

Uganda's ICT Laws and Policies from a Gender Perspective, 2016

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Introduction.

A survey carried out in 2014 by the Uganda Communications Commission 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 Foundation¹. Only 21% of women reported having used the internet, versus 61% for men. The gender gap in internet access in Uganda is real and 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 in partnership with the Association for Progressive Communications (APC) conducted a desk review to ascertain the gender responsiveness of ICT policies and laws and create advocacy and awareness surrounding the need for more participation of women in ICT discussions, policies and decision making processes. The analysis of the laws was done on several of the existing country's legislations including on Data Protection and Privacy Bill, the Electronic transactions and Signatures Act, the Computer Misuse Act and the Regulation on Interception of Communications Act among others.

1.0 Data Protection and Privacy Bill, 2015

The current progress of the Data Protection and Privacy Bill is uncertain, however the last updates received indicated that it has been tabled in parliament and only gone through a first reading. A close analysis on this Bill realized the following gaps:

The Data Protection Bill has many issues to contend with². First, there are issues regarding the current set of personal data and information that is in the hands of Telecom

Companies, Government, Internet Service Providers [ISPs] and Private sectors such as Banks, Secondly, there are concerns on the aspects of data that is already out and the lack of provisions on; who is permitted by law to collect and own this data and under what circumstances can it be used or even may be misused. Furthermore, the Bill doesn't provide for the length of time they should be in possession by any entity and how or where they should dispose of it. This laxity in

the bill may promote online harassment and violence against women as no checks and balances are provided within the Bill. The elements of online violence and harassment against women are not limited to hate speech (publishing a blasphemous libel), hacking (intercepting private communications), identity theft, online stalking (criminal harassment) and uttering threats but can also entail convincing a target to end their lives (counselling suicide or advocating genocide). The Internet also facilitates other forms of violence against girls and women including trafficking and sex trade. A law on data protection would help minimize cases of violence against women and girls that they are likely to face online.

The Bill does not emphasize the need to include security of personal data that is in the hands of government, private institutions and individuals. Provisions for data access exemptions that are used as a scapegoat by government can be found in Article 41 and general limitations in Article 43 of the Access to information Act. These however are not clear and seem to suggest that private data collected by a public institution or any private institution contracted by government to attain personal data, does not belong to the owner but rather to the institution to use it as they see fit. It may also imply that it is the right of these institutions to attain this information and that a citizen has no legal avenue to contest the use of his/her personal data in the courts of law. If such data is in the wrong

hands, then it can be used against the rights of women and girls hence infringement of their privacy. This may include accessing women's private data without consent, monitoring, tracking and surveillance of women's online and offline activities, doxxing (researching and broadcasting personally identifiable information about an individual without consent) and other acts such as divorcing a husband and he exposes your private nude photos online among others

A closer analysis of this Bill found that it lacked gender specific provisions that protect women. It also lacks clear provisions for the privacy and protection of other vulnerable groups like, children and the elderly. It denies them the protection they need particularly in instances where they are named and their identity shown on televised programs including news putting them at risk of being ostracized, denied justice or even being sentenced by the communities they live in without a proper legal trial. It also doesn't protect the rights of sexual minorities who may be victimized due to their sexual orientations by communities or people around them. The lack of legal provisions that protects women and girls may lead to women's/ girl's identity theft including deleting, changing or faking personal data, photos/videos of women who may be of target

In general, the bill is lacking in a clear justification for data surveillance. It needs more legal guidance, research and needs to be benchmarked against and consulted

with similar and already functional legal instruments elsewhere in the world. Stakeholders also need to be involved in what should consist a lengthy and thorough consultative process as a large part of its

review procedure. It's important that a large section of women organizations and rights activists are engaged in a nationwide consultation so that women's view and perspectives are integrated in the bill.

2.0 The Electronic Transactions Act, 2011

The electronic transactions act 2011 gives express powers to security and state apparatus without clear checks and balances. This excessive powers vested in the organs of the security can be used to violate individual freedom of speech, and expression and can be used to target activist and those whose views are deemed critical of the State. Activists including female politicians, opposition leaders have expressed fears over state mercenaries bent on monitoring and surveilling citizens online.

Act 7 section 26 looks at unsolicited goods, services or communications. Subsection 2 of the Act talks of the penalty to a person who sends an unsolicited commercial communication to a consumer outside the provision of that act³. However, the Act only stops at commercial communications and does not provide for a person or institution sending Non-Commercial Messages. Non-Commercial messages may include those

that contain hate speech, sexual harassment, identity theft, doxxing etc. of which majority of women are likely to fall victims either from their intimate friends or those outside. This may damage credibility and reputation of such women who may be targeted by the wrong doers

Act 8 of the Electronic Transactions Act subsection 36 provides power of the Minister to amend schedule. It states that the Minister in consultation with NITA-U may by statutory instrument, within the approval of cabinet amend the schedules. The major critique of this act is that it by pass the roles of Parliament – the legislative body and rather gives excess powers to political authority to cause amendments that can be politically exercised in order to target political opponents, activists, sexual minorities and citizens and these may also include women politicians or female student leaders whose views may seem critical of the State.

3.0 Regulation of interception of Communications Act 2010

Part II – Control of interception and establishment of a monitoring Center.

This act has been massively criticized because it provides for lawful interception including all postal communications. It provides powers within part VII of the Anti-terrorism act of 2002 for security organs and operatives to intercept any communications in the course of its transmission by means of a telecommunications system or radio communications. The provision of the act says that interception is allowed only if; the person to be intercepted is party to the communications, he or she has the consent of the person to whom or the person by whom, the communication is sent or is authorized by a warrant. However, we have seen cases of communications surveillance in Uganda targeted at political leaders without their due consent and warrant.

In March 2014, the media in Uganda were flooded with stories of the fate of the country's former Prime Minister, Amama Mbabazi. According to one Newspaper, an opposition politician was noted as having remarked of how the former Prime Minister" seems to be the first victim of a repressive law that clearly violated the right to privacy". The comments arose when private conversation between then Prime Minister and his wife that had been allegedly secretly recorded were played back at a caucus meeting of the ruling party to which the Prime Minister belonged. The

"repressive" law was the Regulation on interception of communication Act 2010. It should be noted that the 1995 Uganda Constitution under article 27 States that "No person shall be subjected to unlawful search of the person, home or other property of that person, or unlawful entry by others of the premises of that person" and that "no person shall be subjected to interference with privacy of his home, correspondence, communications or other property".

Furthermore, article 29(1)(a) states that every person shall have the right to freedom of expression and speech which includes freedom of press and other media". The data protection bill in Uganda has not been passed as an act of parliament and assented to by the President. The extent to which this law is largely used or misused to violate the rights and freedoms of citizens including women and women activist remains.

Furthermore, the same act provides for the extent of lawful interception of communication. It provides that "A warrant shall be issued by a designated judge to an authorized person referred to in section 4(1) if there are reasonable grounds for a designated judge to believe that" –

(d) the gathering of information concerning a potential threat to public safety, national security or any national economic interest is necessary.

However, none of the above law seems to have applied in the case involving the former Prime Minister.

The regulation on interception of communications, does not highlight social media being intercepted at any one time and yet there are excessive efforts by the State to monitor the operations of online users. Social Media has already been shut down in Uganda twice. The unlawful surveillance on online users are breach to privacy freedoms of individuals online. The act of monitoring users online is likely to deter many women

and girls who may feel that the internet is no longer a safe place for engagement and thus such women would rather prefer to stay offline. Social media shutdowns on the eve of the Presidential elections in Uganda in 2016 and also during the Swearing in Ceremony of President Museveni is a violation of freedoms of speech of individuals. The fact that Government can wake up anytime to shut down online communication platforms in itself portrays that ability of the state to monitor, surveil and miss use people's personal data and information without any reprieve.

4.0 The Uganda Communications Act, 2013

The Act is generally silent on women as unique groups with different interests and how the act impacts on them. There is only one specific area for which reference to women is made and that is under the composition of the Board of Commission. The Act says the Board shall consists of the following “All members of the Board shall be appointed by the Minister with approval of cabinet, one of whom shall be a person with disability and at least 3 of whom shall be women”

Under the right to broadcast, the act stipulates that a person shall not take any action which

is not authorized under the act or other law, on account of content of a program to prevent broadcasting of a program. However, the law does not provide for “broadcast of phonographic material and obscene publications or any broadcasting which infringes upon the privacy of any individual”. TV programs such as “Kalondozi”, print media publishing pictures of female celebrities and women activists are few examples under which some of these laws have been ineffective and yet this affects the extent to which women's use of online spaces are shaped.

5.0 The National Information Technology Uganda E-government Regulation 2014

The policy is generally written with legal language which may be difficult for women to understand. It assumes everyone are targeted.

Page 3 of the policy, under the objectives, one of them states “To promote the use of the internet to provide increased opportunities for citizen participation in government”. The word citizen is an inclusive word; which take every one to be equal and yet it is not the case. The citizens should be further defined as men, women, youth etc

The policy is using words like public bodies, private bodies such as government department, cabinet, parliament, court, local administration etc (page 3). It assumes that through the public bodies both men and women will be targeted, and they will be able to access and use the e-government services, which may not be the case. Men and women under the bodies who are to use or be responsible for the services should be defined.

6.0 The Telecommunications (Licensing Regulation of 2005)

This gives the commission control over all telecommunication devices, equipment and parts or components used in providing telecommunication services. Meaning if the commission is not satisfied with the applicants, they can bar them from operating the services. And this may affect women applicants who may not have all the requirements. Or scare them away for the procedures to be followed and requirements.

Under the Application process, the act notes that this would be done in competitive way. It states “The commission shall tender for a license using the competitive bidding method

of selection of license”. Application/ bidding process should be gender sensitive and the guidelines used should be gender sensitive. The open method will exclude women. Clauses like “women are encouraged to apply “should be used.

Licensing procedures should include gender considerations e.g. should mainstream gender. For example, a ratio be applied to both men and women that gives them equal access.

The policy is also written generally it does not have gender considerations especially statements that encourage women

Key recommendations:

- 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
- Gender auditing including a monitoring and implementation framework must be in place to ascertain progress in implementation and outcomes
- Women should be involved in all stages on ICT policy implementation so that their views are included into policy formulation
- 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
- Government should have a Monitoring and Evaluation Framework for all gender and ICT policies so that actual benefit accrues to the common person.

Closing the gender gap in ICT;

These recommendations are drawn from the report card on Uganda in which WOUGNET and web foundation research also draws from⁴

- Improve access and affordability
- Focus on digital empowerment training for women entrepreneurs
- Prioritize relevant online content for citizen participation
- Protect Women's Digital Rights
- Stop gender based violence online and offline.

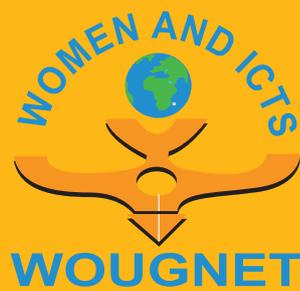
(Endnotes)

¹ Women's Rights Online Gender gap audit <http://webfoundation.org/about/research/digital-gender-gap-audit/>

² Data Protection and Privacy Bill <http://www.nita.go.ug/publication/draft-data-protection-and-privacy-bill>

³ Laws and Regulations <http://www.nita.go.ug/laws>

⁴ Women's Rights Online: Report Card http://webfoundation.org/docs/2016/09/WF_GR_Uganda.pdf



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