



ARTICLE 19's Individual Submission to the Universal Periodic Review of Uganda

**For consideration at the 26th session of the UPR Working Group
to be held in October/November 2016**

Executive summary

1. ARTICLE 19 welcomes the opportunity to contribute to the second cycle of the Universal Periodic Review (UPR) of Uganda. This submission focuses on Uganda's compliance with its obligations under international human rights law to protect and promote the right to freedom of expression and information.
2. During the first cycle, Uganda accepted many recommendations that sought to advance protections for the right to freedom of expression and information. These include:
 - Amend accordingly all laws that are contrary to Uganda's national and international obligations to respect, protect and promote the freedoms of expression and assembly (Sweden)
 - Undertake legislative reforms so that protection and promotion of laws on the freedom of expression and peaceful assemblies and associations would be guaranteed to all the residents of the country (Switzerland)
 - Lift laws that are contrary to the state's international obligations to respect, protect and promote freedom of expression (Belgium, Slovakia) and the right of peaceful and legitimate assembly (Belgium)
 - End intimidation, threats and physical attacks on journalists and promote open reporting and commentary on issues of public concern (Netherlands)
 - Uphold the rights to freedom of expression and assembly (Austria)
 - Guarantee freedom of expression, particularly the possibility to express criticism and opinion regarding acts of the government (Chile)
 - Train security forces to respect freedoms of expression and assembly (United States)
3. ARTICLE 19 notes that the Ugandan government has not implemented any of these recommendations. Instead, the situation of freedom of expression has further deteriorated. This submission addresses the following:
 - Attacks on freedom of expression
 - Laws restricting freedom of expression
 - Blocking of websites and social media during elections
 - Access to information

Attacks on Freedom of Expression

4. Harassment, intimidation, and attacks on both journalists and media houses continue unabated. While the government of Uganda made commitments during the first UPR to end intimidation, threats, and physical attacks against journalists, there has been an increase in the attacks of both media institutions and individual journalists in the last three years. In 2013, Human Rights Network for Journalists recorded 102 cases of violations against journalists by both State and non-state actors. This increased to 122 cases in 2014 with a further increase in 2015 where 134 cases were registered.
5. Police officers were allegedly responsible for the greatest number of reported violations. There have not been any investigations, arrests, or prosecutions of perpetrators in the following instances which risk further increasing impunity for attacks on journalists:
 - On 20 May 2014, more than 50 uniformed police sealed off the premises of the *Daily Monitor* newspaper after it published a letter allegedly written by Uganda's coordinator of intelligence service. Two radio stations located in the same compound were also forced off air by the Uganda Communications Commission. The same day, police closed the *Red Pepper* newspaper on similar grounds. Two journalists and eight civilians protesting the closures were arrested, beaten, and detained by police. They were charged with inciting violence before being released.
 - On 22 February 2016, police attacked freelance photojournalist, Isaac Kasamani, with pepper spray while he covered the 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. 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. The journalist was covering the arrest of Kampala Lord Mayor, Erias Lukwago who was on his way to return his Mayoral nomination papers, despite an earlier move by the Commission to adjourn the nomination process. Police fired teargas as well as rubber and live bullets 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.
 - Police shot Ivan Vincent Mukisa, Radio One correspondent on 15 October 2015 as he covered an altercation between police and supporters of Dr. Kizza Besigye, who is the Forum for Democratic Change (FDC) presidential flag bearer for the 2016 general elections. The same day, police arrested Alfred Ochwo, a journalist working with *The Observer* newspaper, who was photographing the arrest of opposition politician, Ibrahim Ssemujju Nganda at his home in Busiika, Kira Town Council in Wakiso District. Ochwo was detained for four hours before being released without charge, nor having any statement taken.
 - Matovu Enock of NTV was shot on 29 October 2015 while covering an incident of alleged vote-rigging during the National Resistance Movement (NRM) party elections at Bulera police station in Mityana district. He was admitted to hospital with serious injuries. Two days earlier, Haruna Mugerwa (New Vision Group) had been also assaulted while covering NRM primaries at Mbirizzi trading center.
6. However, in the following cases, there have been investigations, arrests and prosecutions:
 - In January 2014, Vision Group photojournalist Mubiru Kakebe was stabbed in the hand by a woman who demanded that he delete a photo he had taken. He died two months later of an infection believed to be connected to this attack.

- In April 2014, a group of teachers in Mpigi attacked Bukedde TV journalist Andrew Mugonza as he covered the aftermath of a fire at their school; police soon came to his aid. In the same month, Police Officers rescued Ismail Ddamba of *Bukedde* newspaper from an assault by motorcycle-taxi drivers who accused him of being a police spy.
7. Despite the Ugandan government promising to promote open reporting and commentary on issues of public concern, media outlets have continued to face reprisals, including the closure and raiding of media outlets without legal authority, especially when they cover opposition candidates.
- On 20 January 2016, Endigito FM in Mbarara was closed by police after featuring the former Prime Minister and Presidential hopeful Amama Mbabazi on 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 featuring opposition politician Dr. Kizza Besigye. The suspensions came after Besigye's scheduled appearance on 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.
 - In May 2014, parliamentarian Odo Tayebwa stormed the studios of Bushenyi Model FM to assault journalist Moses Byendwa for broadcasting Tayebwa's criticism of a presidential agricultural initiative in the area.

Restrictive legislation regarding freedom of expression and media freedom

8. Article 29 of the Constitution of the Republic of Uganda provides that every person shall have the right to freedom of speech and expression.
9. However, ARTICLE 19 has noted that the legal framework continues to be one of the primary tools used to restrict the right to freedom of expression, in particular freedom of the media.
10. Although the Constitutional Court declared the law on sedition unconstitutional in 2010, the State has used criminal defamation provisions (Section 179 and 180(1)) in the penal code to imprison journalists. For example, on 17 October 2014, CBS Radio journalist Ronald Ssemuusi was found guilty of criminal defamation. The verdict came after a two-year trial over a report suggesting that the former chairman of Kalangala District had stolen solar panels meant for the community.
11. UN and regional independent mechanisms on freedom of expression have called on States to decriminalise defamation, since criminal laws on defamation fail to strike the proper balance between individuals' reputation rights and freedom of expression.¹ Individuals' reputations can be protected more effectively, with proper safeguards against abuse, through the civil law. The UN Human Rights Committee has also called on States to consider decriminalising defamation,² a call that the African Commission on Human and Peoples' Rights has also made.³
12. National security officials regularly block journalists from covering official proceedings. For example on 23 September 2015, Derrick Kiyonga, a court reporter with *The Observer* newspaper was arrested from a court room in Kampala and detained for one and a half hours by police who accused him of 'work that is not his.' He was later released without any formal charges.

¹ Joint Declaration of the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 10 December 2002

² HR Committee, General Comment No. 34, *op. cit.*, at para. 47

³ Resolution on repealing criminal defamation laws in Africa, African Commission on Human and Peoples' Rights, ACHPR/Res 169 2010

13. The Press and Journalist Act imposes illegitimate restrictions on press freedoms. It requires journalists to register with and become a member of the government-established National Institute of Journalists of Uganda (NIJU) and obtain a license from the Media Council, the statutory press regulator, which has been criticised for lacking independence. It also requires journalists to possess a university degree. Licensing requirements for journalists, in particular where they impose minimum educational qualifications, do not meet international standards on the right to freedom of expression.
14. Journalists are further required to renew their licenses annually. In February 2014, Information Minister Rose Namayanja issued Statutory Instrument No. 4 of 2014, stipulating the types of fees that must be paid in order to practice journalism. It is feared such fees are prohibitive against those without sufficient financial means, again underscoring why such licensing systems are an unnecessary and disproportionate restriction on freedom of expression that do not serve a legitimate aim.

Blocking of websites and social media during elections

15. ARTICLE 19 is deeply concerned by the decision of the Uganda Communications Commission to block access to social media while millions of Ugandans were heading to the election polls, on 18 February 2016. The Uganda Communications Commission (UCC) blocked social media sites citing 'national security' and that the platforms were being 'used to campaign on voting day.'
16. ARTICLE 19 notes that blanket bans on social media cannot be justified under international human rights law and are a violation of the right to freedom of expression; these concerns are all the more acute in the context of elections. .

Access to information

17. ARTICLE 19 notes that in 2005, Uganda enacted the Access to Information law. The law reaffirms the constitutional right of every Ugandan to access information from State bodies and accordingly prescribes the processes by which anyone can obtain such information. Nevertheless, there are challenges in implementation: the government and most of its agencies and departments are still in the habit of concealing information that should be proactively disclosed, or to which access should be granted. A secrecy law still exists on the statutes and has proved a hindrance to full implementation of Access to Information law.
18. In 2011, the government passed the Access to Information regulations to aid the operationalisation of the Act. However, we are concerned that the regulations limit the right to information and go against the spirit of Article 41 of the Constitution on citizens' right to information as well as Access to Information Act, 2005. For example, the Regulations require individuals requesting information to pay access fees for each request, yet the Act dictates that information should be provided freely and only a minimal cost of reproduction, e.g. photocopying, should be charged. Other concerns include:
 - The Ministry of Information and National Guidance are provided insufficient resources for creating awareness, coordinating implementation, training officials and procuring necessary equipment for effective implementation
 - By 2014, eight years after the passing of the law, only seven out of 21 government ministries had come up with the required manuals stipulating how to implement the Act. Only one agency had allocated a specific budget for access to information implementation while Information Officers had not been trained and provided with the necessary equipment and tools to implement their mandate.

- The categories of information that an officer may refuse or grant information are numerous (under Sections 27, 29, 30, 32, and 33 of the Act) and in many cases ambiguous, thus failing to meet the requirement of legality under Article 19(3) of the ICCPR. This kind of ambiguity enables the State to deny information requests on the pretext of national security or confidentiality, even where disclosure would be in the public interest and would not compromise these legitimate interests. A case in point is that of the two *Daily Monitor* journalists who were denied access to oil production sharing agreements between the government and oil production companies, on the basis that the contracts contained confidentiality clauses.

Recommendations

19. In light of this context, ARTICLE 19 calls upon UN member States to make strong recommendations to Uganda including:
 - i. Prevent and protect against murders, violence, and other attacks against journalists and media workers;
 - ii. End impunity by ensuring impartial, speedy and effective investigations, to bring perpetrators to justice, and to ensure that victims and their families have access to appropriate remedies, including where the attacks are committed by State actors;
 - iii. Cease raids and suspensions against media outlets, and ensure that the media are free to report on all political affairs, including activities of the political opposition;
 - iv. Reform the Penal Code in line with international standards on freedom of expression, including by repealing criminal defamation (Section 179 and 180(1)) provisions;
 - v. Remove the powers of the Uganda Communications Commission (UCC) to issue orders to block access to entire websites, social media platforms, ports, networks protocols OR IP addresses;
 - vi. Protect the right to freedom of expression online, including by ensuring that as a matter of principle, blanket blocking/ filtering is prohibited by law. If such measures are maintained, they must provided by law only for specific categories of content consistent with international standards and should always be authorised by an independent and impartial court with related procedural safeguards under the rule of law. Blanket bans on social media should never be ordered, particularly during elections;
 - vii. Reform the Press and Journalist Act to bring it in line with international human rights law, including to remove the licensing requirements for journalists, and to ensure the independence of any media regulatory body;
 - viii. Ensure the full and effective implementation of the Access to Information law, including by enhancing information collection and management by authorities, addressing the culture of secrecy and fear of reprisals for information disclosures, and undertaking extensive national public education.