

Joint Submissions to the Universal Periodic Review of Uganda by the Unwanted Witness,

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Introduction

The Unwanted Witness the leader of the joint submission is a non-governmental organisation registered in Uganda working for an open, free and secure Internet, which contributes, to the realization of human rights.

Executive summary

1. This submission is in respect of stakeholders' contribution to the second cycle of Uganda under the Universal Periodic Review. The purpose of the submission is to provide information on the human rights situation on the ground in Uganda with particular focus on the extent of implementation, and compliance with international human rights obligations, including commitments made under the previous UPR cycle on freedoms of expression, information, association and assembly as well as Internet freedoms in Uganda. It seeks to contribute to Uganda's second cycle of the Universal Periodic Review for consideration at the 26th session of the Working Group to be held in October/November 2016.
2. This is a joint submission by organizations working in Uganda on freedoms of expression, information, assembly and association as well as Internet freedoms in Uganda. The said organizations include; Article 19, Panos Eastern Africa (PANOS); Center for Media Research and Engagement (C4MRE); Women of Uganda Network (WOUGNET); Uganda Parliamentary Press Association (UPPA), Digital Empowerment Initiative for Eastern Africa; UNWANTED WITNESS UGANDA; Water and Environment Media Network Uganda (WEMNET-U), and Uganda Media Women Association (UMWA). The organizations were engaged in consultative process that were national in nature and validated the report before its submission.
3. The above named stakeholders observe with regret the failure by the government of Uganda from undertaking positive implementation of recommendations that aimed at improving the human rights situation on the ground. While a number of recommendations were made to the government of Uganda to which a couple of them related to freedom of expression, information, assembly, and association, little if any has been implemented to that effect. While efforts have been garnered towards developing a national action plan on the implementation of the recommendations of the UPR 1st cycle of review, many have gone unimplemented.

4. In order to undertake a proper evaluation of Uganda`s commitments to its International mandate under the UPR, the stakeholders took account of the recommendation on freedom of expression, access to information among others accepted by the government of Uganda and enshrined in the outcome report. In undertaking an evaluation, an accountability approach is deduced to determine the level at which the said recommendations were met/ delivered.

Freedoms of Expression

5. There has still continued to exist various concerns and gaps implicating the enjoyment of freedoms of expression, assembly and association in particular and Internet freedoms in general. The above rights have faced alienation due to a number of reasons including; a draconian legal and policy framework, the lack of capacity by state institutions to enforce, or protect the said rights, while in certain places such institutions do not exist; continued harassment of media institutions, and individual journalists with many fleeing the country and practicing self-censorship; denial of information and curtailment of internet freedoms through curbing or limiting access to various internet platforms, online intimidation and threats through targeted surveillance among others.
6. Criminal defamation has continued to exist on Uganda`s law books. Both state and non-state actors have continued to use the draconian provisions of the Penal Code Act Cap 120 to stifle freedoms of expression by using state apparatus to harass journalists with criminal charges under the color of law. In October 2014, a local radio journalist, Ronald Ssembusi (RIP) was convicted of criminal defamation (against Kalangala LC V boss, Daniel Kikoola) by Grade 1 Magistrate; Kenneth Gimugu in Kalangala, and fined Uganda Shilling 1,000,000/= (\$400) or a 1 year jail sentence. The continued retention of such provisions is contrary to Uganda`s human rights obligations notwithstanding that there have been calls by the international human rights bodies to decriminalize defamation, as national criminal laws on defamation fail to strike the proper balance between freedom of expression and individuals` reputation rights which can be enforced through civil actions.
7. General harassment, intimidation and attacks on both journalists and media houses continued unabated. While the Government of Uganda made commitments during the first UPR cycle, to respect the independence of the media, there has been a continued pattern of intimidation and harassment of both media institutions and individual journalists arising from their media work. In May 2014, the government raided and closed for over 7 days two media houses, that is Red Pepper publications and The Daily Monitor, and their sister radio stations. This arose after the two media houses published

details/ contents of a letter allegedly written by former security advisor Gen. Sejusa. The said media siege was an abuse to media freedoms as it has become the basis for the continued arrests and detention of media practitioners like the arrest, and questioning of Red pepper and Monitor newspaper editorial team during May 2013 media siege, the questioning of the Red pepper editorial team for publishing a story on the disappearance of Christopher Aine, an aide to Independent Presidential candidate Amama Mbabazi.

- The safety and security of journalists in Uganda remains frail with a number of them threatened with arrest, some beaten by both state and non- state actors, many have had their equipment stolen, destroyed or damaged, many have been subjected to arbitrary arrests and torture, intimidation and harassment among other untold sufferings. According to HRNJ press index report; there is an increase in cases of violence meted against journalists as indicated by demographics here to: In 2013, 102 cases of violence were reported and 122 cases in 2014 while 2015 registered 134 cases. On 22 February 2016, police attacked freelance photojournalist Isaac Kasamani with pepper spray as he was covering arrest of opposition presidential candidate Dr. Kizza Besigye. Police tried to prevent reporters from covering Besigye's arrest at his home in the Kampala suburb of Kasangati, blocking their passage and firing pepper spray at them. Kasamani, who was working for Agence France Presse, was hit directly in the eyes and was blinded for several hours.
- On 16 November 2015, Isaac Kugonza, a journalist for Delta TV was shot in the head by police, and rushed to Mulago National Referral hospital in critical condition. The journalist was covering the arrest of Capital City's Lord Mayor, Erias Lukwago. Kugonza's video camera was also damaged as the police fired teargas as well as both rubber and live bullets, aiming to to disperse Lukwago's supporters who were opposed to the police's attempt to block him from walking to the Electoral Commission headquarters in Kampala. Lukwago was on his way to return his Mayoral nominations papers, despite an earlier move by the Commission to adjourn the nomination process.
- The last 4 years have witnessed an increase in lack of tolerance by the government of Uganda of divergent views, or opinions. On a number of occasions, the Uganda police force, the Resident District Commissioners and communications regulator have raided media houses and barred various personalities including opposition politicians from appearing on various expression platforms like radios and televisions. Many media houses that have defied the said illegal orders have had their licenses cancelled, not renewed or closed for particular periods while individual journalists especially talk show hosts have been dismissed. On 20 January 2016, Endigito FM in Mbarara was closed by police after hosting the former Prime Minister and Presidential aspirant Amama Mbabazi in a talk show. On 23 July 2015, Innocent Anyole, Isabirye Aga David, and Alton Kasolo working with Jinja-based Baba FM radio were suspended indefinitely for hosting opposition politician Dr. Kizza Besigye. The suspensions came after Besigye's scheduled appearance at the political talk show was cut short after the station owner ordered it be

switched off 15 minutes into the one-hour programme. In March 2014, police raided the Voice of Kigezi radio station and Kasese Guide Radio to halt talk shows featuring Mugisha Muntu, head of the opposition Forum for Democratic Change party.

8. This intolerance of divergent views often labeled as un-developmental has stifled free expression in Uganda. Many individuals including the former presidential press secretary Tamale Mirundi, the former FDC President Kiza Besigye have been denied access to various media houses. This took further shape during the 2016 presidential elections as various presidential aspirants, Kiza Besigye and Amama Mbabazi were barred from accessing various expression platforms. This has taken the form of closure of the premises, suspending the talk show hosts, denying operating licenses to such radios especially Endigito FM in Mbarara for hosting a presidential candidate and the suspension of NTV news crew from filming and covering the ruling party, NRM presidential campaigns.
9. At the height of the 2011- 2012 protests, the government of Uganda undertook measures that aimed at curtailing further media pluralism. This took the shape of increased phone tapping and hacking aimed at increasing self-censorship. Targeted surveillance also took root with many individual journalists known to be independent minded being put under a 24-hour surveillance using various software purchased from Gamma International and Hacking Team.

Recommendations

- i. Government of Uganda should extend an open invitation to the UN special rapporteur on freedom of expression to undertake a country visit.
- ii. Government of Uganda should consider providing a standing invitation to the UN special rapporteur on human rights defenders to undertake a situational analysis of journalists as human rights defenders.
- iii. Government of Uganda should consider scraping the law on criminal defamation by repealing the Penal Code Act cap 120
- iv. Government of Uganda should consider dropping attempts to legislate for the control, and practice of journalism in Uganda. The need to define a journalists and the minimum education consideration has the effect of curtailing freedom of expression. This includes dropping the move to stop practitioners with no degree level education from reporting from parliament.

- v. Government of Uganda should consider investigating all attacks and threats against journalists and prosecute the perpetrators.
- vi. Government should consider implementing all the decisions of the Constitutional Court in repealing the laws and scrapping the offenses of sedition from the law books, including withdrawing all ongoing criminal sessions of sedition charges against journalists.
- vii. Government of Uganda should consider undertaking continuous training of security agencies in human rights especially on freedom of expression.
- viii. Government of Uganda should refrain from passing laws and policies that are draconian and aim to stifle media freedoms like the Press and Journalists Bill 2010 and the Uganda Communications (Amendment) Act 2016;
- ix. Government of Uganda should consider making necessary amendments to the Uganda Communications Act 2013 especially on the process of issuance of broadcasting licenses.
- x. Government of Uganda is called upon to adopt the Necessary and Proportionate Principles to guarantee the right to privacy in communication and curtail surveillance of journalists

Freedoms of Association and Assembly

10. Freedoms of association and assembly have equally come under attack during the reporting period. In 2013, the government of Uganda contrary to the recommendations made at the first cycle of the UPR enacted the Public Order Management Act. This was not withstanding that a number of stakeholders, including civil society and the international organizations advised to the contrary. The law gives immense discretionary powers to the Inspector General of Police to stop and assembly. This power has been exercised on several occasions unconstitutionally by continuous prohibiting opposition groups and civil society organizations from assembling. This has seen many rallies continuously being violently dispersed by the Uganda police using tear gas and imprisoning organizers. These actions have curtailed the right to assemble.
11. The Media has equally suffered at the hands of implementers of the public order management Act (POMA). A number of journalists have been barred from accessing various grounds where such assemblies are taking place. Many have also been prohibited from reporting or airing the curtailment of the right to assembly while some individual journalists have faced arrest, and have been beaten up for example Lwanga Andrew a WBS journalist was badly beaten by the Old Kampala Police Station, District Police

Commander while covering a youth demonstration. Lwanga still faces pain and is currently soliciting for financial aid to undergo spinal surgery in India.

12. Harassment of HRDs and non-governmental organizations: This has aimed at curtailing their right to associate by passing laws that declassify organizations as foreign in order to deny them operating licenses. Other examples include the banning of opposition pressure groups like Activists for Change – A4C and For God and My country F4C being banned for organizing protests against the continued deteriorating human rights situation and bad governance.

Recommendations

- i. Government of Uganda should amend the public order management Act to facilitate rather than curtail freedoms of assembly and association by reducing on the powers of the Inspector General of Police.
- ii. Government of Uganda repeal all repugnant sections of the POMA that are contrary to the enjoyment of the right to assembly
- iii. Government of Uganda should increase oversight on recruitment, management and arming of crime preventers, including developing a legal and policy framework on crime preventers.
- iv. Government of Uganda should consider extending a standing invitation to the Special Rapporteur on freedoms of assembly or association to undertake a situational analysis.

Access to information

13. Article 41 of the 1995 constitution of the republic of Uganda provides for the right to information. While strides have been made to ensure that access to information is achieved by every citizen, like the enactment of a law on access to information, and regulations, appointing information officers in every government body among others, various gaps still exist.
14. The law in its current form is quite restrictive to public access to information. First, the regulations (which were themselves passed in 2011) impose access fees under section 7 of twenty thousand shillings (UGX 20,000) and the reproduction costs for the information requested to be borne by the information requester.
15. The Official Secrets Act (1964) restrains public officials from engaging in proactive disclosure of information. On many occasions, information officers deny information under the guise that the information request needs to be approved by the accounting

officer of the government agency. This is exacerbated by the fear of punishment among information officers for disclosure.

Recommendations:

- i. Government of Uganda should consider removing or scrapping the requirement/ need to pay for access to information as this information is of right, which right should not be tagged to monetary in order for it to be exercised
- ii. Government should consider repealing or amending all old laws that curtail the enjoyment of the right to access to information and seek to entrench a culture of secrecy, like the Oaths Act, the Official Secrets Act
- iii. Government of Uganda through the ministry of Information should consider submitting the annual Access to Information Reports to parliament to provide an understanding on the extent to which the various government institutions have provided access to information

Internet Freedoms

16. Internet freedoms connote the access and use of the internet without control, censorship, limitation or restrictions for any reason that may be. Recognizing that the internet is a source of information, news and it provides platforms where individuals can express their thoughts, opinion and views, including assemble and associate. It's for that reason that the internet should be kept unrestricted for the enjoyment of such rights ordinarily enjoyed offline, especially the freedom of expression that has no frontiers. This thus extends the citizens/ individuals rights offline which rights cannot be derogated whenever they get online.
17. While it's estimated that about 7% of Ugandans have access and thus are actively using the internet. Access has been majorly facilitated through mobile devices. With the invention of Facebook, Twitter and WhatsApp among other social media platform, that are commonly used in Uganda, the internet has provided alternative expression platforms in place of the traditionally curtailed media whose control and censorship is politically driven and often curtailed on orders from above by the communications regulator. The shift in access and use of expression platforms from offline to online platforms by the citizens is driven by the endless crack down on offline media by the government under the color of law by using the communication regulator. These actions are illegal and have no force of law.

18. It is notable that citizens have become civically conscious of their rights online, and even in the midst of the blockage; alternative means that seek to by-pass the blockade are being put to use. By using Internet proxies, citizens have shown the authoritarian government institutions their desire to fight and protect this internet space from control.
- 19.
20. Recalling the United Nations Human Rights Council resolution affirms that internet freedom is a basic human right and that people have the right to freedom of expression on the internet, the government of Uganda needs to do more than talk to necessitate all Ugandans acquire access to the internet through the establishment of necessary infrastructure and guarantee safety and security while online, desist the continued curtailment of internet access. This is intended to reduce the curtailment and effects of the infringement of the rights to freely utilize the internet like as witnessed on the 18th February 2016, election day.
21. Despite the internet being accessed by only 7% of the population, these also face challenges. Among others low internet access, high connectivity costs and snail speed which stands at 156 mbps among the slowest in the region. This is notwithstanding that citizen's view the internet as an engine which facilitates enjoyments of rights and freedoms online and fosters development. While the internet provides online media platforms that continue to provide space for quality debates on issues concerning citizens ranging from service delivery, governance, accountability, rule of law to citizens discussing how they should be governed, which topical issues get addressed by the duty bearers the government of Uganda should ensure that measures are in place that seek to foster the use of the internet rather than the current trends that seek to curtail internet access by stifling the access to social media through mobile networks. This saw the arrest and illegal detention of various internet activists like Charles Rwomushana who was arrested and kept incommunicado for posting a picture believed to be the body of a one Christopher Aine who was allegedly killed while under police custody.
22. While 2016 had been pitted as the year of internet freedoms in Uganda especially as presidential candidates took to various social media to reach to various audiences, and address various concerns, the continued fear among various government institutions that seek to entrench a culture of secrecy and curtail fundamental rights and freedoms still sought to curtail the said freedoms by orchestrating blanket bans and blockades of various social media sites majorly Facebook, Twitter and WhatsApp. While the said social media provide a free platform for citizens to exchange information, express their views and opinions without censorship and also engage the various duty bearers in demanding for services. The blocking of various mobile networks during the Election Day was not only aimed at stifling internet freedoms but also aimed at curtailing access to various social media and information. While many of the voters had no idea of the

location of their polling stations, and many turned to the internet for guidance, the communications commission passed draconian directives under the color of law and office directing ISPs to block access to social media networks including Facebook, Twitter and WhatsApp.

23. Although it is believed that the internet presents a significant opportunity for advancing gender equality, women's empowerment and equitable development, there is an ever widening digital gender gap. Ugandan women on average have a limited ability to afford, adopt and benefit from broadband access. Women are said to possess a high illiteracy rate of 82% compared to their male counterparts of 64%. It is thus crucial that the government of Uganda undertakes strategies to close this gap for women equally access affordable internet to enjoy the same rights online.
24. Whereas internet access continues to grow in Uganda with a reported current Internet penetration rate of 18% from 16% in 2013, access to broadband is still rare and only available in urban areas with less than 1% of the population estimated to have fixed line broadband subscription. This digital divide is also evident despite 80% of Uganda's population living in the rural areas, 70% of the communication services are centered in urban areas denying opportunities to rural dwellers. Internet access in the rural area is impeded by lack of or limited infrastructure, limited access to electricity, high poverty levels and illiteracy, and the high cost of access.
25. This refers to the access and utilization of various internet based platforms to exercise such rights that would otherwise be enjoyed offline. The current government has failed to strike a balance; it is concentrating more on control and neglecting the aspect of access. This is reflected in the pieces of legislations such as interception of communication, computer misuse and the communication regulatory authority, which were all passed in a period of only three years.

Recommendations

- i. Government of Uganda should enact as a matter of urgency the Internet Bill of Rights.
- ii. Government of Uganda should pass the Privacy and Data Protection Bill 2014 as the Bill seeks to protect the enjoyment of the right to privacy including online privacy and curb targeted surveillance
- iii. Revise existing regulations that impede citizens from enjoying their constitutional right of freedoms of expression, as well as privacy in communication by stopping

targeted surveillance. But also ensure that the regulations promote the use of Internet and privacy of citizens online.

- iv. Government of Uganda should put in place mechanisms that aim at holding Internet service providers accountable by ensuring that Internet users get value for money for bundles purchased.
- v. Government of Uganda should put in place intervening measures that bridge the rural-urban as well as gender divide/ gap by making Internet accessible to all including women, children and the rural populace.
- vi. Government of Uganda should undertake implementing the mechanisms that aim at facilitating the access to the Internet by providing free Wi-Fi in all government premises including hospitals and schools.
- vii. Government of Uganda should consider adopting the Necessary and Proportionate Principles to guarantee the right to privacy in communication and freedoms of expression online