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Simplified Guide on Laws that Regulate the Digital Civic Space in Uganda

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ABOUT THE GUIDE



Information and Communication Technologies (ICT), also referred to as digital technologies, are indispensable to humanity. These technologies enable us to create, store, manage and communicate data and information in a swift and often affordable manner. As such, they are pivotal to individuals' livelihoods, as they facilitate work, communication, education, trade, and other facets of life. Essentially, digital technologies are key enablers of both civil and political rights, as well as social, economic and cultural rights.

Despite the numerous benefits of digital technologies, they have their downsides. For example, these technologies have aided the proliferation of hate speech, disinformation, cyber attacks, and trolling. They may also be misused by some actors such as governments to implement repressive controls that curtail the enjoyment of human rights.

In order for citizens and groups to enjoy their rights online through digital technologies, it is important that they are aware of the laws that govern digital or online civic spaces, how such laws promote or limit their rights, the activities that they prohibit, and the accountability mechanisms provided for under the law.

This guide reviews the main laws that regulate the online civic space in Uganda. By digital civic space we mean the online environment that enables people and groups



to participate meaningfully in the political, economic, social and cultural life of their societies. Ideally, in such spaces people and groups can express their views freely without fear, assemble peacefully, associate and engage in decision-making processes on matters affecting their lives.

The guide aims to serve as a quick reference point for readers who want to understand their rights in the digital civic space. It provides an overview of the rights of citizens and the limits within which they should exercise those rights, and the responsibilities of the government to respect citizens' rights in the digital sphere and the circumstances under which it can limit these rights. Besides reviewing national laws, the guide also points to Africa-level international instruments that govern citizens' rights in the digital domain. The guide is intended for the general public, but more specifically to guide civil society organisations (CSOs), human rights defenders, women's rights advocates, online activists, as well as bloggers and journalists.

The guide focuses on key rights: the right to freedom of expression, the right of access to information, the right to privacy, and the right to freedom of assembly and association.

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1. Component 1: Strengthen the advocacy capacity of CSOs to influence national and local development;
2. Component 2: Improve the organizational capacity of advocacy and service delivery-oriented CSOs to sustainably fulfill their stated missions; and
3. Component 3: Promote a more supporting enabling environment that sustains a vibrant civil society.

This activity falls under Component 3.



Collaboration on International ICT Policy for East and Southern Africa (CIPESA)

CIPESA is a non-profit organization that works to increase the capacity of Eastern and Southern African stakeholders to participate in ICT policymaking. CIPESA is a leading center for research and analysis of information aimed to enable policymakers in the region to understand ICT policy issues and support various stakeholders to use ICT to improve livelihoods. CIPESA is a member of the Global Knowledge Partnership and the Association for Progressive Communications.

International Center for Not-For-Profit Law (ICNL)

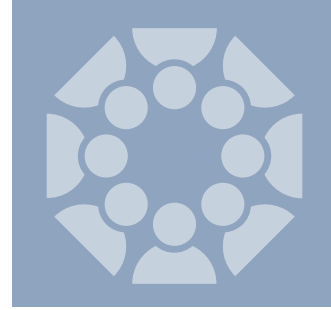
ICNL is a global organization that works with partners from civil society, government, and the international community to improve the legal environment for civil society, philanthropy, and public participation. ICNL's Africa regional team works in over 30 countries on the continent, including countries in the Francophone and Lusophone subregions. ICNL collaborates with civil society leaders, activists, government officials, lawyers, media workers, and academics to strengthen local partner organizations and regional networks, provide technical assistance, and contribute to the knowledge base through research and teaching. ICNL has helped develop progressive regional norms as well as national laws and policies that expand civic space throughout the region.

This Guide was produced for informational purposes only and does not constitute legal advice or substitute for legal counsel. Laws may change, and interpretations of local law may vary. The authors are not liable for any differences or inaccuracies.



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WHAT IS CIVIC SPACE?



The concept of civil space refers to the enabling environment for civil society, human rights defenders (HRDs), individuals and other groups to enjoy civic rights and freedoms, specifically the freedoms of association, peaceful assembly, expression and access to information. It facilitates participation in decision-making processes at local, national, regional, and international levels.

According to the United Nations (UN) Guidance Note on the Protection and Promotion of Civic Space, civic space means the environment that enables people and groups – or “civic space actors” – to participate meaningfully in the political, economic, social and cultural life of their societies. Favourable civic space enables effective access to information, dialogue and the expression of dissenting and unpopular views. It also allows for easy participation and contribution of individuals and groups in policy making, decision-making and in political and peacebuilding processes.

The rights to freedom of expression, access to information, peaceful assembly and association apply at all times – both online and offline.



A vibrant civic space should be open, safe and secure. The environment should be free from all acts of intimidation, harassment and reprisals, whether online or offline. In case of restrictions to civic space, they should comply with international human rights law [i.e., must not discriminate, must be provided for by law, and be necessary and proportionate].¹

What is the Importance of Civic Space?

A favourable civic environment enhances citizens' participation and may also contribute to economic growth,² political development and transformation, as well as human rights promotion and protection.³ However, some governments have adopted measures that limit the civic environment from flourishing. Some of these measures include enforcing criminal defamation laws, which restrict freedom of expression and access to information; deploying surveillance technology, which curtails the right to privacy; and banning peaceful protests, which limits freedom of assembly and association. Moreover, national security has been used by states as an excuse to restrict civic space by cracking down on citizens, including through the use of measures such as threats, arbitrary arrests, prosecutions and punitive sanctions that often discourage civic participation.⁴

1 United National Guidance Note: Protection and Promotion of Civic Space, https://www.ohchr.org/sites/default/files/Documents/Issues/CivicSpace/UN_Guidance_Note.pdf

2 The B Team, "The Business Case for Protecting Civic Rights," <http://bteam.niceandserious.com/assets/reports/The-Business-Case-for-Protecting-Civic-Rights.pdf>

3 See for instance, Open Government Partnership, "Actions to Protect and Enhance Civic Space," <https://www.opengovpartnership.org/actions-for-a-secure-and-open-civic-space/>

4 As above.



An enabling civic space allows individuals, civil society, HRDs and activists to contribute to development, good governance, democracy, the rule of law, human rights and the transparency and accountability of governance processes.

What is Digital Civic Space?

The digital civic space is the environment within which human rights and freedoms are enjoyed in online and digital spaces either by individuals or groups of individuals.

The digital civic space is very important as technology has become essential in working, learning, associating, expressing oneself and participating in community and political affairs. It provides easy access to information and swift communications, while enabling flexible options for citizens to engage in civic matters by allowing them a choice of when and where to participate. Further, it can allow individuals to participate anonymously, which can raise the appetite of citizens to participate in democratic affairs.

However, in spite of the benefits it offers to democracy, the digital civic space is increasingly coming under attack in several countries. The digital civic space is often threatened by:

1. Physical or digital attacks on individuals and human rights organisations, such as those that advocate for civic rights and freedoms online.
2. Intimidation, threats, harassment, arrests, detention and imprisonment, monitoring and surveillance of online activists.



3. Killing of online activists.
4. Internet shutdowns, social media blockage and internet throttling.
5. Enactment and enforcement of draconian or repressive laws that narrow the digital civic space including through prescription of restrictive operational procedures and stringent regulation.
6. Enactment of regressive laws that limit the operations of civil society organisations or criminalise civic activities.
7. Restrictive and unfavourable policies, terms and conditions of service at media houses, especially those who operate online.
8. False accusations of plotting to destabilise national security and public safety and prosecution based on trumped-up charges of terrorism and treason, often against online activists and government critics.



What is the State of Uganda's Digital Civic Space?

The use of the internet and digital technologies is growing steadily in Uganda. In the April to June 2022 report of the Uganda Communications Commission (UCC), there were 23.7 million broadband subscriptions which translate into a broadband penetration of 55 internet connections for every 100 Ugandans.⁵

Individuals in the country have embraced the internet for trade in goods and services. However, costly access to the internet and digital devices, limited digital literacy and skills, are key challenges for a majority of the population, especially women, youth and persons living in rural areas.⁶

Uganda fares poorly in its network readiness and mobile connectivity. In 2021, it lagged behind its neighbours Kenya, Rwanda and Tanzania. The 2021 Network Readiness Index ranks Uganda 116th out of 130 countries. When Uganda introduced Over the Top (OTT) tax it further moved steps back in affordability of the internet in 2018 and 2019. During the same period, internet users dropped by five million.

Moreover, the country generally fares poorly in press freedom rankings. According to the 2020 and 2021 Press Freedom Indexes, Uganda ranked 125th out of 180 countries assessed, with wide intimidation and persecution of journalists being a major concern in the

⁵ Uganda Communications Commission, "Market Performance Report 2Q22," available at https://www.ucc.co.ug/wp-content/uploads/2022/11/UCC-2Q22_Final-Report_With-Response-to-ED-Comments-2-compressed.pdf (accessed January 19, 2023).

⁶ Ibid.



country. In 2022, Uganda declined by seven positions and was ranked 132nd out of 180 countries assessed.⁷ The Freedom on the Net index has consistently rated Uganda as “Partly Free”. In 2021, Uganda was ranked 49th out of 100 countries in the Freedom on the Net Index, and in 2022, it was ranked 50 out of 100 countries with obstacles to access, limits on content and violations of user rights.

The decline in press freedoms is heightened by state practices such as surveillance and the interception of communications, intimidation, threats, arbitrary arrests, torture and prosecution of online activists, government critics and the opposition. Often, such measures have a chilling effect on internet freedom and contribute to shrinking civic space.

Further, regressive measures by the government such as internet shutdowns during the 2021 general elections and social media blockage of platforms such as Facebook have undermined Uganda’s digital civic space.

⁷ Reporters Without Borders, “Press Freedom Index 2022 : Uganda,” <https://rsf.org/en/country/uganda>

WHAT ARE DIGITAL RIGHTS?



Digital rights, often referred to as internet rights, are fundamental human rights enjoyed online through the use of electronic channels, tools and platforms. Digital rights include the ability to use, create, manipulate, publish, and disseminate content through the use of computers and other electronic devices.⁸

Common examples of digital rights include freedoms of expression, access to information, data protection and privacy and assembly and association.

Digital rights are as important as the rights enjoyed offline.⁹ Rights which are enjoyed offline must be equally protected online. The state is required to ensure that rights online and offline are accorded the same measure of recognition and protection.¹⁰

A great proportion of our daily lives including communication, shopping, expression, and increasingly work, happen online. A lot of data is at stake while

8 Kathleen Azali, "Coconet: What are digital rights?" APC, August 4, 2020 <https://www.apc.org/en/news/coconet-what-are-digital-rights> (accessed 19 August, 2022)

9 Declaration of Principles on Freedom of Expression and Access to Information in Africa 2019

10 See for instance; International Commission for Jurists, "2.3.1 State Obligations Stemming from International Law," available at <https://www.icj.org/chapter-2-esc-rights-under-international-law-and-the-role-of-judicial-and-quasi-judicial-bodies-2/2-3-identifying-breaches-of-international-obligations-of-states-pertaining-to-esc-rights/2-3-1-state-obligations-stemming-from-international-law/> (accessed 23 November, 2022).



online protection is required in order to prevent and stop unauthorised access and use by individuals, governments, corporations, especially telecommunication companies and internet service providers, social media platforms, and search engines like Google, Opera and Firefox.¹¹

However, the digital civic space is threatened by regressive measures of the government such as the enactment of draconian legislation, arrests and prosecution of government critics and dissenters as well as the application of force on the mainstream media to operate in a specific way that is not objective or that reflects the digital rights needs and demands of the general public. Similarly, non-state agencies such as the telecommunication companies and internet service providers sometimes take measures such as high internet costs, following of undesirable orders from government agencies, unauthorised sharing of personal data and breaching business and human rights principles which undermine the digital civic space.

¹¹ Pennstate, *supra*.

WHAT LAWS PROVIDE FOR DIGITAL RIGHTS IN UGANDA?



A range of laws govern the digital civic space in Uganda, including those that specify the protection and enjoyment of digital rights, as well as the prescription of limitations to these rights.

The main laws that regulate the online civic space are:

The Constitution of the Republic of Uganda, 1995

This is the supreme law and protects fundamental human rights and freedoms, including freedoms of expression, privacy, assembly and association and access to information in Chapter Four. However, the Constitution also provides for general limitations to human rights and freedoms.

The Penal Code Act Cap 120

This is the code of criminal law. This law, among others, criminalises publication of prohibited content, sectarianism, defamation, libel and sedition, and wrongful inducement of a boycott and unlawful assemblies.



The Press and Journalist Act, 2000

This was designed to professionalise the media sector by putting in place minimum standards for editors and journalists and to empower the government to oversee licensing and certification of journalists. Due to this oversight role, there have been various retrogressive measures such as compulsory registration and licensing of journalists.¹²

The Anti-Terrorism Act

The Anti-Terrorism Act, 2002 as amended 2015, 2016 and 2017: This creates the offence of terrorism. However, the definition is so broad and vague that it limits freedom of expression and the publication of certain content by journalists and individuals (content aimed at influencing the government or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property). Similarly, the Act provides for real time surveillance on individuals who are suspected of promoting terrorism. This can result in self-censorship in fear of being branded as promoters of terrorists.

Access to Information Act

The Access to Information Act, 2005 and the Access to Information Regulations 2011: These provide for the right to information and procedures of accessing it respectively. However, the Act has a broad range of exemptions to information that may be accessed by citizens. The wide

¹² The law requires journalists to be issued with a practising certificate, but this has not been fully implemented in the last two decades partly because the National Institute of Journalists of Uganda, which is supposed to register journalists, is moribund.



limitations curtail freedom of expression and hinder timely access to information.

The Regulation of Interception of Communications Act, 2010

This provides for lawful interception of communications. It empowers government security agencies such as the police to intercept citizens' communications. Using this law, compulsory SIM card registration was enforced by government, leading to mass collection of individuals' personal data.

Uganda Communications Act, 2013

This establishes the Uganda Communications Commission (UCC), which is empowered to monitor, inspect, license, supervise, control and regulate communication services. It sets standards and handles complaints while at the same time carrying out activities that enhance consumer empowerment.

Computer Misuse Act, 2011

The Computer Misuse Act, 2011 as amended in 2022 provides for the safety and security of electronic transactions and information systems. It seeks to prevent unlawful access, abuse or misuse of information systems including computers. The law prohibits offensive communication, unauthorised sharing of information, sharing of unsolicited information and misuse of social media. It has been used on a number of occasions to curtail and limit civic freedoms online including speech and expression, access to information and data privacy.



Laws on Data Protection and Privacy

The Data Protection and Privacy Act, 2019 and the Data Protection and Privacy Regulations of 2021 seek to protect the privacy of the individual and of personal data by regulating the collection and processing of personal information. They provide for the rights of data subjects and obligations of data collectors, data processors and data controllers. However, they allow government security agencies like the police to have access to individuals' personal data in the course of criminal investigations, making it easy to identify data subjects. Individuals' data is often used to monitor and track individuals who are suspected of involvement in criminal activities, especially political activists, dissenters and government critics.

The Registration of Persons Act, 2015

The Registration of Persons Act, 2015 provides for the registration of individuals and establishes a national identification register and the National Identification and Registration Authority. It also provides for issuance of national identity cards for nationals and foreigners. Under the Act, government has collected a lot of personal data including names, addresses, gender, professions, tribes, fingerprints and marital status. Personal information has made identification of targeted individuals such as government critics and opponents much easier, which often leads to self-censorship by the press, opposition politicians and government critics.

NATIONAL LAWS:

HOW DO THEY PROTECT FREEDOM OF EXPRESSION AND ACCESS TO INFORMATION?



It is every person's right to express themselves, provide opinions and access information online subject to limitations that are provided for by the law.

Freedom of Expression

Uganda's 1995 Constitution provides for freedom of expression in **article 29(1)(a)** that states that every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media.¹³ This expression extends to critical, shocking and disturbing content.¹⁴ However, in exercising expression and access to information, individuals and organisations must have regard to the rights of others.

A number of laws widely impact on freedom of expression. They include:

The Penal Code Act

This criminalises defamation and speech under the guise of prohibiting sectarianism. The Code further empowers

13 Constitution of the Republic of Uganda, 1995, <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/44038/90491/F206329993/UGA44038.pdf>

14 See for instance, *Handyside v United Kingdom*, European Court of Human Rights (ECtHR), Application No. 5493/72, para 49.



the minister to stop importation of publications considered unfit for public consumption. It also restricts and limits free debate on matters of public interest by prescribing offences of wrongful inducement of boycott, incitement of violence and incitement to refuse or delay payment of tax.

The Uganda Communications Act and the Uganda Communications (Content) Regulations of 2019

These limit freedom of expression as the UCC is given excessive powers to license, regulate and set standards for the provision of all communication services in Uganda, including online broadcasting.¹⁵ Using this law, UCC has overstepped its mandate by, among others, limiting the publication of content considered to be distorted and a threat to public safety and security, suspending and revoking licences, as well as suspending journalists.¹⁶

The Regulation of Interception of Communications Act (RICA), 2010

This allows for interception of communications. It establishes a monitoring centre for purposes of intercepting communications. Furthermore, it requires telecommunication services providers to make their services and systems capable of being intercepted.

The above-mentioned laws have a chilling effect on freedom of expression. They fuel self-censorship and limit the enjoyment of expression since they potentially threaten and intimidate users of online platforms due to the constant fear of surveillance.

15 CIPESA, "Uganda Communications Tribunal: Regulations Fall Short of Constituting an Impartial Arbiter, 2021," http://104.152.168.205/~cipesa/old/?wpcf_dl=448 (accessed 23 November, 2022)

16 Ibid.



Access to Information

Article 41 of the 1995 Constitution provides for every citizen's right of access to information held by the State or any other organ or agency of the State. This, however, does not extend to circumstances where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

The relevant national laws include the following:

The 2005 Access to Information Act

This seeks to “empower the public to effectively scrutinise and participate in “government decisions that affect them”. It also aims to promote an efficient, effective, transparent and accountable government by providing the public with timely, accessible and accurate information in the confines of government agencies. The Act provides for the classes of information that can be obtained from government agencies and the procedure to be followed to access the information sought. The procedural requirements are elaborated in the Access to Information Regulations, 2011.

The Access to Information Act does not apply to private entities such as companies, hotels and non-governmental organisations. When exercising the right to information, there are procedures which are prescribed under the law. The Act also provides for proactive disclosure of information by the state and its ministries, departments and agencies.

The right to access to information is also limited. For instance, the 1964 Official Secrets Act Cap 302 has broad and vague definitions of “documents” in its prescription of documents or information that should be protected.



The provision equally has a chilling effect on the right to information.

Regulation of Interception of Communications Act (RICA) 2010 and the Uganda Communications Act

These provide for lawful interception of communication. They also give broad powers to the Uganda Communications Commission to limit the dissemination or sharing of information.

The Computer Misuse Act, 2011 as amended 2022

This prohibits willful and repeated use of electronic communication to disturb or attempt to disturb the peace, quiet or right of privacy of any person.¹⁷

The Press and Journalists Act¹⁸ and the Professional Code of Ethics for journalists and editors

These prohibit publication of false news.¹⁹ Such provisions relating to the publication of what is deemed as false news have been used to arrest, detain and prosecute individuals.²⁰

17 CIPESA, "Technology and Elections in Uganda: A Digital Rights View of the Uganda 2021 General Elections," https://cipesa.org/?wpfb_dl=367

18 Chapter 105, <https://www.parliament.go.ug/cmisis/browser?id=f6852c88-0d0a-4b7b-ad9c-c9c4579f786f%3B1.0>

19 CIPESA, "Technology and Elections in Uganda: A Digital Rights View of the Uganda 2021 General Elections," supra.

20 Wambi Michael, "To Silence a Poet, and a Nation: What Stella Nyanzi's Conviction Means for Uganda," Inter Press Service, August 6, 2019, <http://www.ipsnews.net/2019/08/silence-poet-nation-stella-nyanzis-conviction-means-uganda/>; see also: Amnesty International, "Uganda: Freedom of expression takes a knock as Stella Nyanzi found guilty of cyber harassment," August 2, 2019, <https://www.amnesty.org/en/latest/news/2019/08/uganda-freedom-of-expression-takes-a-knock-as-stella-nyanzi-found-guilty-of-cyber-harassment/>; Voice of America, 'Ugandan Security Forces Arrest Writer, TV Anchor After Coronavirus Posts' <https://www.voanews.com/africa/ugandan-security-forces-arrest-writer-tv-anchor-after-coronavirus-posts>; Nile Post, 'Missing critical book writer, Kakwenza charged, remanded' <https://nilepost.co.ug/2020/04/21/missing-critical-book-writer-kakwenza-charged-remanded/>; Nile Post, 'Critical book writer, Kakwenza released on bail' <https://nilepost.co.ug/2020/04/21/missing-critical-book-writer-kakwenza-charged-remanded/>.



According to the Press and Journalist (Amendment of Fourth Schedule) Instrument, 2014:²¹

(1) Journalists and editors must take care not to publish inaccurate, misleading or distorted information, including pictures. (2) Any significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and, where appropriate, an apology should be published. (3) A journalist or editor must distinguish clearly between comment, conjecture and fact. (4) Journalists and editors must afford a fair opportunity for reply to inaccuracies when reasonably required.

What is the Right to Privacy and Data Protection?

The right to privacy is a fundamental human right which is guaranteed and protected under national and international instruments. Article 27 of the 1995 constitution provides for the right to privacy of the individual including of their correspondence and communication.

How do National Laws Provide for Data Protection and Privacy?"

The relevant national laws and the respective provisions for data protection and privacy include:

co.ug/2020/05/06/critical-book-writer-kakwenza-released-on-bail/; New Vision 'Arrests disrupted my political plans, says Tumukunde' <https://www.newvision.co.ug/news/1522127/arrests-disrupted-political-plans-tumukunde>; Tracy Teddy Nayiga, 'Bizonto' comedians arrested over sectarianism' <https://www.pmldaily.com/news/2020/07/bizonto-comedians-arrested-over-sectarianism.html>; The Observer 'Bizonto comedians arrested again after God-appeal skit' <https://observer.ug/news/headlines/68724-bizonto-comedians-arrested-again-after-god-appeal-skit>.
21 Press and Journalist (Amendment of Fourth Schedule) Instrument, 2014 S.I. No.5 of 2014, <https://media.ulii.org/files/legislation/ug-act-si-2014-5-publication-document.pdf>



- The Data Protection and Privacy Act of 2019: This law gives effect to the constitutional provision on the right to privacy. It provides for the right to data privacy of individuals including the right to be informed and seek their consent prior to collection, processing and transfer of data. All the responsible parties must take all the relevant precautions to ensure that the collected data is accurate and correct any errors. The law also lays down the principles of data protection which data controllers and processors must adhere to so as to ensure that the interests of the individual whose data is collected are protected. The principles are provided for in section 3 and include dealing with personal data in an accountable, transparent, fair, lawful, and secure manner, with adherence to quality, for a specified period and purpose.

However, the right to privacy may be limited in exceptional circumstances such as in relation to national security, enforcement of the law, medical purposes and conducting of criminal investigations by state security agencies. Hence, surveillance, such as through the use of closed-circuit television (CCTV) systems and interception of communication, are some of the measures employed by the State and its agencies to monitor physical and digital behaviour of individuals.

- The **Uganda Communications Act** has been invoked on several occasions to interfere with operations of the telecommunications sector



including in determining issues of privacy of the individual online. For instance, there have been requirements to register SIM cards which facilitated the collection of individuals' personal data.²²

- Under the **Registration of Persons Act**, the National Identification and Registration Authority (NIRA) is mandated to register citizens and non-citizens and births as well as to issue unique identification numbers and national identity cards to registered persons
- The **Regulation of Interception of Communications Act, 2010** provides for lawful interception and monitoring of communications in the course of their transmission whether through telecommunication media or postal services or any other service.²³ The Act establishes a monitoring centre, which is placed under the Minister's responsibility, for the interception of communications.
- Some provisions of the above laws facilitate real time interception and surveillance of individuals including of their communication and movements and activities online.

22 Onyait Odeke, "Here's how to re-register your SIM card on MTN, Airtel, Vodafone, Smart, Smile and Africell Uganda before the deadline," Dignited, April 13, 2017, available at <https://www.dignited.com/22430/re-register-sim-card-mtn-air-tel-africell-vodafone-smile-smart-uganda/>

23 Regulation of Interception of Communications Act, 2010. Long title.



What is Freedom of Assembly, Association and Participation?

Freedom of assembly, association and participation are provided for under article 29 of Uganda's 1995 constitution. The Article provides for the right of every person to enjoy freedom to assemble and to peacefully demonstrate together with others and to petition. It also provides for the right of freedom of association, which includes the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

These rights extend online where one has the right to use online platforms including websites, social media platforms and applications to associate and assemble with other users. However, just like other online rights and freedoms, the right to freedom of assembly and association is subject to legal limitations.

Article 43 of the Constitution provides for general limitations on fundamental and other human rights and freedoms, which extends to interference with the rights and freedoms of others or in public interest. This limitation extends to freedom of assembly and association.

In the lead up to the 2021 general elections, the Parliament passed the Political Parties and Organisations (Conduct of Meetings and Elections) Regulations 2020,²⁴ which aimed to safeguard public health and safety of political party activities in light of the COVID-19 pandemic. Almost all political meetings under the regulations had to be held virtually as a measure to check the spread of the deadly

²⁴ See the regulations <http://parliamentwatch.ug/wp-content/uploads/2020/07/The-Political-Parties-and-Organisations-Conduct-of-Meetings-and-Elections-Regulations-2020.pdf>



virus. This adversely affected freedom of association and assembly online as it limited and curtailed them.

The Public Order Management Act, 2013 regulates public assemblies. Authorities have interpreted the law as primarily giving the Uganda Police Force powers to determine whether individuals can actually assemble and associate. However, this reading contravenes constitutional guarantees of freedom of assembly. In fact, in March 2020 the Constitutional Court ruled that section 8 of the law was inconsistent with the Constitution because it did not pass the test set out under Article 43 of the supreme law of the land. Article 43(2)c of the Constitution requires that any limitation on rights and freedoms provided for in chapter four must be “acceptable and demonstrably justifiable in a free and democratic society”.²⁵ “It is only in undemocratic and authoritarian regimes that peaceful protests and public gatherings of a political nature are not tolerated,” Justice Cheborion Barishaki said in the lead judgement.

Since then, however, the Uganda Police has continued to invoke the law to interfere with public assemblies.

The Computer Misuse Act, 2011 as amended in 2022 in as far as it seeks to prevent unlawful access, abuse or misuse of information systems including computers and the prohibition of offensive communication, unauthorised sharing of information, sharing of unsolicited information and misuse of social media, presents opportunities for the state and government to limit freedom of assembly and association online. The restrictions further curtail speech and expression and access to information which are often a medium for effective online engagements.

25 <https://ulii.org/ug/judgment/constitutional-court-uganda/2020/6>

WHAT IS THE STATE ROLE IN THE REALISATION AND ENJOYMENT OF DIGITAL RIGHTS?



States have an obligation to ensure that human rights are respected, protected and fulfilled within their territories without discrimination of any kind, such as on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.²⁶

Where restrictions are imposed against any digital rights, they must conform to the three-part test. That is, the restriction must be provided for by the law, pursue a legitimate aim and be necessary in a free and democratic society.²⁷

Article 43 of the Uganda 1995 Constitution provides that:

- (1) in the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.
- (2) Public interest under this article shall not permit-
 - (a) political persecution;

²⁶ See for example article 2 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic Social and Cultural Rights
²⁷ See for example article 19 (3) of the International Covenant on Civil and Political Rights which prescribes acceptable restrictions to freedom of expression.

(b) detention without trial;

(c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.



The common grounds for limitation of rights relates to information or content that may potentially incite violence, discrimination or hatred or infringe on the privacy of another person.

Institutions that Regulate the Digital Civic Space in Uganda

A number of institutions are charged with regulating the use of the digital civic space:

- The **Ministry of Information and Communications Technology and National Guidance** was established in June 2006 with a mandate of providing strategic and technical leadership, overall coordination, support and advocacy on all matters of policy, laws, regulations and strategy for the ICT sector. It also ensures sustainable, efficient and effective development, harnessing and utilisation of ICT in all spheres of life to enable the country achieve its national development goals.²⁸
- The **National Information Technology Authority (NITA-U)** was established by the Na-

²⁸ Ministry of Information and Communications Technology and National Guidance, <https://ict.go.ug/about-us/>



tional Information Technology Authority Act, 2009. The functions of NITA-U include creating and managing the national databank; monitoring and regulating data standards; and promoting and providing technical guidance for the establishment of e-Government, e-Commerce and other e-Transactions in Uganda.

- The **Uganda Communications Commission** was established in 1997 and is currently governed by the Uganda Communications Act, 2013. Its functions include implementing the Act; monitoring, inspecting; licensing, supervising; controlling and regulating communications services.
- The **Data Protection Office** is established by the Data Protection and Privacy Act, 2019. The office performs the function of overseeing the implementation and enforcement of the Act, including enforcement of the right to privacy. The office can receive complaints, monitor and investigate all complaints.
- The **Uganda Human Rights Commission (UHRC)** is mandated by the Constitution to protect and promote fundamental human rights. The functions of UHRC, include investigating human rights violations and maladministration of justice and proposing effective measures to prevent human rights abuse.



- The **Media Council**²⁹ is established by section 8 of the Press and Journalists Act. The functions of the Media Council are:
 - To regulate the conduct and promote good ethical standards and discipline of journalists;
 - To arbitrate disputes between the public and the media, and the State and the media;
 - To exercise disciplinary control over journalists, editors and publishers;
 - To promote, generally, the flow of information;
 - To censor films, videotapes, plays and other related apparatuses for public consumption; and
 - To exercise any function that may be authorised or required by any law.
 - Under Section 29, the council engages in media regulation, press freedom advocacy, disciplinary action and film classification.
- The **courts in Uganda** are mandated to administer and dispense justice to all Ugandans. Article 126 of Uganda's Constitution requires that administration of justice is done in accordance with the law. The principles to be applied in dispensing justice include timely justice, adequate compensation, reconciliation,

²⁹ Media Council, <https://mediacouncil.go.ug/media-council-2/>



and administration of justice without undue regard to technicalities.

Once one's digital rights are violated, the court system which includes the Magistrates Courts, the High Court, Court of Appeal and Supreme Court (highest appellate court), are available for approach in search for a remedy.

For instance, under section 33 of the Data Protection and Privacy Act, a data subject who suffers damage or distress as a result of failure by the data collector, processor or controller to comply with the Data Protection and Privacy Act may apply to a Court for compensation.

What Should I do When My Digital Rights are Violated?

You have a right to an effective remedy in case of violations of your digital rights. Remedies can be obtained from internet service providers, the police, courts, UCC, and other government ministries, agencies and departments like the Uganda Human Rights Commission. The rights to appeal should also be available to you in case your issue is not addressed to your satisfaction. The processes of obtaining remedies are provided for in the various laws that govern digital rights.

The Police is mandated to maintain law and order and to protect lives and property. Rights violations should be immediately reported to the police. The police shall then investigate the matter and refer to the Court for handling.



The Courts will, depending on the right violated hear cases against an individual responsible for the violation or against the State. Under the Human Rights (Enforcement) Act, 2019, a public officer may be held personally liable who, individually or with others, violates or participates in the violation of a person's rights or freedoms.

All information concerning issues that could lead to your claim for a remedy should be availed to you at all times by the responsible data protection officer or officers. You should accordingly be told of your online rights and freedoms by the data collectors, controllers and processors.

In case you are charged with a criminal offence relating to your use of the digital civic space, you are entitled to a right to a fair hearing in accordance with the laws governing justice processes. Common cases giving rise to claim of rights include breach of obligations by telecommunication companies and internet service providers.

Where violation of rights has been systematic, advocacy may be preferred. Advocacy can be conducted at different levels:

- With parliament to push for legislative reform. This can be done through engaging members of parliament on the need to review, amend and repeal regressive provisions and laws and, to replace them with progressive ones that protect and promote rights and freedoms.
- With regional and international human rights protective mechanisms such as the United Nations Universal Periodic Review and the African Commission on Human and Peoples'

Rights to hold the state to account for human rights violations. Regional and international mechanisms present an opportunity for civil society organisations and individuals to present the state of human rights in a given state for review by another or other state with the aim of improving the state of human rights.



HOW DO YOU SAFEGUARD YOURSELF IN THE DIGITAL SPACE?



As an individual, there are measures that you can take to protect your privacy when you operate in online and digital spaces.

- Regularly update software programs and operating systems on your gadgets such as mobile phones and laptops.
- Install anti-virus software programmes on all ICT gadgets to guard against viruses and malware.
- Always enable firewalls. A firewall functions like a gatekeeper for your computer or device. It checks everything that tries to come in and out, and only lets in the things that are safe and allowed. It helps keep your computer safe from bad guys who want to steal your information or hurt your computer. So, it is like a superhero for your computer.
- Protect all files and other content on your gadgets, apps and platforms using strong passwords to ensure that only intended or authorised persons can access them.



- Maintain regular backups of your content and make use of file encryption for highly confidential information.
- Encryption involves the use of a secret code to write your message. Instead of using regular letters and numbers, you use special symbols or rearrange the letters in your message in a special way. This makes your message look like a jumble of letters or symbols that does not make sense to anyone who does not know the code. Encryption helps keep information safe when it is being sent over the internet or stored on a computer. It helps protect your private information, such as passwords or personal messages, from being seen by anyone who does not have the key to unlock the encryption.
- Protect computers against power surges by making use of uninterruptible power supply (UPS).
- If you are not sure about the security of a wireless network, do not use it.
- Properly dispose of information from computers and other gadgets to ensure it cannot be accessed by other individuals. This should apply to gadgets, disposal into bins of printed information and electronic storage devices.

ANNEX:

REGIONAL AND INTERNATIONAL INSTRUMENTS ON DIGITAL CIVIC SPACE



Freedom of Expression and Access to Information

What do regional and international instruments provide in respect of freedom of expression and access to information?

Uganda has committed itself to respect, protect and promote human rights. Both national and international law is applicable.

The regional and international laws and instruments that regulate the digital civic are briefly highlighted below.

Regional Instruments

The leading instrument in Africa on freedom of expression is the African Charter on Human and Peoples' Rights. It provides in article 9 that: (1) Every individual shall have the right to receive information. (2) Every individual shall have the right to express and disseminate his opinions within the law.

Other instruments from which freedom of expression and access to information can be drawn include Resolution 169 on Repealing Criminal Defamation Law in Africa by the



African Commission on Human and Peoples' Rights of 24 November 2010. The resolution highlights the threats associated with defamation and calls upon states parties to repeal criminal defamation laws.

International Instruments

Article 19 of the Universal Declaration of Human Rights (UDHR) and article 19 of the International Covenant on Civil and Political Rights (ICCPR) guarantee freedom of expression. The two articles emphasise that everyone has the right to freedom of opinion and expression; and this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

An elaborate explanation of freedom of expression can be found in United Nations General Comment No. 34 of 2011. It elaborates freedom of expression as entailed in article 19 of ICCPR includes internet-based modes of communication.³⁰

The UN Human Rights Council Resolution of 2016 affirmed that the way rights are protected offline should be the same way they are protected online.³¹ It specifically notes:

“[T]he same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with articles 19 of the Universal Declaration of

30 General Comment No. 34 above at n 4 at para 12, <https://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>

31 UNHRC, ‘Resolution on the promotion, protection and enjoyment of human rights on the internet’, A/HRC/32/L.20 (2016) at para 1, <https://digitallibrary.un.org/record/845728?ln=en>



The International standards on freedom of expression are provided in the following:

- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (article 5)
- Convention on the Elimination of All Forms of Discrimination against Women (article 7)
- ILO Convention N° 135, Workers' Representatives Convention
- General Comment 10 [19] (Article 19) of the Human Rights Committee (CCPR/C/21/Rev.1 of 19 May 1989)
- General Comment 11 [19] (Article 20) of the Human Rights Committee (CCPR/C/21/Rev.1 of 19 May 1989)
- The public's right to know: Principles on Freedom of Information Legislation. Annex II Report E/CN.4/2000/63



Freedom of Assembly and Association

Regional Instruments

The African Charter on Human and Peoples Rights (ACHPR) provides for the freedom of assembly in article 11 and the freedom of association in article 10.³⁴ Further, the African Charter on the Rights and Welfare of the Child of 1990 provides for the right of every child to freely associate and assemble within the law.

In 2017, the African Commission on Human and Peoples' Rights (ACmHPR) adopted the Guidelines on Freedom of Association and Assembly in Africa. The guidelines provide for best approaches and practices to protecting assembly and association within the international law framework.³⁵ Freedom of association is also drawn from articles 12(3), 27(2) and 28 of the African Charter on Democracy, Elections and Governance.

The African Declaration on Internet Rights and Freedoms, a Pan-African initiative of civil society without binding force, offers commendable guidance on freedom of assembly and association on the internet.³⁶

ohchr.org/en/privacy-in-the-digital-age/international-standards

34 Article 10 of the ACHPR is to the effect that: "(1) Every individual shall have the right to free association provided that he abides by the law. (2) Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association." While article 11 is to the effect that: "Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others."

35 African Commission on Human and Peoples' Rights "Guidelines on Freedom of Association and Assembly in Africa, 2017" https://mk0rofifiqa2w3u89nud.kinstacdn.com/wp-content/uploads/ACHPR-Guidelines-english.pdf?_ga=2.173642336.2115100416.1586080912-1356296997.1570615122

36 Article 5 of the African Declaration on Internet Rights and Freedoms, available at <https://africaninternetrights.org/articles/>



Further, the African Union Convention on Cyber Security and Personal Data Protection offers guidance on data protection and privacy. When analysed, the Convention reveals potential impact of personal data collection on the exercise of assembly and associations online.³⁷

International Instruments

The Universal Declaration of Human Rights (UDHR) (article 20 (1) and (2));³⁸ International Covenant on Civil and Political Rights, 1966 (ICCPR) (article 21 on assembly and article 22 on association);³⁹ Convention on the Elimination of Racial Discrimination (Article 5(d) (ix)) provide for the rights to assemble and associate. The two rights are now wider in scope and extend to labour relations in article 8 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).⁴⁰

Other international instruments providing for assembly and association include article 15 of the International Convention on the Rights of the Child of 1989; article 15 of the 1951 Refugee Convention; articles 26 and 40 of the Convention on the Protection of the Rights of All Migrant

37 The African Union Convention on Cyber Security and Personal Data Protection, https://au.int/sites/default/files/treaties/29560-treaty-0048_-_african_union_convention_on_cyber_security_and_personal_data_protection_e.pdf

38 Article 20 (1) of the UDHR provides that; everyone has the right to freedom of peaceful assembly and association and article 20 (2) provides that “No one may be compelled to belong to an association.

39 Article 21 of the ICCPR provides that; “The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.”; Article 22 (1) of the ICCPR provides that; “Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.”

40 Freedom of association in labour rights is made elaborate in ILO Instruments: the convention concerning Freedom of Association and Protection of the Right to Organise No. 87 and the convention concerning the Application of the Principles of the Right to Organise and Bargain Collectively ILO Convention No. 98.



Workers and Members of Their Families of 1990; article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance of 2000 and Article 29 of the Convention on the Rights of Persons with Disabilities of 2006. Soft laws such as the UN Human Rights Council Resolution on the Promotion, Protection and Enjoyment of human rights on the internet provide further protection measures and guidelines on freedom of assembly and association online.⁴¹

41 The UN Human Rights Council Resolution on the Promotion, Protection and Enjoyment of human rights on the internet A/HRC/38/L.10 of 2 July 2018 is available at <https://undocs.org/en/A/HRC/38/L.10>



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