

How Recently Enacted Laws Undermine Ugandan Citizens' Rights

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Introduction

Uganda has in the recent months passed a raft of legislation, which human rights defenders say detract from citizens' freedoms. These laws and policies were passed in the context of shrinking space for the opposition, civil society and the media, and come two years to presidential elections in which President Yoweri Museveni – who has been in power for 28 years – is widely expected to contest.

This brief reviews three laws (The **Anti-Pornography Act 2014**, The **Public Order Management Act 2013** and The **Anti-Homosexuality Act 2014**), the Non Government Organisation (NGO) **Amendment bill** and the **2014 Press and Journalist regulations**. The brief also outlines the implications of these laws, regulations and the proposed law on the work of civil society organisations.

Uganda Governance and ICT Indicators

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| Population | 36.3 Million |
| Number of cellphone subscriptions | 16.8 Million |
| Number of internet users | 3.5 Million |
| Party System | Multi Party |
| Number of Registered Political Parties | 38¹ |
| Ruling Party | National Resistance Movement (NRM) |
| Corruption Perception Index | Rank 140 out of 177 countries² |
| Press Freedom | 'Partly Free'³ |

The Anti-Pornography Act, 2014

This Act prohibits the production and consumption of pornography. Section 13 (1) states: "A person shall not produce, traffic in, publish, broadcast, procure, import, export, sell or abet any pornography." This is criticised as a violation of adult users' rights to access information and the right to conscience. The law allows police officers who have a warrant to search premises where there is an object containing pornography or an act or an event of a pornographic nature.

Under, Section 17 (1), internet service providers (ISPs) whose systems are used to upload or download pornography can be imprisoned for five years and fined US\$4,000. They are required to install software to block access to porn by devices such as computers and mobile phones. Critics say the law should only require service providers to detect and suppress child pornography and that adults who consume adult pornography in private should not be

¹ The Electoral Commission of Uganda, <http://www.ec.or.ug/regdparty.php>

² Transparency International, Corruption by Country, <http://www.transparency.org/country#UGA>

³ Freedom House, Freedom of the Press 2013: Uganda, <http://www.freedomhouse.org/report/freedom-press/2013/uganda#.U0z9scZ87Rc>

proscribed as is the case with the law.

Furthermore, different voices in the Uganda ICT community contend that filtering content violates the principle of net neutrality, which requires ISPs and governments to treat all data on the internet equally, not discriminating or charging differently by user, content, site, platform, application, type of attached equipment, and modes of communication. They also argue that best practice requires that in order to avoid infringing internet users' rights to freedom of expression and right to privacy, ISPs should only implement restrictions to these rights after judicial intervention. They have further suggested that service providers should be liable for removing illegal content hosted on their networks but not for content that merely flows through their networks. Furthermore, the liability needs to only be placed on internet content developers, publishers or broadcasters who allow pornography, specifically child pornography, to be published to the public, as well as to users who consume pornography in the public domain.

The description of 'pornography' in the Act, as well as most debate around the Act, which centred on dress styles, have seen a perception among the public that this law bans the wearing of mini skirts. This, according to women rights groups, prompted the stripping of 50 women by unruly individuals a few days after the president assented to the law.⁴

Observers have said this law targets the media more than miniskirts.⁵ The Act defines pornography as "any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real or stimulated explicit sexual activities or any representation of the sexual parts of a person for primarily sexual excitement." Some experts said failure to elaborate on 'sexual parts' and define what amounts to representation leaves this piece of legislation open to misinterpretation.

The Public Order Management Act, 2013⁶

The Act, which came into effect in October 2013, provides for the regulation of public meetings, spells out duties of organisers of meetings and responsibilities of the police in respect to public gatherings. The law gives police officers wide-ranging powers to break up meetings or to deny individuals permission to hold meetings. The line minister has powers to gazette places where meetings cannot take place. The law has numerous times been used by security agencies to block or disband peaceful meetings of civil society and the opposition.

The Act has faced criticism by domestic and international civil society organisations, as it "restricts freedoms of expression and peaceful assembly and further deteriorates an already shrinking space for civil society and human rights defenders in the country."⁷ The Act also "provides no protection to the rights of the media, including bloggers, to access and

⁴ Justus Lyatu, 'Fifty women stripped over pornography law', The Observer, March 6, 2014. http://observer.ug/index.php?option=com_content&view=article&id=30526:-fifty-women-stripped-over-pornography-law&catid=34:news&Itemid=114

⁵ Raymond Mpubani, Uganda's anti-pornography law targets media more than miniskirts, March 9, 2014, <http://www.journalism.co.za/blog/ugandas-anti-pornography-law-targets-media-more-than-miniskirts/>

⁶ Government of Uganda (2013); Uganda: Public Order Management Act, 2013; <http://www.ulii.org/content/public-order-management-act-2013>

⁷ FIDH, Uganda's Constitutional Court should repeal the Public Order Management Act as unconstitutional, December 19, 2013; <http://www.fidh.org/en/africa/uganda/14422-uganda-s-constitutional-court-should-repeal-the-public-order-management>

reporton assemblies.”⁸ Ultimately, this law “will lead to a further deterioration of the civic space in Uganda, and may hamper civil society actions that involve discussions related to governance and accountability, rule of law and more generally human rights, or anything within the spectrum of ‘public interest’ will only be held provided police permission and supervision is granted.”⁹

The Anti-Homosexuality Act, 2014

This law was assented to by President Museveni in February 2014, under the blare of local and international media, and amidst condemnation by civil society and Western governments, some of whom cut some aid to government departments in the aftermath of the law’s passing.¹⁰ The Act prohibits any form of sexual relations between persons of the same sex; and also prohibits the promotion or recognition of homosexual relations.

“Aggravated homosexuality” is punished by life imprisonment. The law defines “aggravated homosexuality” as where the person the offense is committed against is below 18 years or is a person with a disability, where the offender is a person living with HIV, a guardian of the person against whom the offense is committed, or where the offender is a serial offender.

Article 13 outlaws the promotion of homosexuality, including by the use of “electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality.” The penalty is UGX 100 million (US\$ 40,000) or minimum five years and maximum seven year prison sentence. Where the offender is a corporate body, association or NGO, on conviction its certificate of registration shall be cancelled and its directors and promoters are punishable by seven years imprisonment. This clause, according to some activists, may be used to crack down on organisational websites that work with sexual minorities in Uganda, as well as gay and lesbian websites. Furthermore, they argue that this clause limits the ability of adult consenting homosexuals to use mobile phones freely as it criminalises even flirting or making dates.¹¹

Last year, a local LGBT rights group said an email attachment with information on the LGBT community in the country which was sent among a private group of individuals was possibly intercepted by an unknown actor.¹² According to Freedom House, the information was later published in a local tabloid. While this story was not corroborated, after president Museveni assented to the anti-gay bill, a daily tabloid, The Red Pepper, published the names and pictures of what it claimed were the “top 200 homosexuals” in Uganda.¹³

⁸ Article 19, Uganda: Public Order Management Act, November 1, 2013;

<http://www.article19.org/resources.php/resource/37331/en/uganda:-public-order-management-act#sthash.NoC89Lyz.dpuf>

⁹ FIDH, Uganda’s Constitutional Court should repeal the Public Order Management Act as unconstitutional, December 19, 2013

¹⁰ Plaut, M (2014), “Uganda donors cut aid after president passes anti-gay law”, The Guardian, February 25, 2014, <http://www.theguardian.com/global-development/2014/feb/25/uganda-donors-cut-aid-anti-gay-law>; Al

Jazeera (2014), ‘Sweden suspends Uganda aid over anti-gay law,’ March 06, 2014, Aljazeera, <http://www.aljazeera.com/news/africa/2014/03/sweden-suspends-uganda-aid-over-anti-gay-law-20143661242394264.html>

¹¹ GenderIT.org, Uganda’s Anti-Homosexuality Bill – a great blow to internet freedom, March 5, 2014. <http://www.genderit.org/feminist-talk/uganda-s-anti-homosexuality-bill-great-blow-internet-freedom>

¹² Freedom House (2013); Freedom on the Net Uganda Report

¹³ Uganda Tabloid Prints List of Top 200 Homosexuals,

<http://www.theguardian.com/world/2014/feb/25/ugandan-tabloid-prints-list-top-200-homosexuals>

The Press and Journalism Regulations 2014

In February 2014, the Ministry for Information and national Guidance issued a statutory instrument, the Press and Journalist (fees) Regulations, 2014, which require journalists to pay US\$80 for a practicing certificate and US\$40 for renewing the certificate every year. The new regulations require journalists to pay for an application for enrolment and also for a certificate of enrolment. Experts questioned the legitimacy of the new regulations and said the charges appeared to violate the right to freedoms of speech, expression, the press and other media freedoms as spelt out under Article 29 of the Constitution.¹⁴ Requiring journalists to be licenced means regulatory bodies can deny licences to those deemed critical of government. One organisation has petitioned court over the constitutionality of the law under which the new regulations were issued.

NGO Amendment Bill

Uganda is in the process of amending the law on Non-Government Organisations (NGOs) at a time when the government, notably president Museveni and the Internal Affairs minister, have publically spoken about a need to have stricter NGOs who they claim do not serve Uganda's interests. The new law would see stricter monitoring of NGOs, whom government ministers have accused of meddling in politics and serving foreign interests.¹⁵ The minister wants NGOs to put Ugandan interests first and be opposed to "retrogressive foreign ideas and innovations".¹⁶ Under the proposed law, NGOs would pay an annual fee. Civil Society Organisation (CSO) leaders have suggested that the new law should pay less emphasis on registration, monitoring and control of the NGO sector.¹⁷ Last year, the National NGO Board, the statutory regulator of CSOs under the internal affairs ministry, asked all NGOs to update their files or risk being deregistered.¹⁸ Civil society officials have asked government to amend the Non-Governmental Organizations Registration (Amendment) Act of 2006 by doing away with provisions that hinder the promotion and protection of human rights.¹⁹

Implications on civil society's work

The laws provide greater leeway for state agencies to interfere in individuals' rights, but also greater scope to take action against civil society actors fighting to uphold rights and freedoms. In the run-up to the presidential elections expected in February 2016, where President Museveni might face some of the severest competition to his hold on the presidency, affronts to civil liberties could increase.

Two of the laws passed in 2014 specifically legislate, controversially, on individuals' and organisations' actions in the online sphere. This appears to indicate that the Uganda government is increasingly moving its affronts on individual freedoms of expression into the internet and other digital mediums. Notably, in 2010 Uganda enacted the Regulation of

¹⁴ Mercy Nalugo, Experts caution govt against bad media laws, Daily Monitor, March 25, 2014.

¹⁵ Minister Wants Tighter Law On NGO Activities; <http://ugandaradionetwork.com/a/story.php?s=54801>

¹⁶ NGO Law Monitor: Uganda; <http://www.icnl.org/research/monitor/uganda.html>

¹⁷ New civil society, government forum to address NGO concerns; <http://www.acme-ug.org/index.php/new-civil-society-government-forum-address-ngo-concerns/>

¹⁸ Uganda: Government should drop NGO registration renewal process, <http://www.article19.org/resources.php/resource/37248/en/uganda:-government-should-drop-ngo-registration-renewal-process#sthash.SSneEOKB.dpuf>

¹⁹ Civil Society wants NGO Act Revised. The New Vision, March 07, 2014, <http://www.newvision.co.ug/news/653295-civil-society-wants-ngo-act-revised.html>

Interception of Communications Act²⁰ under which individuals' communications can be monitored and intercepted on the basis of a court order. This law gives effect to the Anti-Terrorism Act of 2002, under which security agencies can intercept communications and monitor individuals and groups suspected of terrorism. The law also includes sanctions against perceived supporters of any institution suspected of "promoting" terrorism. This includes journalists and media establishments that publish or disseminate suspected material.

Without national data protection legislation, and limited judicial oversight, citizens' rights to privacy could easily be trampled. A mandatory registration of all mobile phone subscribers ended last year, which would make the monitoring easier.

Uganda is ranked by Freedom House as 'partly free' in terms of internet freedoms. It has in the past ordered the blocking of access to Facebook and SMS services²¹ and to a critical website in the face of opposition protests and during a national election.²² A journalist was charged over an article in an online publication. Uganda is also among the five African countries which in 2013 asked Facebook to disclose particulars of an individual for unknown reasons.²³ In 2013, a cabinet minister announced that Uganda would establish a social media monitoring centre "to weed out those who use it to damage the government and people's reputation."²⁴

Many civil society actors in Uganda work in the promotion of the very rights that these laws and regulations are increasingly restricting. These laws further restrict the space, both online and offline, in which civil society, the media and citizens can enjoy constitutionally granted rights to freedom of expression, opinion, assembly, and information.

²⁰ Regulation of Interception of Communications Act, 2010; <http://www.ulii.org/content/regulation-interception-communications-act-2010>

²¹ Open Net Africa (2013) "Government blocks Facebook, Twitter", <https://opennet.net/blog/2011/04/ugandan-government-asks-isps-block-facebook-twitter>

²² UCC Ordered Blocking Radio Katwe, <http://www.newvision.co.ug/D/8/13/483221>

²³ OpenNet Africa (2013) Online Freedoms Under Siege as African Countries Seek Social Media Users' Information, <http://opennet.org/online-freedoms-under-siege-as-african-countries-seek-social-media-users-information/>

²⁴ Uganda, Assurances on Social Media Monitoring Ring Hollow, <http://opennet.org/ugandas-assurances-on-social-media-monitoring-ring-hollow/>

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