Hunting Down Social Media 'Abusers' in Uganda as Elections Near
CIPESA ICT Policy Briefing Series No. 04/15
July 2015

As Uganda draws closer to the February 2016 presidential elections, the fever of anxiety in government corridors is rising. Over the years, election periods have seen a crackdown on social media, voices critical of the ruling party, and independent media in the guise of promoting public order and unity as well as preventing the spread of false information. This, however, has sparked debate on the fine line between preserving national cohesion and hampering free speech.

Incumbent President Yoweri Museveni, who has been in power for 29 years and is gearing up to run in the February 2016 elections, has in recent weeks been vocal on the use of social media. On May 30, 2015 he expressed disdain for "sectarian and abusive" audio recordings that were widely shared on the popular mobile messaging platform WhatsApp. The audios featured an exchange of words between unidentified individuals, supposedly from the Bahima and Bakiga ethnic groups, ridiculing each other. Museveni, who hails from the former group, called for the immediate arrest of the people involved in the recordings. He accused them of using sectarianism to achieve political advantage.

Section 41 of Uganda's Penal Code Act defines promoting sectarianism as the act of printing, publishing, making or uttering any statement likely to "(a) degrade, revile or expose to hatred or contempt; (b) create alienation or despondency of; (c) raise discontent or disaffection among; or (d) promote, in any other way, feelings of ill-will or hostility among or against, any group or body of persons" on the grounds of religion, tribe, ethnic or regional origin.

In June 2015, police arrested social critic Robert Shaka, also an information systems engineer with a United States Agency for International Development (USAID) programme, on allegations of being behind the pseudonym Tom Voltaire Okwalinga (TVO), responsible for leaking government secrets on Facebook. Shaka was arrested on charges under Section 25 of the Computer Misuse Act for using computers and other electronic devices to issue "offensive communication". Section 25 of the Computer Misuse Act states, "Any person who willfully and repeatedly uses electronic communication to disturb or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication whether or not a conversation ensues commits a misdemeanor." A conviction attracts a fine not exceeding UGX 480,000 (US$140), imprisonment not exceeding one year, or both.

The charges of making "offensive communications" brought against Shaka relate to Facebook posts by TVO on President Museveni's health status. Authorities allege that between 2011 and 2015, Shaka has "willfully and repeatedly using a computer with no purpose of legitimate communication disturbed the right of privacy" of President Museveni "by posting statements as regards his health condition on social media." However, there has been no evidence that Shaka is responsible for posting content under the TVO pseudonym and he was released on bail a week after arrest. The Uganda government has in the past made user information requests to Facebook but they were declined. There are unconfirmed reports that the requested user information was for TVO. Earlier in February 2015, authorities had arrested Shaka, ransacked his home without a search warrant, and confiscated his personal electronic devices including an iPad, laptop, mobile phone and flash disks.

In a press statement, Shaka's lawyer Nicolas Opiyo stated that when police arrested his client, they issued a 'charge and caution statement' containing two counts. Firstly, he was accused of promoting sectarianism and bringing into "hatred and contempt" the sovereign state of Uganda contrary to Section 41 of the Penal Code Act. Secondly, it was stated that Shaka had issued "offensive communications" against Museveni, first lady Janet Museveni, a one "Mbabazi", the police chief Kale Kayihura and a one "Kelen" contrary to Section 25 of the Computer Misuse Act. In court, however, Shaka was charged only with making offensive communications against President Museveni. "We don't know why [the charges were amended], but [prosecutors] were caught by surprise when we got a court order for his release so they rushed to charge," explained Opiyo. "Secondly, they may have discovered that Amama [Mbabazi] was ready to testify in defense of Shaka so that might have scared them off" since Mbabazi was among those police claimed Shaka had besmirched.[1]

Meanwhile, on June 17, political tensions mounted when Amama Mbabazi, Uganda's former Prime Minister and secretary general of the ruling party, took to Youtube to officially announce his intention to contest in the 2016 presidential elections. In a rebuttal video to Mbabazi's announcement, Museveni linked Mbabazi aides to the Whatsapp audio recordings whose authors he had asked the police to arrest and to other "false" documents circulating on social media, which he said were tarnishing his government's image and inciting ethnic tensions.

Less than a week later, on June 22, authorities announced that a cybercrime unit had been established and a head appointed. This came in response to the president's warnings on the misuse of cyberspace to incite hatred and sectarianism. Although this unit will fight cyber crime in general (including cyber fraud, cyber terrorism, cyber stalking and other electronic crimes), its timing and set up are curious, given that in 2013, a national Computer Emergency Response Team (CERT) was set up for similar purposes.

This surge of interest and activity on Uganda's social media landscape echoes past incidents that have threatened citizens' access to information and freedom of speech and the press. In the lead up to the February 2006 elections, the national regulator, Uganda Communications Commission (UCC), reportedly instructed Internet Service Providers (ISPs) to block access to www.radiokatwe.com, a website that published anti-government news and gossip. A UCC spokesperson alleged that the website was publishing "malicious and false information against the National Resistance Movement and its presidential candidate [Museveni]." Accessing the website from within the country was only possible via web proxies. Access was later restored by the ISPs but its administrators then shut down the site shortly thereafter.

In the same month, the government blocked access to the privately owned radio station 93.3 KFM and the website of its sister newspaper Daily Monitor (www.monitor.co.ug) for publishing independently tallied election results. Within two days, access to the media houses' platforms was reinstated, but this was after the electoral commission had announced its official results.

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[1] Nicholas Opiyo, Executive Director of Chapter Four Uganda and lawyer for Robert Shaka, in telephone interview with CIPESA, July 7, 2015.

Five years later in the run up to the February 2011 elections, UCC instructed telecom companies to block and regulate SMS (short message service) that could instigate hatred, violence and unrest during the presidential election period. The regulator flagged 18 words upon which a blockage could be carried out. It remains unclear whether the companies complied with the request.

Following the announcement of the 2011 election results, the leading opposition party, Forum for Democratic Change (FDC), questioned their legitimacy, arguing that telecom company MTN had jammed the telephone lines of its independent tally centre, thus hampering the transmission of results by its field monitors. The party called for a boycott of MTN services, which has the biggest number of subscribers of all operators in Uganda.

This dissatisfaction with election results contributed to the popularity of the 'walk to work' protests driven by the opposition party over rising fuel and food prices. The protests, which came two months after the elections, gained a lot of traction online and broke out in the capital Kampala and a few other major towns. At the height of the protests on April 14, UCC instructed ISPs to block access to Facebook and Twitter for 24 hours. It is unclear whether ISPs complied with the order as some of them claimed they received the instruction after the 24-hour period during which the regulator had ordered them to block the social media sites that were purportedly being used to mobilise protestors.

In May 2013, police shut down two daily newspapers and two radio stations for publishing and broadcasting a letter written by former intelligence chief General David Sejusa Tinyefunza, claiming there was a plot to assassinate senior government officials opposed to a purported plan by Museveni to eventually hand the presidency to his son. Using social media, journalists and media activists widely condemned the closure of the media houses, which were reopened after 11 days. A handful of other radio stations were shut down in 2009 for prolonged periods of time, while journalists are often under attack by security agencies.

Furthermore, numerous regressive laws have been enacted in recent years by Uganda's parliament where the ruling party has an overwhelming majority. The Regulation of Interception of Communications Act 2010, the Anti-Terrorism 2002, Anti-Pornography Act 2014, the Public Order Management Act 2013 and the Anti-Homosexuality Act 2014 (later annulled by the constitutional court) have drawn criticism from human rights activists both locally and internationally due to their severity and infringement on privacy, access to information and freedom of expression online and offline. These laws generally impede citizens' rights granted by the constitution under the guise of safeguarding national security or protecting public decency.

Indeed, past incidents driven by social media such as the Arab Spring have become a concern for a number of African governments, who are increasingly seeking users' information from social media sites as well as telecommunications companies. The fight against terrorism, hate speech, and cybercrime including cyber fraud, identity theft, website hacking are often among the stated pretexts for these growing efforts to monitor and control digital communications. Incidents such as the 1994 genocide in Rwanda and the ICT-fuelled 2007–2008 post-election violence in Kenya in which more than 1,100 persons were killed, also highlight the potential of mass communications platforms such as social media, mobile messaging and radio being use to fuel ethnic hatred, incite hate speech and promote extremism.

As Uganda's elections draw closer, authorities are wont to justify the renewed interest in monitoring the use of social media in campaigning and expressing critical opinion. They are likely to point to the fact

that neighbouring Kenya continues to grapple with hate speech and has had to enact laws and to regularly charge individuals it accuses of breaking the law as they use social media.

While authorities such as the communications regulator, intelligence and law enforcement agencies, and the security ministry have a duty to promote national cohesion and to promote law and order, profound respect of citizens' freedom of expression and privacy on the internet must be upheld. As called for by the United Nations General Assembly resolution 68/167 on the right to privacy in the digital age adopted in December 2013, authorities should ensure that the same human rights held offline should be guaranteed online, and these include the rights to privacy and free expression.

Furthermore, government should respect international instruments such as the Universal Declaration of Human Rights (UHDR), which under Article 19 calls for respect of the right to freedom of opinion and expression, which "includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

Information is fundamental to electoral and democratic processes and as such, access to it and its free flow between citizens, media and the government should be upheld. Recent events represent a clampdown on critical voices and may perpetuate online self-censorship by Ugandan media and citizens, while also undermining electoral integrity and the country's democracy standing. Any content moderation, blocking and removal, communications surveillance and interception, as well as investigations and prosecutions related to online offenses, must follow due process as detailed in the country's laws, with a high level of judicial and parliamentary oversight. These laws should not be used to silence legitimate expression by real or perceived critics and opponents of the ruling party and government.