internet governance conversations and processes was identified as a key factor limiting the internet to fulfil its potential as transformative space for all. Policy processes should not only ensure equal participation of women and girls from different stakeholder groups, but also ensure that this has impact in the substance of the discussions and can be seen in the outcomes. Avri Doria 2015,¹ notes that one has to search far and wide to find substantive outcomes that relate to gender, women’s rights and the governance of the Internet. Discussion of gender in Internet governance often occurs as a set of stand-alone topics² rarely discussed in terms of their intersections and their interrelated nature.

This is the issues paper on the intersections of women’s rights and ICT in Uganda. The paper will be used to help structure and give guidance on content for a training curriculum for the Gender and Internet Governance exchanges (Gigx) taking place in Uganda and also in Durban, South Africa. The paper situates itself in a feminist intersectional’s approach to understanding gender and internet governance beyond internet infrastructural aspects to address legal, economic, developmental, and socio-cultural issues. The more policy-relevant questions addressed by the paper include (1) whether the internet regulatory frameworks and responses are appropriate to police the content on human rights and women’s rights delivered through the internet and (2) how is women participation in the internet governance and human rights is addressed, and (3) what important rules are in place to improve internet safety for the end users including protection against threats such as cyber-bullying, violence against women, human rights abuse, internet negligence, copyright infringement and data and privacy protection.

¹ Avri Doria 2015: Association for Progressive Communication Issues Paper; Women’s rights, gender and Internet governance October 2015

² : There are not enough women on the board! Women are subjected to violence online! Women’s lives as presented online are minimised, stigmatised and fetishised!

1.2 Definition of key concepts.

It's vital to define the key concepts in the title of this paper.

Women's rights are human rights. This is confirmed and detailed in the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women: Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women, Noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex.

Gender refers to the socially constructed identities, attributes, roles and responsibilities of men and women. The concept of gender also includes the expectations held about the characteristics, aptitudes and likely behaviors of both women and men (femininity and masculinity). These roles and expectations vary across time, economies and societies. Like race, ethnicity, and class, gender is a social category that often establishes one's life chances, influencing one's participation in society and in the economy. Gender ideologies, norms and rules have material consequences and determine women and men's relative access to, utilization, and control/ claims over different processes, structures, resources, opportunities for education, decision making, politics, leadership and management; all of which influence household economic and social wellbeing; sustainable livelihood and economic development³(World Bank, 2001).

Internet Governance. The Internet is a unique global resource and one of the largest cooperative efforts ever undertaken by humankind. Driven from the onset by a shared aspiration toward global connectivity, this intricate network of networks currently connects nearly three billion users and facilitates much of the world's communications and commerce. For many people the Internet has become a fundamental part of everyday life.

As the Internet continues to expand, the majority of the next billion users will come from developing and less-developed countries. Internet governance (IG) must evolve to meet the changing needs of Internet users, ensuring that Internet openness, inclusivity, and accessibility are promoted and delivered in emerging regions.

The definition of Internet governance has been contested by differing groups across political and ideological lines. One of the main debates concerns the authority and participation of certain actors, such as national governments, corporate entities and civil society, to play a role in the Internet's governance. Defining it was important to governments during the World Summit on the Information Society (WSIS), and a United Nations Working Group on Internet Governance (WGIG) established after the summit produced a working definition that was included its June 2005 final report of the WSIS, the Tunis Agenda for the Information Society. Over the years this definition has become standard in the field.

³ The World Bank, FAO and IFAD, 2009, *Gender and Agriculture: A Source Book*, Washington DC

*Internet governance is defined as the development and application by Governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet.*⁴

Internet governance should not be confused with E-Governance, which refers to governments' use of technology to carry out their governing duties. Shortcomings in promoting a gender specific perspective on governing the Internet are seen as an opportunity for reinventing women's inclusion at the global level. This view stems from the realization that, in a multistakeholder arrangement, only stakeholders that ground their participation in the equal-status right can count on the benefits of the collaborative process. In other words, to 'share power' with other participants requires certain efforts in identity building, coalition building, and strategy building. To be recognized as a legitimate stakeholder group, women's organizations must insist on their right to be proportionally represented at the leadership level, to participate in agenda setting and consensus building, to propose policy recommendations supported by the consensus of broad constituencies, and to require accountability from the executive governance bodies (national governments and international organizations) for the implementation of those decisions.

1.3. Evolution of women's rights in Information Communication Technologies (ICT)

Over the past four decades important gender equality mandates have emanated and been reaffirmed in global conferences, where national governments committed themselves to women's human rights promoting gender equality in the formulation of all public policies and programs. The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁵, emphasized the need to ensure women's equal access to, and equal opportunities in, political and public life, education, health and employment. The 1993 Vienna Declaration and Programme of Action, reaffirmed that "the human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights" (para. 18) and placed particularly heavy emphasis on eliminating all forms of gender-based violence.

Research conducted by the United Nations Commission on Science and Technology for Development (UNCSTD) in 1995 in preparation for the Fourth World Conference on Women identified an emerging gender divide, with gender differences in levels of access to, control of and advantages accruing from a wide range of technological developments. The commission concluded that "the information revolution appeared to be by-passing women; that information society literature was silent on gender issues, and that neither research nor practical projects in the information technology field had addressed the specific circumstances of women. Subsequently the Beijing Platform for Action (1995) called on "governments and active players to promote an active and visible policy of mainstreaming a gender perspective in all

⁴ Tunis Agenda for the Information Society (WSIS-05/TUNIS/DOC/6(Rev.1)- E, 18 November 2005, para. 34.

⁵ <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

policies and programs”⁶. Although it did not explicitly mention information and communication technologies (ICTs) nor Internet governance, its plan of action included several items which over the years have been recognized as being related to the Internet. These include strategic violence against women; objectives and actions dealing with women and poverty; education and training of women; women in power and decision-making; institutional mechanisms for the advancement of women; women and the media; and human rights of women among others. It drew attention to the emerging global communications network and its impact on public policies, as well as the attitudes and behavior of individuals. It called for the empowerment of women through enhancing their skills, knowledge, access to and use of information technologies. The Beijing Platform of action also included a strategic objective J.1 focusing on “increasing the participation and access of women to expression and decision-making in and through the media and new technologies of communication”. It recognized the need for women to be involved in decision making regarding the development of the new technologies in order to fully participate in their growth and impact.

The 23rd special session of the General Assembly of June 2000 recognized that ICT had created new opportunities for women and contributed to knowledge sharing, networking and electronic commerce activities. Member States acknowledged that poverty, lack of access and opportunities, illiteracy (including computer illiteracy) and language barriers prevented women from using ICT, including the Internet. The session called for steps to ensure that women benefited fully from ICT, including equal access to ICT-related education, training and entrepreneurship opportunities and equal access as producers and consumers of ICT through public and private partnerships. The Millennium Development Goals (MDGs) identified “gender equality and empowerment of women” as one of the goals and a crucial condition for achieving all the others (UNDP, 2009).

The World Summit on the Information Society (WSIS, Geneva 2003 – Tunis 2005) reaffirmed, among other things (i) the commitment to build a people-centred, inclusive and development-oriented information society; (ii) the universality, indivisibility, interdependence and interrelation of all human rights and fundamental freedoms. It also reaffirmed that democracy, sustainable development and human rights and fundamental freedoms as well as good governance at all levels are interdependent and mutually reinforcing (Tunis Commitment 2005).

A Forum on Gender and ICTs for the WSIS 2005 produced the Seoul-Gyeonggi Declaration on Equal Participation of Women in the Information Society which recommended establishment of multi stakeholder mechanisms at both the global and national levels, with opportunities for participation of women as mechanism for ICT governance. This Declaration also emphasized the need for sex-disaggregated data, capacity-building in gender analysis of ICT policies and programmes, increased employment opportunities for women, enhanced opportunities for women’s involvement in ICT decision-making, and investment in infrastructure and services specifically for women.

⁶ United Nations (1995). *Declaration and Platform for Action of the Fourth World Conference on Women*. New York: UN Division for Public Information UN.

In September 2005, the United Nations Division for the Advancement of Women highlighted the advances that were expected from the post-WSIS process and identified strategies for achieving the goals of gender equality in the use of ICT and the Internet during the next decade. Among others these include mainstreaming and monitoring of a gender perspective in all ICT initiatives; collecting sex disaggregated data on the use of ICT and women's participation in policy making as well as developing targets, indicators, and benchmarks to track the progress of women's and girls' access to the benefits of ICT (Avri Doria 2015).

The newly adopted UN Sustainable Development Goals include an important pledge to harness information and communications technologies (ICTs) to advance women's empowerment, as well as a commitment to connect everyone in Least Developed Countries to the Internet by 2020.

The African declaration on internet rights and freedoms Gender equality principle reaffirms that “to help ensure the elimination of all forms of discrimination on the basis of gender, women and men should have equal access to learn about, define access, use and shape the internet”. It calls for efforts to recognize and redress existing gender inequalities, including women under representation in decision making roles, especially internet governance. Realizing this principle on the internet rights requires:

- A side from addressing the gender digital divide, the creation and promotion of online content that reflect women's voices and needs, and promote and support women's rights
- Processes and mechanisms that enable the full, active and equal participation of women and girls in decisions making about how the internet is shaped and governed
- Empower women and girls to act against gender inequalities replicated on the internet, including by using tools enabling collective monitoring of various forms of inequalities, individual tools that allow track

1.3 Gender dimension of ICTs

Technologies are socially constructed and thus have different impacts on women and men. Women's capacity to exploit the potential of the new ICT as tools for empowerment is constrained in different ways. Some constraints are linked to factors that affect both women and men, including technical infrastructure, connection costs, computer literacy and language skills. These overall constraints are, however, exacerbated in many cases by gender based determinants which particularly disadvantage women.

Most poor women in developing countries are further removed from the information age than the men whose poverty they share. Women need ICT for the same reasons as men; to access information of importance to their productive, reproductive and community roles and to obtain additional resources. Access to ICT can enable women and men to gain a stronger voice in their communities, their Government and at the global level. ICT also offers women flexibility in time and space and can be of particular value to women who face social isolation, including many women in developing countries.

More and more women across the developing world are gaining access to the Internet and mobile phones, and there are high hopes that this could accelerate progress against gender inequality – progress

that has otherwise been frustratingly slow. However recent work by Web Foundation 2015, revealed that although women are almost as likely as men to own a mobile phone of their own, they are a third less likely than men of similar age, education level and economic status to use their phones to access the Internet. The most important socio-economic drivers of the gender gap in ICT access are education and age. Controlling for income, women who have some secondary education or have completed secondary school are six times more likely to be online than women with primary school or less.

2 INTERNET ACCESS AND ONLINE FREEDOMS IN UGANDA

2.1 Overview of the ICT industry in Uganda

The ICT and telecommunications industry in Uganda has grown over the last decade connecting more people to new digital media tools and platforms, particularly on internet-enabled mobile devices, in urban and rural areas alike. Uganda's telecommunications regulator reported 21.5 million telephone subscribers; 7,461,035 mobile internet subscribers; 134,350 fixed internet subscribers and an estimated 14,564,600 million internet users as of March 2016 (UCC 2016⁷).

As of March 2016, Uganda had an internet penetration rate of 39.8% and there were 59 telephone connections per 100 inhabitants. This was made possible by increasing investments in the ICT sector by the private sector and the government, proliferation of affordable smart phones and a steady decrease in internet costs spurred by a liberal competitive telecommunication sector. Internet costs, are reported to “have reduced from \$1200 to \$300 per megabit per second per month in 2010 and 2016 respectively⁸. Also many internet service providers (ISPs) provide free access to some features of social networks such as Facebook. Social media applications such as Facebook, WhatsApp, and Twitter have become significant platforms on which Ugandans connect with each other, share information, and consume news. Through the national backbone infrastructure project, government has laid a total of 1,400 kms of fibre optic cable connecting major towns and government agencies across the country. Uganda’s telecom and internet service providers are connected to high-speed submarine cables landing at the East African coast through Kenya and Tanzania (CIPESA 2015⁹).

Through the Rural Communications Development Fund (RCDF), a universal access fund, GOU has supported the establishment of internet points of presence (POPs), internet cafes and ICT training centres, among other internet related infrastructure across the country. Total Bandwidth (mbps) was reported to be 38,606.7 while Bandwidth per million inhabitants stood at 1,055.0. The Bandwidth is noted to have increased network capacity to carry larger volume of information per second from one location to the next; improved network performance facilitating higher speed internet services to internet

⁷ Uganda Communications Commission; 2016: Posts, Broadcasting and Telecommunications Market and Industry report January-March 2016.

⁸ qz.com/797349/Uganda-is-giving-free-wi-fi-in-kampala-every-night-but-only-for-access-to-good-websites

⁹CIPESA; 2015: State of internet freedom in Uganda

users (UCC 2016). Towards close of September, Uganda's government started offering free Wi-Fi services in the capital Kampala between 6 pm and 6 am on weekdays, and from 3 pm to 6 am on weekends as part of an initiative to broaden the reach of internet access to the public¹⁰.

While freedom to access the internet is generally unfettered, access is mainly restricted by infrastructural and economic reasons. Internet speeds are still slow, averaging just over 1.5 Mbps (compared to a global average of 4.5 Mbps¹¹). Only 18.7% of Ugandans live in urban areas, and just over 650,000 people, out of a total estimated population of 37.5 million, were reported to have access to electricity by the national distributor in 2014. Despite the enthusiasm for connectivity in the capital, the rural regions of Uganda remain grossly underserved. The majority of Ugandan women live in rural areas, constituting more than 90% of citizens, particularly the northern region, and therefore do not have consistent access to electricity or telecommunication services, including limited internet access. At present, mobile cellular signals cover almost 100% of the population, but in rural areas these signals are weak and huge improvements are needed, including reduction of broadband costs as well as tax burdens, which are three times as high as the average in Africa (CIPESA 2015; Second Muse; CIPESA and i Freedom Network of Uganda 2016¹²).

2.2 Women's access to the internet in Uganda

The Constitution of the Republic of Uganda 1995 provides for affirmative action and empowerment of women under Articles 32 (1), 33 (5), 78 (b) and 180 (b) while the National Gender Policy recommends gender mainstreaming as a strategy for addressing gender imbalances. Uganda also has a National Equal Opportunities Policy. Uganda is a signatory to various international commitments, key among which are: CEDAW, the Beijing Platform of Action, and the Sustainable Development Goals.

Women in Uganda constitute 51% (17,573,818) of the total population. Out of 7,306,942 households in Uganda, 1,761,575 (24%) are headed by women while 7 million people out of total population of 37 million reside in households headed by women. The efforts of government and other stakeholders towards improvement of the status of women and the promotion of gender equality notwithstanding; most of the women in Uganda still face a wide range of challenges, including discrimination, low social status, lack of economic self-sufficiency, high illiteracy levels and greater risk of HIV/AIDS infection. The struggle to eliminate discrimination and inequalities in Uganda emphasizes the need to address the different development concerns of women (The Equal Opportunities Commission 2016)¹³.

¹⁰ <http://www.ntv.co.ug/news/local/19/oct/2016/ict-minister-frank-tumwebaze-tests-kampalas-free-wifi-hotspots-14668>

¹¹ <https://freedomhouse.org/report/freedom-net/2015/Uganda>

¹² Second Muse; CIPESA and i Freedom Network of Uganda May 2016: Understanding Internet Freedom: Uganda's LGBT Human Rights Defenders

¹³ The Equal Opportunities Commission 2016: Annual report on the state of equal opportunities in Uganda 2015/16

The internet has become a key space to facilitate the exercise of fundamental rights and freedoms, especially to access critical information, to build knowledge, express thoughts and beliefs, to form networks and communities and to mobilize for change, the development and growth of internet access and services indicates women's central roles in social, political, economic and cultural life. The centrality of internet as a human right has grown along this development¹⁴. In a speech on 30th September Hon Frank Tumwebaze, the country's minister of information and communication, said that Internet access is no longer a luxury but a necessity for all Ugandan citizens"

Although the internet can present significant opportunities for advancing gender equality, women's empowerment and equitable development, there is an ever-widening digital gender gap. Recent work by World Web-Foundation 2016¹⁵, illustrates the reality of the existing gender inequalities in internet access and use in Uganda. The reports quotes a survey carried out in 2014 by the Uganda Communications Commission which found that only 6% of women in Uganda are online. Kampala has the largest gender gap in internet access across 10 cities surveyed by research commissioned by the World Wide Web Foundation. Only 21% of women reported having used the internet, compared to 61% for men.

The gender gap in internet access in Uganda is perpetuated by a number of 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. These constraints hinder women's ability to actively participate and influence ICT policy and decision making processes. Women must be at the forefront of ICT Policy making processes for the internet to be a transformative space for all (WOUGNET Policy Brief 2016)¹⁶.

Ugandan women on average have a limited ability to afford, adopt and benefit from broadband access. Despite the fact that prices have been dropping, 1GB of data costs more than 22% of average monthly income (World Web Foundation Report Card Uganda 2016). Women are far less likely to be able to access the internet affordably than men. The 2014 Alliance for Affordable Internet's Affordability report noted that though entry-level mobile broadband costs 18.2% of GNI per capita in Uganda overall, but 26% of GNI per capita for women when adjusted for the gender gap at 30% lower incomes.

One of the most pressing barriers affecting women is illiteracy. While 71% of the Ugandan population over the age of 10 can read or write at a basic level, literate men far outnumber literate women: 77% of men are literate compared with only 65% of women (UBOS 2014¹⁷). Furthermore, only 23% of adult

¹⁴ Women's Rights Programme Association for Progressive Communication October 2012; Going Visible: Women's Rights on the internet

¹⁵ World Web Foundation; 2016, Women's Rights On-line, A report Card Uganda

¹⁶ WOUGNET Policy Brief 2016; Cyber infrastructure a women's issue too! Advancing a gender sensitive approach to ICT policy and decision making in Uganda".

¹⁷ Uganda Bureau of Statistics 2014; Uganda National Household Survey (UNHS) 2012/13

women in Uganda have any secondary education, defined as education beyond the age of 12. The World Web Foundation 2016, reports that a third of the women surveyed in poor areas of Kampala cited lack of know-how as the reason stopping them from using the internet. Even though relevant content about reproductive and sexual health rights is available on-line, the information is not comprehensive and is often only available in English.

Rural women still face unique barriers to access. In contrast to urban centres, rural areas are often serviced by internet telecentres, a central hub where a given population has access to internet-connected computers. Travel time to telecentres can be long, and a limited number of computers further limit access. Connections are often slow, and pay-per-minute access can make them costly. Aside from distance and cost, women may also face resistance from family members.

2.3 Technology-related Violence Against Women On-Line

ICT use can be considered a gendered issue, as technology-related violence against women (tech-related VAW) has become prevalent. Such forms of female-targeted violence “include cyber stalking, sexual harassment, surveillance, and unauthorized use and manipulation of personal information, including image and video format.” Technology related violence acts as a significant barrier to women’s meaningful engagement with the internet. Cyber stalking, online sexual harassment, blackmail through the use of private and often sexualized information, photographs and videos, and the forwarding of content that depicts, promotes and normalizes violence against women are becoming increasingly documented and faced by women and girls who use the internet in Uganda (WOUGNET “Take Back Tech! campaign; CIPESA 2015; Mandada et al 2009¹⁸). According to World Web Foundation 2016; 45% of female internet users in Kampala reported having experienced on-line threats.

Intimidation, threats of violence, and technical attacks against vulnerable groups and marginalized communities, particularly the LGBTI community, were frequently reported and remained a growing concern in Uganda in 2014-2015¹⁹. LGBTI activists, in particular, have reported increasing harassment, both offline and online, in recent years, with hate messages often pervading targets’ Facebook walls. In July 2014, Magembe Norma, an individual who created a petition on Change.org for the prosecution of Uganda’s top three leaders behind the anti-homosexuality movement in the country, reported that his life was in danger as a result of his online petition and activism. Also, increased cases of revenge pornography against female celebrities were reported in 2014-2015²⁰

¹⁸ Aramanzan Madanda, Berna Ngolobe and Goretta Zavuga Amuriat 2009; Uganda: Violence against Women and Information and Communication Technologies

¹⁹ <https://freedomhouse.org/report/freedom-net/2015/Uganda>; and Second Muse; CIPESA and i Freedom Network of Uganda May 2016: Understanding Internet Freedom: Uganda’s LGBT Human Rights Defenders

²⁰ <https://freedomhouse.org/report/freedom-net/2015/Uganda>

Sexualized violence against women in Uganda, with their nude pictures circulated on social media platforms without their consent, is another issue that the Ugandan government must address to prevent violence against women online. In 2015, there were several cases of the non-consensual transmission of intimate videos and photos. However, instead of the authorities punishing the perpetrators, it was the victims who were harassed and the government even threatened the shutdown of social media platforms involved. Gender experts note that many cases go unreported due to a culture of silence and limited legal recourse or resources to seek justice.

For those Ugandans who are online, the internet is only “partly free”. According to the 2015 Freedom House rankings, the Ugandan government is increasing its surveillance of Ugandan citizens, thus rendering the internet less conducive to freedom of expression and discussion. VAW on-line creates a hostile online environment and can cause women and girls to disengage from the internet due to fear for their safety. Technology-related forms of violence that are committed, aggravated and abetted by ICT must be recognized as a form of violence against women and be integrated in monitoring, prevention and response mechanisms, including in public policy and in expanding the implementation of anti-VAW laws. This includes the articulation of the duties and responsibilities of actors involved in preventing and responding to reported violations, including actions to minimize continued harm.

3 THE PRINCIPLE INSTITUTIONS ACTORS, AND PROCESSES RELATED TO ICT
Institutions and actors involved

Table 1: summary of the principle institutions actors, and processes related to ict

| Internet governance institutional framework | Internet governance policy framework | Information society governance |
|---|--|---|
| <p>The international governance of the internet should be;</p> <p>Multilateral Transparent Democratic And full involvement of government, the private sector, civil society, and international organizations</p> | <p>Goal:</p> <ul style="list-style-type: none"> • an equitable distribution of resources • facilities access • ensure stable and secure funding of the internet with multi lingolism | <ul style="list-style-type: none"> • Partnership among stakeholders • Access to infrastructure and services • Access to information and knowledge • Capacity building • Confidence and security in the use of ICTs • Enabling environment • Social and economic application • Cultural and linguistic diversity • Freedom of communication media • Ethic dimensions • Interventional and resource allocation |

| | | |
|--|---|--|
| <p>Actors</p> <ul style="list-style-type: none"> • United Nations • Regional governments • National governments • Private Sector • CSOs • International organizations | <p>Actors and Roles</p> <ul style="list-style-type: none"> • State: public policy • Private sector: technical and economic decisions • Civil society: community development • Intergovernmental organisation: facilitate coordination for policy issues <ul style="list-style-type: none"> • I n t e r - organizational: development of technical standards and relevant policies | <p>Actors</p> <ul style="list-style-type: none"> • United Nations • Regional governments • National governments • Private Sector • CSOs • International organizations |
|--|---|--|

Source: WSIS

4. INTERNET GOVERNANCE AND GENDER ISSUES IN UGANDA

4.1. ICT REGULATORY FRAMEWORK IN UGANDA

The trend of ICT policy in Uganda has been moving towards greater privatization while maintaining an active government role in regulating telecommunications. In 1996 and 1997 the government issued the Telecommunications Sector Policy Statement and the Uganda Communications Act which set into play liberalization and privatization processes in the ICT industry. The Uganda Communications Act of 2013 formalizes convergence in the ICT sector with regulation of the telecomm and the broadcasting sector under the Uganda Communications Commission (UCC). The UCC is also tasked to include three women on its board. Objective 10 in the National ICT policy focuses on gender mainstreaming. Its strategies call for taking into account gender information needs and interests of both men and women in all communication programs; develop mechanisms of increasing women’s access to information so as to reduce the gender information gap, use non discriminative gender sensitive language in information and communication programs and ensure equal participation in all aspects of ICT development. However absence of a gender sensitive monitoring and evaluation mechanism makes it difficult to implement such provisions.

Currently Uganda has several laws and policies governing ICT these include: The National ICT Policy, 2013; the Uganda Communications Act, 2013; the NITA-U Act, 2009; The Computer Misuse Act 2011;

Electronic Transactions Act 2011; The Regulation of Interception of Communications Act, 2010; and the Access to Information Act, 2005.

Although Uganda has ratified several international conventions that require upholding of human rights and gender equality (see annex 2) and the country's constitution provides for citizens' right to freedom of expression and privacy, under Articles 29, 27 and 41, there are numerous laws that constrain freedom of expression on the internet as well as offline, and have been used to either prosecute or intimidate internet users (CIPESA 2016²¹; WOUGNET Policy Brief 2016). Sections of the penal code, and the Anti-Terrorism Act—appear to negate these constitutional guarantees for freedom of expression. The penal code contains provisions on criminal libel and the promotion of sectarianism, imposing penalties that entail lengthy jail terms. While none of these laws contain specific provisions on online modes of expression, they could arguably be invoked for digital communications and generally create a “chilling effect” on freedom of expression both online and offline (<https://freedomhouse.org/report/freedom-net/2015/Uganda>).

Growing access and affordability of ICT and the attendant benefits it offers citizens could, be undermined by laws that infringe on internet rights, subtract from citizens' privacy and the protection of their data. The Regulation of Interception of Communication Act, the Computer Misuse Act, the Anti-Pornography Act, and the Uganda Communications Act, 2013; have been widely criticized for violating individuals' right to privacy on the internet. The right to privacy is threatened under the Ugandan cyber laws as various provisions enable both targeted and mass surveillance of individuals' communications, as well as search and seizure of private mobile electronic gadgets and computers. The level of evidence required for a warrant to be issued is as a rule extremely low and the judicial involvement in the process of issuing warrants is either unclearly defined or lacking totally. The Data Protection and Privacy Bill, 2015 which was tabled in parliament needs to have stronger privacy safeguards and in its current form falls short of protecting the privacy of Ugandan citizens which the country is obliged to uphold under both national laws and international instruments. The Uganda Communications (Amendment) Bill, 2016, seeks to give the executive arm of government outright powers to control communications in any way the sector minister deems fit and human rights activists fear this largely intended to gag free speech on social media (Unwanted Witness and Civil Rights Defenders 2016; CIPESA 2016; freedom house.org 2015; Unwanted witness, CIPESA, EHAHRDP and PI 2016)²².

The country has witnessed internet shutdowns and other unlawful limitation to enjoyment of fundamental rights on-line. In 2011, the UCC directed all service providers to temporarily block access to certain services which included Facebook and Twitter in fear of these social media networks being

²¹ CIPESA September 2016: State of Internet Freedom in Africa 2016

²² Unwanted Witness and Civil Rights Defenders 2016: Analysed Cyber laws of Uganda, 2016

<https://freedomhouse.org/report/freedom-net/2015/Uganda>;

Unwanted Witness, CIPESA, East and Horn of Africa Human Rights Defenders Project (EHAHRDP), and Privacy International (PI); March 2016: Rights to Privacy in Uganda; Stakeholders Report Universal Periodic 26th Session Uganda.

used to escalate opposition protests. In 2016 UCC blocked access to social media networks in February 2016 just before and after the Presidential elections and again in May before the re-elected President was sworn in (CIPESA 2016; freedomhouse.org 2015) .

4.3. PARTICIPATION OF WOMEN IN INTERNET GOVERNANCE

Increasingly women are represented in fora that discuss internet governance issues. The representative for the Uganda Ministry of ICT to the International Committee Assign Names and Numbers is a woman; both the President and Secretary General of Internet Society Uganda chapter are women. Women are active in the annual events of the Uganda Internet Governance Forum. The UIGF events which are organized by the Internet Society Uganda chapter in partnership with CIPESA bring together representatives from government- UCC, NITA-U, Ministry of ICT, I-Network, LUG, Members of Parliament, Uganda Police-, civil society, academia, private sector, entities and individuals interested in Internet Governance (IG) issues.

Since inauguration of UIGF in 2006, 10 forums have been held to discuss and address Internet Policy issues in Uganda and East Africa with each addressing different thematic areas. Key areas addressed over the years include: - Status of implementation of the Universal Service Fund; Internet cost/bundling; extent of Uganda's compliance with regional legislative and regulatory frameworks; Cyber security/safety especially among vulnerable users including VAW online; Data protection and privacy in the new era of internet; review of the Data protection and privacy bill, Child Online Protection; Status on the operations of the Uganda Internet Exchange Point, Internet censorship and surveillance; Net neutrality implications for Uganda internet users; Internet and business innovation; Internet and big data; Internet and e-government; among others.

At the national level the ICT Association of Uganda brings together different stakeholders to discuss issues pertaining to the sector. Women organizations also participate in consultative meetings organized by NITA Uganda to engage stakeholders on policy; though agenda setting and taking on board stakeholder views remains firmly at the discretion of the NITA U.

At the regional level, the Forum on Internet Freedom in East Africa has organized panel discussion on women's rights on line. The East African Governance Forum brings together Kenya, Uganda, Burundi and Rwanda. Ugandan women also participate in the African Internet Governance Forum that is committed to advancing an understanding and upholding of internet freedoms and how they impact media freedom, free expression, and privacy for a range of civic actors such as journalists, human rights defenders, sexual minorities, women, political actors, and bloggers. Three African Internet Governance Forum events have been organized to date and Uganda has participated in all of them. The 2015 forum brought together 200 human rights defenders, journalists, government officials, bloggers, developers, and representatives from academia, the arts community, law enforcement agencies, and communication regulators from 18 countries while the inaugural 2014 forum, hosted 85 participants from six countries.

The above notwithstanding, there is still little representation of women in ICT policy and decision-making bodies. Only by integrating representatives of women who understand gender-sensitive ICT

issues into the policy-making process will it be possible to address crucial development opportunities and infrastructural gaps. Broadening the conception of who has a stake in ICT policy will inevitably produce a more robust and prosperous future for Uganda (World Web Foundation 2016; WOUNET Policy Brief 2016; CIPESA 2016).

Recommendations

Women in general and especially women with a gender oriented agenda need to get involved with the Internet governance institution of their choice and need to look toward leadership. Given cultural barriers and the difficulty most new participants, especially women, have with asserting themselves. The best method for bringing people into the organization is to use trailblazers or mentorship systems that can help guide and assist with the organizational web and the young women on board. In terms of getting gender issues into the agendas, there are two problems that need to be overcome, (1) the fact that the other stakeholders, including many from civil society, do not recognize the problems as existing and (2) that finding the appropriate venue can be challenging. Currently, women's issues get mentioned once or twice in every major meeting but they are neither explored nor discussed in any detail. The solution to this problem involves educating the other stakeholders of the critical nature of gender issues. This cannot be done solely through well spoken representatives. Rather gender experts need to be persistent in submitting comments on varied and sundry topics under discussion, presenting gender analysis of the situation, whether it is public and privacy or cyber security and women's rights.

- Women should be involved in all stages on ICT policy implementation so that their views are included into policy formulation. 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 sensitive. Pass comprehensive data protection legislation that meets international standards and establish an independent data protection authority that is appropriately resourced and has the power to investigate data protection breaches and order redress;
- Gender auditing including a monitoring and implementation framework must be in place to ascertain progress in implementation and outcomes. Government should have a Monitoring and Evaluation Framework for all gender and ICT policies so that actual benefit accrues to the common person. Improvement of statistical information related to equal opportunities, marginalisation and discrimination with UBOS and other statistical production stakeholders.
- Civil society organizations need to combine efforts and have an ICT strategy for engagement with policy makers and other stakeholders
- All stakeholders views should be integrated into all ICT consultative processes and such processes must be exhaustive enough for all views to be captured

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Annex 1 Notes on cost.

Uganda is experiencing a decline in internet access costs. In 2012, the daily cost of mobile browsing for 20MB of data was UGX 500 (US\$ 0.14) while a limited monthly mobile bundle for 1GB cost UGX 30,000-49,000 (US\$ 9 – 14). As of September 2016, average daily cost for mobile browsing for 10MB was UGX 300 while 1GB costs between UGX 35,000(US\$ 10.4) on the MTN Uganda, Africel and Airtel Uganda. With new market entrants, the internet market is competitive with speeds being a key customer choice determinant.

Annex 2: Details on analysis of cyber laws in Uganda

Uganda has ratified several international conventions that require upholding of human rights and gender equality. The Universal Declaration of Human Rights (UDHR) is the earliest human rights instrument

that fostered the international Bill of Rights and over 80 of the international conventions, declarations and human rights standard setting instruments. Uganda ratified the International Covenant on Civil and Political Rights ('ICCPR') on 21 June 1995 and the Optional Protocol to the ICCPR on 14 November, 1995. Article 17 of the ICCPR provides that "no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation". The Human Rights Committee has noted that states party to the ICCPR have a positive obligation to "adopt legislative and other measures to give effect to the prohibition against such interferences and attacks as well as to the protection of this right [privacy].

The Constitution of Uganda reflects many of the ICCPR provisions. Freedom from discrimination is enshrined in Article 21(2) of the Constitution which states that a person *shall not be discriminated against* on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion or social or economic standing, political opinion or disability. Uganda ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) on 21 January 1987. The ICESCR, like the ICCPR, affirms emphatically that all persons are entitled to enjoy the full range of human rights *without discrimination based on any distinction* such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Uganda signed the African Charter on Human and Peoples' Rights (Banjul Charter) on 10 May 1986. The Banjul Charter is a unique instrument of the African Union that distinctly emphasises peoples' rights and African values. Uganda ratified CEDAW on 22 July 1985 with no reservations but is yet to ratify the Optional Protocol to CEDAW that allows Ugandan women to register individual complaints with the Committee on CEDAW.

The Regulation of Interception of Communications Act 2010 allows for the interception of communications. The law gives the ICT minister the powers to set up a monitoring centre connected to telecom service providers' systems. To date, there is no evidence that such a centre exists. Additionally, the Anti-Terrorism Act 2002 gives security officers the power to intercept the communications of a person suspected of terrorist activities and to keep suspected persons including journalists who "promote terrorism - under surveillance". The scope of the interception and surveillance includes letters and postal packages, telephone calls, faxes, emails and other communications, access to bank accounts, as well as monitoring meetings of any group of persons.

Meanwhile, the Anti-Pornography Act 2014 provides for the prohibition of the production, traffic in, publishing, broadcasting, procuring, importing, exporting and selling or abetting any form of pornography and punishment for those found to be in possession of any pornographic materials. Under section 17 (1), an Internet Service Provider (ISP) through whose service pornography is uploaded or downloaded is punishable with a fine of up to UGX 10 million (US\$ 3,000) or five years imprisonment or both. Subsequent conviction of the ISP may lead to the suspension of their operating license. Anti-Pornography Act, 2014, which requires ISPs to monitor online content to identify and remove content considered pornographic. In its efforts to clamp down on pornography, the government invested in an \$88,000 pornography-detection machine, bought from a South Korean company in August 2016, the minister for Ethics told the press that the country had purchased a machine to detect and remove pornographic content from the Internet, social media sites, blogs and phones.

The 2011 Computer Misuse Act includes provisions that can specifically limit freedom of expression online. The Act makes it an offence for a person to make a communication that will “disturb the peace and quiet or right to privacy of a person”. However, it does not define the circumstances under which such can be applied hence making any form of cyber communication potentially capable of being an ingredient of such a crime. The Act has a broad definition of a computer, which covers all types of electronic or electromagnetic systems capable of storing or transmitting data. The broad definition of a computer means any person using an electronic or electromagnetic system has a duty to act within the confines of the Act, failure of which that person commits one of the several offences under the Act. The broad nature of this Act was tested in *Nyakahuma vs. Uganda*³² where in a High Court reference to determine whether posting materials on the internet amounted to publication within the meaning of the Penal Code Act³³, the judge ruled that the broad nature of the Computer Misuse Act captured all forms of posts made on cyberspace irrespective of the tool used to post. Offences under this provision of the Act are considered misdemeanors and subject to fines, imprisonment of up to one year, or both (CIPESA 2016).

The Uganda Communications Act 2013 awards the Uganda Communications Commission (UCC) the power to “direct any operator to operate a network in a specified manner in order to alleviate the state of emergency”, as defined by the Constitution, “during a state of emergency in the interest of public safety” under Section 86. But neither of those terms are defined in the Act, and in accordance with the Constitution, it is the President who declares a state of emergency.

The Communications (amendment) Bill 2016 seeks to amend section 93(1) of the Communications Act, 2013 to enable the minister to make regulations for the sector without seeking parliamentary approval. There are fears that, if this amendment passed, the ICT minister could single-handedly issue tough rules against social media use, but the government denies this.

Government efforts to draft a Data Protection and Privacy Bill were seen as a positive step towards promoting the right to privacy, but the draft was later criticized for its broad and vague conditions in which personal data may be collected, thus leaving it open to misinterpretation and mis-use. Notably, the Data Protection and Privacy Bill, 2015 which is reported to have been tabled in parliament and only gone through a first reading falls short of protecting the privacy of Ugandan citizens. It needs to have stronger privacy safeguards but, if passed in its current form, it would not be the only law in Uganda to breach citizens’ rights which the country is obliged to uphold under both national laws and international instruments.