

**EXAMINATION OF THE LAW ON SEX TAPES, NUDE PICTURES; CASE STUDY  
ON UGANDAN FEMALE CELEBRITIES.**

**BY**

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**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL  
FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF THE DEGREE OF  
BACHELOR OF  
LAWS OF KAMPALA INTERNATIONAL UNIVERSITY**

**JULY, 2015**

## DECLARATION

I ATUHAIRWE RONAHI declare to the best of my knowledge that this Dissertation has never been presented or submitted anywhere as a piece of work and that it is purely an original and novel work of my own.



..... Date.....

21<sup>st</sup>/07/015

ATUHAIRWE RONAHI

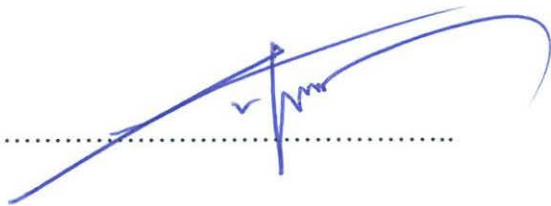
STUDENT

## DEDICATION

This work is dedicated to: my Parents, Prof Mwambutsya Ndebesa and Rev. Loie Nankunda Mwambutsya, who have strived to keep me in school; my discussion group members and friends, Enock Kasirye, Ssozi Sharif, Ndugwa Ivan, and Sekabira Moses, John Paul Agaba, Mac June and my sister and brothers LUCY Miles, Merina Tugume, Dorothy, Moreen Kesiime Mugume Dean, Ronald Twesigye and Bomuhangi Allan for their encouragement and support; and my cell members, Apio Betty, Komagum Emmy, Waiwai Gabriel, Baptist, Daniel, Sincere among others, for their continuous encouragement and prayers. I appreciate with utmost sincerity your generous contributions during and after the completion of the course. May the Good Lord richly and abundantly bless you.

## APPROVAL

This dissertation has been submitted for examination to the school of law with my approval as the student's supervisor.

A handwritten signature in blue ink, consisting of a large, sweeping 'W' followed by a vertical line and some smaller, less distinct strokes.

Date: .....

21<sup>st</sup> / 07 / 2015

**SUPERVISOR:**

**Mr. WANDERA ISMAIL**

## **ACKNOWLEDGEMENT**

First and foremost, I thank the Almighty God for he has been my Ebenezer. My humble appreciation goes to: Mr. Wandera Ismail for his valuable, and guided supervision with which this study was made possible and interesting; To my lecturers, the entire staff of school of Law especially Mr. Kirunda Robert, Mr. Ogwal Samuel and Mr. Iga Steven; and the entire Law society for the love and encouragement.

## **ABSTRACT**

The emergence of new information communication technologies (ICTs) like compact disc (CD) and digital versatile/video disc (DVD) players, computers, Internet and mobile phones, has focused debates among development experts on the opportunities, uncertainties and challenges of using these technologies in behaviour change campaigns. Heeks (1999) defines ICTs as electronic means of capturing, processing, storing and communicating information. The older ICTs have analogue systems and these include the radio and television while the newer ones are digital and they include telephones, wireless cellular phones, communication satellites, computers and the Internet. This study examines the adequacy and inadequacy of the existing legal framework of the ICT laws in Uganda, as related to the sex tapes, nude pictures, and Ugandan female celebrities.

## **LIST OF STATUTES AND INTERNATIONAL INSTRUMENTS**

The Constitution of the Republic of Uganda 1995

The Regulations for Interception of Communications Act

The Computer Misuse Act

The Anti-Pornography Act

The Police Act

The National Information Technology Act of 2009

The Electronic transaction Act

The Uganda Communications Act of 2013

## **LIST OF ABBREVIATIONS**

|         |  |
|---------|--|
| ICT     | Information Communication Technology               |
| UNCST   | Uganda National Council for Science and Technology |
| UCC     | Uganda Communications Commission                   |
| IT      | Information Technology                             |
| ITU     | International Telecommunication Union              |
| UPF     | Uganda Police Force                                |
| NBI     | National Backbone Infrastructure                   |
| VAW     | Violation Against Women                            |
| WOUGNET | Women of Uganda Network                            |
| UPTC    | Uganda Post and Telecommunications Corporations    |
| NITA-U  | National Information Technology Authority-Uganda   |



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# **CHAPTER 1**

## **GENERAL INTRODUCTION**

### **1.1. Introduction**

Information and communications technology (ICT) has transformed and revolutionised society. It has transformed political, economic systems, culture and social interactions. The vast, intractable and borderless nature of ICT has become an indispensable aspect of human life because it has permeated and transcended public and private spheres and thus changed the manner states, business sectors and people conduct their operations and interact.

However with the increasing use of ICT, there have been growing bodies of evidence and study showing violence against women involving the use of ICTs such as computers, internet and mobile phones. As expressed by the Association for Progressive Communications (APC) in their 57<sup>th</sup> session of the Commission on the status of Women then, ICT –related violence against women is not prioritized in prevention and response strategies, budgeting and evidence based policy making and women who experience these violations have little or no redress. On the other hand we can't discard the fact that ICTs have brought new frontiers of women's participation, expression and empowerment. There has been on growing forms of gender violence especially via the internet through posting of nude pictures and sex tapes of especially the female celebrities in Uganda, which acts could have been done because of hatred, bullying, harassment, revenge and many other reasons. It is against this backdrop that women's experiences in accessing justice for violations perpetrated through the use of ICTs need to be addressed.

The government of Uganda established the Uganda Communications Commission and National information Authority-Uganda as the agencies of the government to oversee; regulate communication and develop the IT infrastructure among others. Various legislations such as the computer misuse act 2010, Electronic transaction Act 2011, the regulation of the Interception of Communications Act; the NITA Act 2009; the UCRA Act 2012 and the UCC act among others were enacted to provide for the use, security, facilitation and regulation of electronic communications and transactions to encourage the use of the e-government services and provide for such related matters.

The UN Human Right Council Resolution on the promotion, protection and enjoyment on the internet recognizes that the internet is universal space for communication and exchange of ideas that can promote freedom and mutual understanding among all people regardless of race, religion, geography or economic status and as a result international Organisations, civil society organizations(HRDs), individuals and government ministries have adopted the use of online services as the fastest avenue to express themselves, transact business and share information through the different platforms.

## **1.2. Background of the study**

Uganda is a small landlocked country in East Africa with a population 35 million inhabitants, most of which live in the urban areas. Information and Communications Technology(ICTs) are generally becoming very popular with telecommunication companies and internet services on almost all mobile phones.

In the last 2 decades, a number of events have greatly changed the way people over the world work and live. This is because of the widespread of the personal computers, massive roll out of

mobile communications and the ever present internet together with the expansion of the World Wide Web. ICT has revolutionised the way production, market and distribution of goods and services are organized thus leading to new business models emerging on the horizon leading to fundamental changes in the enterprises relate to consumers. The internet and the use of the Web based technologies have led to new communication modalities that have forced traditional media like TV, radio and newspapers to devise new strategies in the struggle to remain relevant. In Uganda more and more people use the internet daily to communicate and transact business.

ICT plays a major role in all aspects of life including economic life, politics as well as social and cultural development. It also relates to human rights and supports freedom of expression and the right to information. In 1996 Government adopted the telecommunications policy which led to the liberalization of the sector, creation of the Uganda communications Commission (UCC) as the regulator and privatization of the then incumbent Uganda Post and Telecommunications Corporations (UPTC). In as much as the sub-sector was being reshaped using liberalization to attract foreign investment, government realized that there were new issues emerging due to rapid changes in technology and characterized by the advent of the internet, that it embarked a process to address these new trends of development of the ICT sector in Uganda. A ministry of ICT was created in 2006 to spearhead the improvement of ICT awareness, access and utilization with an aim of bringing all aspects of ICT under one roof and one of the first things it addressed was to work on the law to create the National Information Technology Authority-Uganda (NITA-U) which its main objective was to focus on harnessing the Information technology sub sector to contribute to national development.

Having said that, it is important to underscore that under the previous policy regime, regulatory developments, along with other government and private sector initiatives have resulted to

significant improvement in the ICT sector. Uganda has moved from approximately 250,000 available fixed telephone lines pre 2003 to over 17 million by the second quarter of 2012 and a penetration of 50%, thereby making Uganda's telecommunications market one of the fastest growing in Africa.

Electronic media: The liberalization process ended monopoly of the government owned Uganda televisions and radio Uganda which when the 2 broadcasters were merged in 2005 formed the Uganda Broadcasting Corporation. By December 2008 there were 188 functional FM radio stations. Most of these stations are commercially oriented and majority wide spread over several districts countrywide.

Fixed and mobile phone services: The first mobile cellular service provider ,Celtel, then Zain (now Airtel) was licensed in 1993 but by the end of 2009,there were 7 telecom providers servicing over 8.2 million mobile phone users meaning mobile phone network coverage now extends to several rural areas but most subscribers are in the urban areas. Many rural dwellers mainly access low cost telecommunication service through the rural mobile payphone services. There have also been improvements in the technological applications and modes of handsets available, subscribers now have access to 3G, Blackberry and Edge. Regarding fixed phone services, estimates from the Uganda Communications Commission show that fixed lines totaled to 200,000 by May. About 10million people have access to telephones compared in 1998.

Internet developments: Internet use in Uganda started in 1993 but commercial Internet services did not become available until 1994. By 2000, there were about 60,000 Internet users. According to UCC about 2.5 of the 31 million Ugandans could access internet by the end of 2008. Most Ugandans access the Internet at Cyber cafes which increased significantly when UCC waived the

Internet café and payphone licenses fess in 2002(Ibid). Access to mobile wireless Internet is also steadily increasing.

### **1.3. Statement of the problem**

There are a number of legislations in Uganda including the Constitution of the Republic of Uganda 1995 concerning the varying problems faced with ICT in failing to regulate some information which should and should not be aired. However with the laws such as computer misuse Act, the vice of cyber crime including sexting and bullying have continuously evolved in Uganda because the laws are not effective and the perpetrators are thus left free since the negative effects of ICT have failed to be dealt with and the victims especially the women fail to get just justice and continue being faced with the humiliation and violence caused by the ICT.

### **1.4. Objective of the study**

- 1.4.1. To examine the ICT laws in Uganda
- 1.4.2. To assess the loopholes in the ICT laws in Uganda
- 1.4.3. To make recommendations for the improvement of the ICT laws

### **1.5. Scope**

The study covers mainly the ICT laws in relation to gender violence in Kampala, Uganda

### **1.6. Significance of the study**

The research will help the researcher to conceptualize the phenomena and the report will act as partial fulfillment of the requirements for the award of the degree.

The research shall assist policy makers and the government with the solutions to overcome the legal challenges of the ICT in Uganda.

### **1.7. Literature review**

The research went over a number of literature and studies relevant to the present study in different public and private libraries, different websites which have bearing to the present day.

Cyber crime explains a criminal activity done using the computer over the internet to perform illegal acts.<sup>1</sup>

It is associated with offences to do with computers and the internet, inclusive of misuse of computer systems and data.<sup>2</sup>

Uganda is one of the countries in Sub-Saharan Africa generally characterized with high levels of disparity in access to and usage of ICTs (especially between rural and urban areas) and low levels of ICT infrastructure. But over the past 10 years, the government and the private sector have implemented projects aimed at improving the availability and usage of ICTs in the country. This has led to an increase in the number of fixed and mobile users, improved access to Internet connectivity paving way for the use of ICTs in different projects.

In Uganda, the Electronic Signature Act, Computer misuse Act and Electronic Transfer Act have recently been implemented to protect against cyber crime while promoting a safe and

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<sup>1</sup> Tim Simcoe (2005), Open standards and Intellectual Property Rights, Open Innovation: Researching a New Paradigm, Oxford University Press.

<sup>2</sup> Geoffrey Wold (2007), Computer Crime: The Undetected Disaster, Disaster Recovery Journal, McGladrey and Pullen Publication.



environmentally healthy electronic transacting environment. However, with the available legal and institutional framework, the country continues to experience increasing cyber crimes.<sup>3</sup>

Crimes such as cyber terrorism, intellectual property infringement, internet usage policy abuses, internet fraud, industrial espionage and altering of data, on-line child exploitation and pornography, illegal goods purchasing, piracy, impersonation and hacking, remain a challenge.<sup>4</sup> This is yet to involve more undiscovered crime given the pace of advancing technology and while the future of technology remains rich with innovation.<sup>5</sup>

In Uganda a significant percentage of transactions and processes are adopting networking technology.<sup>6</sup> Institutions such as the Ministry of Information and Telecommunication and the Uganda Police Force (UPF) have policy frameworks designed to address cyber crime. UPF is legally mandated by the Constitution to prevent and detect crime in order to ensure that the rule of law prevails.<sup>7</sup>

The Ministry of Information and Telecommunication is also mandated to address cyber crime. In Uganda, telecommunications service was monopolized by Uganda Post and Telecommunication Company, prior to the telecommunications sector reforms. Today many private companies such as Airtel, Warid, MTN, UTL and others have come up to offer services with cheap access to

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<sup>3</sup> The Ministry of Information and Communications Technology (2011), National Information Security Strategy (NIIS), 2011.

<sup>4</sup> Florence Tushabe and Baryamureeba Venansius (2005), Cyber Crime in Uganda: Myth or Reality?, Proceedings of the World Academy of Science, Engineering and Technology, Volume 8.

<sup>5</sup> Mitnick, Kevin and Simon, L. William (2005), The Art of Intrusion, The Real Stories Behind the Exploits of Hackers, Intruders and Deceivers, Hardback ISBO.

<sup>6</sup> Florence Tushabe (2004), Computer Forensics for Cyberspace Crimes, University of Colombo.

<sup>7</sup> The effectiveness of Uganda's legal and institutional framework in combating cyber crime.

internet subscriptions and roaming services. By nature the services are unregulated and subscriptions are rented out to different subscribers.<sup>8</sup>

The regulatory independence of the private companies is making it difficult for law makers and enforcement to address cyber crime while technology keeps changing and requiring timely reviews for counter measures moreover under scarcity of funds. This is in addition to lack of technical expertise by those responsible of detecting and combating crime.<sup>9</sup>

In a fully competitive environment of internet providers in Uganda, there would be limited need for regulation, but regulatory authorities still have a critical role to play. The dynamic competitive role of the information and communications sector and the unsettled issues introduced by new technologies affect the regulatory environment. This has prompted the Ministry of Information and Communications Technology to permeate national consciousness for the security ramifications of online activity.<sup>10</sup>

Indeed the universal access policies operating among diversity and isolated communications introduce legal challenges in addressing issues of social and political cohesion.<sup>11</sup>

The legal framework is also still limited in scope with changing technology. The Electronic Transaction Act<sup>12</sup> provides for the use, security, facilitation and regulation of electronic communications and transactions in addition to encouraging the use of e-government services

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<sup>8</sup> The Ministry of Information and Communications Technology (2011), National Information Security Strategy (NIIS), 2011.

<sup>9</sup> The International Telecommunication Union (2002), Trends in Telecommunication Reform: Effective Regulation, ITU Regulatory Kit.

<sup>10</sup> The Ministry of Information and Communications Technology (2011), National Information Security Strategy (NIIS) Final Draft, 2011.

<sup>11</sup> The International Telecommunication Union (2002), Trends in Telecommunication Reform: Effective Regulation, ITU Regulatory Kit.

<sup>12</sup> Electronic Transaction Act 2011

and providing for matters connected therewith to broadly remove existing legal impediments that can prevent a person from transacting electronically because of the omissions of the traditional laws; making provisions for functional equivalency making paper transactions and electronic transactions to be treated similarly; establishing rules that validate and recognize contracts formed through electronic means and setting out default rules for contract formation and governance of electronic contract performance; providing the characteristics of a valid electronic writing and an original document; in addition to supporting the admission of computer evidence in courts and arbitration proceedings. However, this will affect the position of judges as prosecutions for Cyber crime will requires judges to possess enough technical knowledge to be able properly to adjudicate on Cyber crime cases or else inappropriate acquittals will be exercised as seen in *R V CROPP*<sup>13</sup> where the jury was misled by trial judge in the application of the Computer Misuse Act 1990 (UK).

A group of individuals and organisations, including the Centre for Domestic Violence Prevention, Women's Organisation Network for Human Rights Advocacy, Prof. Sylvia Tamale, Ms. Sarah Kihika, Ms. Lilian Drabo, Strategic Initiative for Women in the Horn of Africa, Uganda Health and Science Press Association and Human Rights Network for Journalist Uganda, filed a petition in Constitutional Court challenging the legality of the Anti-Pornography Act, signed into law by President Y. Museveni on February 6, 2014. Initiated by human rights activists and civil society organisations, the petition questions the Act's compatibility with the constitution and the principles of individual freedom and women's rights. John Francis Onyango, one of the lawyers representing the petitioners, noted that "the definition of pornography as stipulated in the Act and the use of vague terminology such as 'sexual excitement' creates an

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<sup>13</sup> (1993) QB 94.C.A

offence that is overbroad, vague, and subjective in character in contravention of the principle of legality guaranteed by the Constitution“. He further highlighted that the Act, which provides for the creation of an Anti-Pornography Committee in charge of, among several duties, ensuring that perpetrators of pornography are apprehended and prosecuted and that pornographic materials are collected and destroyed, “confers wide and discretionary powers in contravention of the rights to personal liberty, privacy and property”.<sup>14</sup>

“This Act embodies a set of values and justifies the involvement of the state in personal morality, thereby infringing on personal freedom,” said Prof Sylvia Tamale. “It presents a significant challenge to the gains made on the legal front around ensuring freedom over one’s body and sexuality and must be seen as a dangerous step towards further infringement on civil rights and freedom of expression”.<sup>15</sup>

Beyond the challenges associated with legal interpretation, the Anti-Pornography Act also leads to polarization of society by implicitly attributing specific roles and behaviours to men and women and encouraging people to position themselves in relation to a set of values guiding what is morally acceptable<sup>16</sup>.

As a symptom of this phenomenon, about 44 cases have been reported of mobs using the law as an excuse to target and unclothe women that they consider to be improperly dressed. “I never thought this would happen to me, but now I know it can happen to anyone”, said one of the victims. “I am now afraid because I am not sure if I will not follow victim because of what I wear as I step out of my house”. These cases clearly show how the passing of the Act legitimated

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<sup>14</sup> Anti-Pornography Act - Human Rights Activists and Civil Society Organisations Challenge the Legality of the Act in Constitutional Court - Uganda

<sup>15</sup> Ibid

<sup>16</sup> Ibid

violence against women in the eyes of certain segments of the population. As outlined in the current petition, “the Act is likely to deny women control over their own bodies and access to public spaces, in contravention of the right to equal dignity and freedom from discrimination, right to personal liberty and security of the person, freedom from cruel, inhuman or degrading treatment and the freedoms of movement and association.”<sup>17</sup>

Although the recent declarations of the government announcing further work on the Act and the development of implementation guidelines can be seen as an effort to appease the critics and contain the increasing violence, it is not likely that the Act, passed by parliament and assented by the President will be simply withdrawn. For this reason, it is necessary to challenge the Act and ensure that individual freedom and women’s rights are not endangered by its implementation. “Effectively challenging this Act in Constitutional Court would go a long way towards ending the violence and harassment that women are already facing,” said Daisy Nakato, Executive Director of the Women’s Organisation Network for Human Rights Advocacy. “We call upon the Constitutional Court to pronounce itself urgently on the legality of this Act”.<sup>18</sup>

National ICT Policy: Private investors dominated the communication sector after the economy was liberalised and they mainly focused on urban areas because they lacked the incentive and infrastructure, appropriate policy and legislative framework to cater for nationwide coverage. To streamline developments in the ICT sector, the government asked the Uganda National Council for Science and Technology (UNCST) to initiate the process of formulating the national ICT policy. This process was concluded in 2002.<sup>19</sup>

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<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> ICTs, youth and sex Maria Roselynn Muzaaki Pg. 27

The policy mainly seeks to promote the development and effective utilization of ICTs. Although this policy does not explicitly spell out how to incorporate ICT usage in the education and health sectors, some of its objectives like; providing for the establishment of appropriate infrastructure, creating awareness about the role of ICTs in development, improving functional literacy and ensuring gender mainstreaming in ICT programmes, are a prerequisite for facilitating the pedagogical use of these technologies.<sup>20</sup>

The UN estimates that 95% of aggressive behaviour, harassment, abusive language and denigrating images in online spaces are aimed at women and come from partners or former male partners. Information and communications technologies (ICTs) such as the internet and mobile phones are the most used tools by abusers as a platform to attack their victims but also used by sur the rapid adoption of mobiles has also seen a rise in invasion of privacy through SMS stalking, monitoring and control of partners' whereabouts.<sup>21</sup>

Anecdotal reports are backed by a new study, which found that the majority of ICT users have had conflicts within their families.

The study, by Aramanzan Madanda from Makerere University's Department of Gender and Women Studies, found that about 46 percent of people had problems with spouses in relation to use of mobile phones and 16 percent reported having conflicts over use of computer.

In the ancient times, women had to ask for permission from their husbands if they wanted to go somewhere or even visit the relatives or friends, in also some families, the wives must speak on loudspeaker so as for the husband to listen but times have changed because the women now can

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<sup>20</sup> Ibid

<sup>21</sup> Ibid

get in touch with them minus their consent which then makes the men feel inferior and they resort to violence. Therefore the intrusion of women's privacy has greatly been seen through the improvements in the ICT sector especially through the computer, internet and mobile phones.

The research found that the majority of people who have mobile phones are men. Eighty-eight percent of original buyers were men, while only 44 percent of the women had bought their phones. This means about 56 percent of women who own phones got them from someone else, usually from the husband or partner. To women, the internet is a vital public subject that directly affects them due to barriers of access to media or political representation. Inequalities that women face in terms of economic power, education and access to resources also affect access and participation in policy, shaping the use of internet and its debates. This explains why the internet has become an increasingly critical public sphere for the claiming of personal private lives, citizenship rights and civil liberty not forgetting women's rights. For people who have little access to other kinds of public platforms due to the multiple forms of discrimination they face such as gender, age, class or sexuality, the internet is a vital space to negotiate and realise their rights.<sup>22</sup>

Women have not been raised and trained to be involved and participate in ICTs, this has resulted into minimal or no contribution by women in that area. Because women are less exposed and lack knowledge on the dangers of use of ICTs, they most time fall victims of Violence Against Women (VAW) through ignorant use of ICTs E.g. the current epidemic of sex scandals shown all over social media in around the world. For example, Nude pictures and sex tapes is the new thing taking over the entertainment industry and very many of the Ugandan female celebrities have been found victims some of which include artists like Brenda Nambi, Hellen Lukoma,

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<sup>22</sup> Ibid

Desire Luzinda, Margla to socialites Zari, Judith Heard all the way to TV and radio personalities like Sanyu Robinah Mweruka and Sanyu Fm's Nina, and of recent this year 2015 Anita Kyarimpa commonly known as Anita Fabiola who hosted the 'Be My Date' show on NTV. Most of the celebrities have been pin pointed at as being a shame and disgust to the society because they have abused the dignity of women through showing off their nudity publically.<sup>23</sup>

However it should be noted also that much as the victims are portrayed as the women, the men should also be looked at as the perpetrators but this isn't seen because of patriarchy in society which has continued to cause discrimination and violation against women. The question put by the women is that Does one perform sex alone? why is it the women that are put to shame and not the men who also participate? Do the women adore to show their nudity to the public? These are some of the comments from the fellow female celebrities towards this vice and the defense the victims give.

Juliana Kanyomozi is one of the most respected artists in East Africa simply because of the way she carries herself around. She's principled, composed, confident, focused and talented. The "Nabikowa" artist said she doesn't think anyone in her right mind can release her nakedness unless it is someone who does it for sabotage but this is always fueled by the media who embellish the whole situation. Asked why, *Cindy* a victim of nude picture leaking an incident happened about five years ago thinks many celebrities are being involved in such acts, "the Ayokya yokya" artist gave three reasons as to why someone would go to an extent with the first being :- a solution for dying careers in the entertainment industry, a new revenge method for dumped boyfriends and lastly a move for people to be famous. The famous artist *Desire Luzinda* whose nude pictures and sex tape went viral on social media opened up about the leaked pictures

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<sup>23</sup> Ibid



and had this to say “*When haters tried so hard to put down my concert with all sorts of terrible stories, I slapped them in the face with a very successful concert. Now that I am a hot cake and the HEAT is killing them, they have come up with a false nude pic,*”. Desire insists that the lady in the pictures is not her as many tabloids had reported. She further says that haters are just trying to tarnish her name by leaking false pictures. The amazing vocalist *Angella Katatumba* said some people are purely victims of circumstances while others are attention seekers. The “For you Gulu” artist had advice to the general public to stop taking nudies because they’ll never know when such pictures might be exposed. “If it’s a publicity stunt, it will achieve all the negative publicity and your brand will forever be seen in negative way.”

“I am definitely not happy that my nude photos are out there, but there is nothing that I can do about them now. I cannot close Facebook, I cannot close WhatsApp and neither can I cover the eyes of anyone who wants to see them,” said the Brenda Nambi. “Let the people enjoy them, they will get tired of them by themselves.” added the *Hb Toxic star* and when questioned on how the photos leaked, Brenda said someone who she knows very well intentionally leaked them to get public attention.

This and much more is happening to many female celebrities and they pin it to the haters who want to tarnish their names and gain fame, in other words it has become a somewhat new kind or form of revenge by the men. This is not just happening to Ugandan females but also all over the world, there have been different cases of sex scandals and posting of nude pictures as a cyber crime and a form of violation against women.

Computer under the Electronic Transactions Act 2011 defines Computer as “electronic, magnetic, optical, electrochemical or other data processing device or group of such

interconnected or related devices, performing logical, arithmetic or storage functions; and includes any data storage facility or communications facility directly related to or operating in conjunction with such a device or a group of such interconnected or related devices". Therefore when computer users log onto the Internet, they are able to perform various tasks and services like browsing the World Wide Web, chatting with fellow cyber citizens, transferring files from one computer to another, remote logging to another computer, sending electronic mail, conducting electronic commerce and many more. It is these many functionalities and freedom of use while in cyberspace brings an equal ease of committing immoral acts and crimes. These crimes include cyber terrorism, illegal purchase of goods, software piracy, sexual assault, hacking and many more.<sup>24</sup>

Therefore it is through the ICT that different crimes have been committed and these are under the cyber crimes and these include Cyber harassment, Cyber pornography and Cyber trafficking.<sup>25</sup>

The Government of Uganda through the Ministry of ICT and NITA-U embarked on an NBI/EGI project. The project involves the following components:

National Backbone Infrastructure (NBI): This involves the laying of Fiber Optic Cable in major towns and is intended to ensure that high bandwidth data connection is available in all major towns of Uganda at a reasonable rate.<sup>26</sup>

Electronic Government Infrastructure: This is designed to reduce the cost of doing business in government, improving communications between government agencies, and

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<sup>24</sup> The Inter-Sessional Panel Of The United Nations Commission On Science And Technology For Development 15-17 December 2010. Geneva. Uganda Contribution " Ict Policies, Strategies And Initiatives Put In Place In Uganda "

<sup>25</sup> Ibid

<sup>26</sup> Ibid

reducing the need for officials to commute for meetings and thereby increasing efficiency.<sup>27</sup>

Using the cyber laws, the government institutions have been able to monitor and threaten with closure such providers who do not filtrate internet posts by users. Recent developments have witnessed systematic build up by the government agencies to consider shutting down or limiting internet freedom. In 2010, a blogger Timothy Kalyegira was the first known person to be charged of offences relating to internet expression. this case has dragged on since with the courts failing to decide as to whether the statements made via internet constituted an offence there being no known legislation to give effect to the same.<sup>28</sup>

Cyber crime explains a criminal activity done using the computer over the internet to perform illegal acts. However with the available legal land institutional framework, the country continues to experience increasing cyber crimes. In Uganda a significant percentage of transactions and processes are adopting networking technology. Institutions such as the Ministry of Information and Telecommunications and the Uganda Peoples Force (UPF) have policy frameworks designed to address cyber crime and UPF is legally mandated by the Constitution in order to ensure that the rule of law prevails.

“Most actors in the ICT industries are preoccupied with expansion and profit without much emphasis on the ramifications on gender based violence resulting from adoption” said Madanda from Women of Uganda Network (WOUGNET).

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<sup>27</sup> Ibid

<sup>28</sup> The Inter-Sessional Panel Of The United Nations Commission On Science And Technology For Development 15-17 December 2010. Geneva. Uganda Contribution " Ict Policies, Strategies And Initiatives Put In Place In Uganda "

The Anti-Pornography Bill outlaws anything that shows sexual parts of a person such as breasts, thighs, buttocks or any erotic behaviour intended to cause sexual excitement or any indecent act or behaviour tending to corrupt morals, among other things.<sup>29</sup>

According to the Bill, the current law on pornography (Article 166 of the Penal Code) does not recognise the fact that the issue of pornography transcends publication and includes communication, speech, entertainment, stage play, broadcast music, dance, art, fashion, motion picture and audio recording.

### **1.8. Methodology**

The nature of the research conducted is doctrinal legal research. The researcher carried out a qualitative analysis of the ICT laws in Uganda.

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<sup>29</sup> Daily Monitor 17<sup>th</sup> July 2015

## **CHAPTER 2**

### **INSTITUTIONAL FRAMEWORK OF ICT**

#### **2.1. Ministry of Information and Communications Technology**

The Government of Uganda has undertaken a number of Policies, strategies and initiatives in the development of ICT in the country; among this is the creation of a fully-fledged Ministry of Information and Communications Technology. The Ministry of Information and Communications Technology 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 utilization of ICT in all spheres of life to enable the country achieve its national development goals.

#### **2.2. National Information Technology Authority Uganda**

The National Information Technology Authority Uganda (NITA-U) was established in 2009 by an Act of Parliament of Uganda. NITA-U is an autonomous body which is also an agency of Government and under the general supervision of the Ministry of ICT. Its mandate is to coordinate, promote and monitor IT development within the context of national social and economic development.

The regulatory functions of the NITA-U are:

To provide first-level Technical support and advice for critical Government Information Technology Systems including managing the utilization of the resources and infrastructure

for centralized Data Center facilities for large systems through the provision of specialized technical skills;

To identify and advise Government on all matters of Information Technology Development, utilization and deployment including systems development, Information Technology Security, training and support;

To set, monitor and regulate standards for Information Technology Planning, acquisition, implementation, delivery, support, organization, sustenance, risk management, data protection, security and contingency planning;

To regulate the electronic signature infrastructure and other related matters as used in the electronic transactions in Uganda;

To promote and provide Technical guidance for the establishment of e-Government and e-Commerce in Uganda;

In liaison with other relevant institutions, to regulate the Information Technology profession in Uganda in order to ensure its effective promotion and Development;

To provide and Information management service through acting as a records management facility and an information depository;

To provide guidance on the establishment of an infrastructure for information sharing by Government and related stakeholders;

To provide guidance in Information Technology audit services to Government;

To undertake and commission research as may be necessary to promote the objective of the Authority;

To arbitrate disputes arising between suppliers of Information Technology solutions and consumers;

To undertake any other activity necessary for the implementation of the objects of the Authority.

### **2.3. Uganda Communications Commission (UCC)**

The Uganda Communications Act provides for the establishment of Uganda Communications Commission.<sup>30</sup> The Commission is a body corporate with perpetual succession and a common seal and may for the purposes of discharging its functions under this Act: acquire, hold or dispose of movable and immovable property; sue and be sued in its corporate name; do all acts and things that a body corporate may lawfully do.<sup>31</sup>

The functions of the Commission are:

To implement the objectives of this Act;

To monitor, inspect, licence, supervise, control and regulate communications services;

To allocate, license, standardize and manage the use of the radio frequency spectrum resources in a manner that ensures widest variety of programming and optimal utilization of spectrum resources;

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<sup>30</sup> Section 4(1) of the Uganda Communications Act 2013

<sup>31</sup> Section 4(2) Ibid

To process applications for the allocation of satellite orbital locations; to regulate rates and charges for communications services with a view to protecting consumers from excessive tariffs and to prevent unfair competitive practices;

To establish, amend, administer and enforce a national numbering plan and electronic addresses plan; and assign numbers and electronic addresses;

To conduct, or authorise any person to conduct, technical evaluations relating to communications services;

To coordinate and collaborate with the relevant national and international organisations in matters relating to communications;

To set national standards and ensure compliance with national and international standards and obligations laid down by international communication agreements and treaties to which Uganda is a party;

To receive, investigate and arbitrate complaints relating to communications services, and take necessary action;

To promote and safeguard the interests of consumers and operators as regards the quality of communications services and equipment;

To promote research into the development and use of new communications techniques and technologies, including those which promote accessibility of persons with disability and other members of society to communications services;



To improve communications services generally and to ensure equitable distribution of services throughout the country;

To promote competition, including the protection of operators from acts and practices of other operators that are damaging to competition, and to facilitate the entry into markets of new and modern systems and services;

To regulate interconnection and access systems between operators and users of telecommunications services;

To advise the Government on communications policies and legislative measures in respect of providing and operating communications services;

To represent Uganda's communications sector at national and international fora and organizations relating to its functions and to coordinate the participation of any interested groups;

To collaborate with educational institutions in order to promote specialised education in the field of communications;

To establish and administer a fund for the development of rural communications and information and communication technology in the country;

To advise the Minister on the administration of this Act;

To establish an intelligent network monitoring system to monitor traffic, revenue and quality of service of operators;

To regulate value added services provided by communications operators;

To operate and manage the Uganda Institute of Information and Communications Technology;

To set standards, monitor and enforce compliance relating to content; and

To encourage and promote infrastructure sharing amongst licensees and to provide regulatory guidelines to carry out any other function that is related to the functions of the Commission.<sup>32</sup>

#### **2.4. Broadcasting Council (BC)**

The Broadcasting Council was established to implement the provisions of the Electronic Media Act Cap. 104 Laws of Uganda 2000, with a principal goal of developing a modern broadcasting sector and infrastructure in Uganda.

The Council is mandated to undertake a range of functions in the following areas:

To introduce and exercise control over and to supervise broadcasting activities;

To be responsible for the standardization, planning and management of the frequency spectrum dedicated to broadcasting and to allocate those spectrum resources in such manner as to ensure widest possible variety of programming and optimal utilization of those spectrum resources;

To coordinate communication on electronic media with the relevant national and international organizations;

To receive and consider applications made to it under this Act;

To set ethical broadcasting standards;

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<sup>32</sup> Section 5(1)

To arbitrate in consultation with the Media Council on disputes between: Operators of broadcasting stations; and the public and operators of broadcasting stations;

To advise government on all matters relating to broadcasting Policy; and

To carry out any other function that is incidental to any of the foregoing functions.

## **2.5. The Uganda Police Force.**

The Police Act of Uganda establishes the Uganda Police Force.<sup>33</sup>

According to the Act, the functions of the force are: to protect the life, property and other rights of the individual; to maintain security within Uganda; to enforce the laws of Uganda; to ensure public safety and order; to prevent and detect crime in the society; subject to section 9, to perform the services of a military force; and to perform any other functions assigned to it under this Act. Subject to section 6(1)(c), a member of the force is authorised to carry arms in the performance of his or her duties.<sup>34</sup>

No person is allowed to arrest, detain or institute criminal proceedings except as is provided for under a written law or the Constitution.

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<sup>33</sup> Section 2

<sup>34</sup> Section 4

## **CHAPTER 3**

### **A CRITICAL ANALYSIS OF THE ICT LAWS**

#### **3.1. Introduction**

Uganda's ICT industry is one of the fastest growing industry sectors and this can be evident in the diversity channels in which information is passed on, related policy and regulatory framework and the growth of the telecommunications sector. This is a great stride, however focus should be put to areas that sensitizes women in the digital space as well as protect their rights from abuse.

Like any other freedoms enunciated in the Universal Declaration for Human Rights (UDHR), internet freedoms too are provided for and protected as other rights. Article 19 of the UDHR provides that "everyone has the right to freedom of opinion and expression" this right includes freedom to hold opinions without interference and to seek, receive and impart formation and ideas through any media and regardless of frontiers". The internet has been regarded as other frontiers.

Whereas the 1995 Constitution of the Republic of Uganda doesn't expressly guarantee internet freedoms but provides for under Article 29, the protection of freedom of expression which connotes the right to speak out. Uganda is positioning itself to control how digital freedoms should be exercised. For a long time the access and use of internet had not been legislated against any national laws until 2010 when the government enacted a number of legislations termed 'cyber laws' aimed at governing and regulating activities done via the internet which include transactions and communications and expressions. These legislations include the Regulations for

interception of Communications Act, the Computer Misuse Act, NITA Act, Electronic transaction Act, Anti-Pornography Act, Uganda Communication Authority Act among others.

### **3.2. The National Information Technology Act 2009**

This was established in 2009 and its aims at providing high quality information technology and also is working to establish the necessary infrastructure that may enable all Ugandans to access and utilize IT. It is at the fore front in overseeing the development and enactment of various policies like; the e-government policy, e-government strategy; and the IT policy which give operational framework through which government IT infrastructure operates. The government of Uganda through the Ministry of ICT and NITA-U embarked on initiatives such as (NBI) project National Backbone Infrastructure which involves the laying of Fiber Optic Cable in major towns and is intended to ensure that high bandwidth data connection at a reasonable rate, (DBICs) District Business Information Centers and (NSIS) National Security Information System which project aimed at registering all Ugandan nationals and provision of National IDs which are stipulated in Article 16(1) 16(3)(a) of the Constitution of the Republic of Uganda.

### **3.3. The Uganda Communications Act 2013**

The Act was enacted to consolidate and harmonise the Uganda Communications Act and the Electronic Media Act; to dissolve the Uganda Communications Commission and the Broadcasting Council and reconstitute them as one body known as the Uganda Communications Commission; and to provide for related matters.

The objectives of this Act are to develop a modern communications sector, which includes telecommunications, broadcasting, radio communications, postal communications, data communication and infrastructure by: establishing one regulatory body for communications in

accordance with international best practice; enhancing national coverage of communications services; expanding the existing variety of communications services available in Uganda to include modern and innovative communications services; reducing the direct role of Government as an operator in the communications sector and minimising the subsidies paid by the Government to the communications sector; encouraging the participation of the private sector in the development of the communications sector; introducing, encouraging and enabling competition in the communications sector through regulation and licensing of competitive operators to achieve rapid network expansion, standardisation as well as operation of competitively priced and quality services; and establishing and administering a fund for the development of rural communications and information and communication technology in the country.<sup>35</sup>

The Act also establishes the Uganda Communications Commission.<sup>36</sup>

The Act sets the Minimum broadcasting standards. A person is not allowed to broadcast any programme unless the broadcast or programme complies with Schedule 4.<sup>37</sup>

A person is prohibited from taking any action which is not authorized under this Act or other law, on account of the content of a programme, to prevent the broadcasting of a programme.<sup>38</sup>

However, this does not absolve a person from complying with any law which prohibits: the broadcasting of pornographic material and obscene publications; or any broadcasting which infringes upon the privacy of any individual.<sup>39</sup>

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<sup>35</sup> Section 3

<sup>36</sup> Section 4

<sup>37</sup> Section 31

<sup>38</sup> Section 28(1)

<sup>39</sup> Section 28(2)

The holder of a licence or a producer of a broadcasting station or disseminating apparatus is required to: ensure that what is broadcast is not contrary to public morality; and retain a record of all that is broadcast, for not less than sixty days.<sup>40</sup>

The Commission may suspend or revoke a licence issued under this Act, on the following grounds: serious and repeated breach of the licence conditions; any fraud or intentional misrepresentation by the operator applying for the licence; where the operator is engaged in or is supporting activities amounting to a treasonable offence under the Penal Code Act; or where the operator has ceased to be an eligible person.<sup>41</sup>

A person shall not broadcast any programme unless the broadcast or programme complies with Schedule 4.<sup>42</sup>

A broadcaster or video operator is required to ensure that any programme which is broadcast: is not contrary to public morality; does not promote the culture of violence or ethnical prejudice among the public, especially the children and the youth; in the case of a news broadcast, is free from distortion of facts; is not likely to create public insecurity or violence; is in compliance with the existing law.<sup>43</sup> The broadcaster is also required to ensure that: programmes that are broadcast are balanced to ensure harmony in such programmes; adult-oriented programmes are appropriately scheduled; where a programme that is broadcast is in respect to a contender for a public office, that each contender is given equal opportunity on such a programme; where a

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<sup>40</sup> Section 29

<sup>41</sup> Section 41

<sup>42</sup> Section 31

<sup>43</sup> Schedule four to the Act

broadcast relates to national security, the contents of the broadcast are verified before broadcasting.<sup>44</sup>

### **3.4. Computer Misuse Act 2011**

This provides with offences related to sending messages via any electronic device like a computer that are threatening, and may create fear for life of the recipient including stalking. The Act aims at preventing what is considered as unlawful access, misuse of information systems through computers and electronic devices basically focusing on limiting child pornography, those posting such material and the intended users. The ministry of ICT under the Computer Misuse Act seeks to address online child safety. Mainly this Act is in connection to child pornography leaving out the adults.

A person who commits cyber harassment is liable on conviction to a fine not exceeding seventy two currency points or imprisonment not exceeding three years or both.<sup>45</sup> Cyber harassment in this case is the use of a computer for any of the following purposes: making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent; threatening to inflict injury or physical harm to the person or property of any person; or knowingly permits any electronic communications device to be used for any of the purposes mentioned in this section.<sup>46</sup>

The Act provides against Child pornography. It follows therefore that a person who: produces child pornography for the purposes of its distribution through a computer; offers or makes available child pornography through a computer; distributes or transmits child pornography through a computer; procures child pornography through a computer for himself or herself or

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<sup>44</sup> Ibid

<sup>45</sup> Section 24(1)

<sup>46</sup> Section 24(2)



another person; or unlawfully possesses child pornography on a computer, commits an offence.<sup>47</sup>

A person who makes available pornographic materials to a child also commits an offence.<sup>48</sup> A person who commits such offences is liable on conviction to a fine not exceeding three hundred and sixty currency points or imprisonment not exceeding fifteen years or both.<sup>49</sup>

Child pornography in this case includes pornographic material that depicts: a child engaged in sexually suggestive or explicit conduct; a person appearing to be a child engaged in sexually suggestive or explicit conduct; or realistic images representing children engaged in sexually suggestive or explicit conduct.<sup>50</sup>

The Act further provides against offensive communication. Any person who wilfully and repeatedly uses electronic communication to disturb or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication whether or not a conversation ensues commits a misdemeanour and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.<sup>51</sup>

### **3.5. The regulations for the interception of Communications Act 2010**

The Act was enacted to provide for the lawful interception and monitoring of certain communications in the course of their transmission through a telecommunication, postal or any other related service or system in Uganda; to provide for the establishment of a monitoring centre; and to provide for any other related matters.

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<sup>47</sup> Section 23(1)

<sup>48</sup> Section 23(2)

<sup>49</sup> Section 23(4)

<sup>50</sup> Section 23(3)

<sup>51</sup> Section 25

The Act provides for the establishment of Monitoring Centre. The Minister is required to, in consultation with the relevant Ministers, at the expense of the State: establish a centre to be known as the Monitoring Centre for the interception of communications under this Act; equip, operate and maintain the Monitoring Centre; acquire, install and maintain connections between telecommunication systems and the Monitoring Centre; and administer the Monitoring Centre.<sup>52</sup>

The Minister exercises responsibility over the administration and functioning of the Monitoring Centre.<sup>53</sup> The Monitoring Centre is the sole facility through which authorised interceptions shall be effected.<sup>54</sup>

Where an authorised person suspects on reasonable grounds that a postal article in the custody of a postal service provider: contains anything in respect of which an offence or attempted offence is being committed; or contains anything that will afford evidence of the commission of an offence; or is being sent to further the commission of an offence; needs to be obtained and examined in the interests of defence, public safety or public order; he or she may apply to a designated judge for a retention order to retain the postal article for the purpose of examination.<sup>55</sup>

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<sup>52</sup> Section 3(1)

<sup>53</sup> Section 3(2)

<sup>54</sup> Section 3(4)

<sup>55</sup> Section 13(1)

## CHAPTER 4

### ICT LAWS IN OTHER JURISDICTIONS: KENYA, SOUTH AFRICA AND TANZANIA

#### 4.1. Kenya

##### 4.1.1. The Kenya Information and Communications Act Cap 411

The Act establishes the Communications Commission of Kenya.<sup>56</sup> The Commission is a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of: suing and being sued; taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property; borrowing or lending money; and doing or performing all such other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.<sup>57</sup>

The Commission was established to licence and regulate postal, information and communication services in accordance with the provisions of this Act.<sup>58</sup> The Commission has all powers necessary for the performance of its functions. The Commission may enter into association with such other bodies or organizations within or outside Kenya as the Commission may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established.<sup>59</sup>

According to the Act, a person who by means of a licensed telecommunication system: sends a message or other matter that is grossly offensive or of an indecent, obscene or menacing

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<sup>56</sup> Section 3(1)

<sup>57</sup> Section 3(2)

<sup>58</sup> Section 5(1)

<sup>59</sup> Section 5(3)

character; or sends a message that he knows to be false for the purpose of causing annoyance, inconvenience or needless anxiety to another person commits an offence and shall be liable on conviction to a fine not exceeding fifty thousand shillings, or to imprisonment for a term not exceeding three months, or to both.<sup>60</sup> This provision can be invoked where a person sends pornographic material.

All licensed broadcasters are required to: provide responsible and responsive programming that caters for the varied needs and susceptibilities of different sections of the Kenyan community; observe standards of good taste and decency; gather and present news and information accurately and impartially; when controversial or contentious issues of public interest are discussed, make reasonable efforts to present alternative points of view, either in the same programme or in other programmes within the period of current interest; respect the right to privacy of individuals; respect copyright and neighbouring rights in respect of any work or material; ensure that advertisements, either in terms of content, tone or treatment, are not deceptive or are not repugnant to good taste; and ensure that derogatory remarks based on ethnicity, race, creed, colour and sex are not broadcast.<sup>61</sup>

Where any cinematograph film has been submitted under any law for classification or censorship and approved for exhibition, and where approval of the film for exhibition has been denied or has been given subject to excisions, no broadcaster is allowed to: in the case of any film in respect of which such approval has been denied, broadcast the film or any part thereof; or in the case of any film that has been approved for exhibition subject to excisions therefrom, broadcast that film or any part thereof if the film or, as the case may be, that part thereof includes any part

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<sup>60</sup> Section 29

<sup>61</sup> Section 46I

of the film required to be excised; except with the consent of and subject to any conditions given by the Kenya Film Censorship Board established under the Films and Stage Plays Act .

The Commission may in accordance with this Act revoke a licence to broadcast where the licensee: is in breach of the provisions of the Act or regulations made thereunder; is in breach of the conditions of a broadcasting licence; or fails to use the assigned broadcasting frequencies within one year after assignment by the Commission.<sup>62</sup>

All broadcasters are required to establish and maintain a procedure, by which persons aggrieved by any broadcast or who allege that a broadcaster is not complying with this Act, may file complaints.<sup>63</sup> Where any person alleges that he has exhausted the procedure but is not satisfied with the remedy offered or action taken, he may appeal to the Commission.<sup>64</sup> Any person who is aggrieved by a decision of the Commission made under this section may appeal to the Tribunal within thirty days after the decision.<sup>65</sup>

No person is allowed to send by post: any indecent or obscene printing, photograph, lithograph, engraving, book or card or any other indecent or obscene article; any postal article having thereon, or on the cover thereof, any words or designs of an indecent, obscene, scurrilous, threatening or grossly offensive character; any postal article bearing any fictitious stamp or purporting to be prepaid with any postage stamp which has previously been used in payment of any stamp duty; and any other article which the Commission may by regulation prohibit.<sup>66</sup>

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<sup>62</sup> Section 46J

<sup>63</sup> Section 46L

<sup>64</sup> Ibid

<sup>65</sup> Ibid

<sup>66</sup> Section 58

A person, who without lawful excuse, the proof of which lies on the person charged, sends or procures to be sent by post, a postal article which has thereon or enclosed therein any word, drawing or picture of a scurrilous, threatening, obscene or grossly offensive character, commits an offence and shall on conviction be liable a fine not exceeding three hundred thousand shillings, or to imprisonment for a term not exceeding three years or to both.<sup>67</sup>

#### **4.1.2. The Kenya Information and Communications (Broadcasting) Regulations, 2009**

A licensee is required to ensure that no broadcasts by its station: contains the use of offensive language, including profanity and blasphemy; presents sexual matters in an explicit and offensive manner; glorifies violence or depicts violence in an offensive manner; is likely to incite, perpetuate hatred, vilify any person or section of the community, on account of the race, ethnicity, nationality, gender, sexual preference, age, disability, religion or culture of that person or section of the community; or has no program rating from Kenya Films Classification Board indicated prior to the commencement of such programs.<sup>68</sup>

A licensee is also required to: ensure that due care is exercised in order to avoid content that may disturb or be harmful to children, that has offensive language, explicit sexual or violent material, music with sexually explicit lyrics or lyrics which depict violence; and request for permission to conduct an interview with a minor from the minor's parents or guardian before conducting an interview with a minor.<sup>69</sup>

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<sup>67</sup> Section 71 as amended by section 20 of 2009

<sup>68</sup> Regulation 19(1)

<sup>69</sup> Regulation 20

A licensee required: not to disclose, in a broadcast, the identity of a victim of a sexual offence unless such victim consents in writing to the disclosure of his or her identity; and avoid the use of unnecessary or repetitive detail when broadcasting the circumstances of a sexual offence.<sup>70</sup>

#### **4.1.3. Kenya Communications Amendment Act (2009)**

This Act mandates the CCK to regulate the programming code for content that suits various ages.<sup>71</sup> Media houses are expected to file the code with the CCK, but the media are discontent with the section. While the minister pointed to complaints of adult content being aired as early as 7:00pm, the media thought the section would result in undue interference in editorial independence. The media want the decision on what to air when to be left to market forces and editorial policies. However, Bitange Ndemo, the permanent secretary in the Ministry of Information and Communications, is not convinced: “Can the radio presenters repeat what they say on air in front of their mother, father, younger sisters and brothers or their own children?” he said. “This law protects consumers hitherto frustrated with the un-African [taboo, especially sexual] type of content spewing from TV and radios stations by ‘comedians’ claiming to be ‘journalists’ and hiding behind ‘Press Freedom’.”

Across the European Union (EU), broadcasters are subject to a variety of more or less demanding regimes. Statutory regulatory bodies find it increasingly difficult to cope with the sheer volume of material that they are responsible for regulating. Where regulators have a responsibility for detailed monitoring and reporting on media content, the trend has been towards a “lighter touch regulation”. In this way, more of the regulatory responsibilities are taken on by the producers and users of content rather than legal or regulatory bodies.

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<sup>70</sup> Regulation 28

<sup>71</sup> Section 46 (c, h)

In Germany, the Freiwillige Selbstkontrolle Fernsehen e.V. (Voluntary Television Review Body), or FSF, is an organisation whose main concern is the protection of minors in relation to the representation of violence and sex on television. The FSF was founded in 1993 by the largest German commercial broadcasters, as a response to a public outcry about the depiction of violence and sex on television.

In Italy, public and commercial broadcasters agreed to a “[s]elf-regulatory [c]ode of conduct on television and [regarding] minors” to protect minors from harmful content. In January 2003 a Supervisory Committee was set up. This system works within the statutory control in place, and to ensure compliance, the Supervisory Committee can refer non-compliance cases to AGCOM, the statutory regulator.

In Sweden, the Våldsskildrings rådet (Council on Media Violence) supports and stimulates the industry’s efforts regarding self-regulation. The Swedish Ministry of Culture is responsible for the technical aspects of broadcasting and the Radio and Television Authority is in charge of awarding licences.

In Kenya, the media expect responsibility to be taken by the producers and users of content rather than the CCK. The problem is that proper mechanisms do not exist to make this a reality.

Moreover, the self-regulation versus government regulation debate has been crowded by deep-seated issues of journalistic ethics and corruption. Regarding journalistic ethics, the Media Council launched a code of conduct in 2005 for print, television and radio journalists. Again, it lacks enforcement mechanisms.



In supporting regulation, the government contends that alleged cases of breaches of professional standards in the print or the broadcast media have gone unpunished, though the Media Council of Kenya says it has cases pending.

#### **4.1.4. Sexual offences Act No 3 of 2006 of Kenya**

A person including a juristic person who: makes or organizes any travel arrangements for or on behalf of any other person, whether that other person is resident within or outside the borders of Kenya, with the intention of facilitating the commission of any sexual offence against a child, irrespective of whether that offence is committed; or prints or publishes, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual offence against a child introduces, organizes or facilitates contact with another person under the auspices of promoting tourism, in any manner, in order to promote conduct that would constitute a sexual offence against a child, is guilty of an offence of promoting child sex tourism and is liable upon conviction to imprisonment for a term of not less than ten years and where the accused person is a juristic person to a fine of not less than two million shillings.<sup>72</sup>

Any person including a juristic person who: sells, lets to hire, distributes, publicly exhibits or in any manner puts into circulation, or for purposes of sale, hire, distribution, public exhibition or circulation, makes, produces or has in his or her possession any obscene book, pamphlet, paper, drawing, painting, art, representation or figure or any other obscene object whatsoever which depict the image of any child; imports, exports or conveys any obscene object for any of the purposes specified under the Act, or knowingly or having reason to believe that such object will be sold, let to hire, distributed or publicly exhibited or in any manner put into circulation; takes

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<sup>72</sup> Section 14

part in or receives profits from any business in the course of which he or she knows or has reason to believe that any such obscene objects are, for any of the purposes specifically in this section, made, produced, purchased, kept, imported, exported, conveyed, publicly exhibited or in any manner put into circulation; advertises or makes known by any means whatsoever that any person is engaged or is ready to engage in any act which is an offence under this section, or that any such obscene object can be produced from or through any person; or offers or attempts to do any act which is an offence under this section, is guilty of an offence of child pornography and upon conviction is liable to imprisonment for a term of not less than six years or to a fine of not less than five hundred thousand shillings or to both and upon subsequent conviction, for imprisonment to a term of not less than seven years without the option of a fine.<sup>73</sup>

A person who, in relation to a person with mental disability, for financial or other reward, favour or compensation to such person with mental disability or to any other person, intentionally: commits any offence under this Act with such person with disabilities; invites, persuades or induces such person with disabilities to allow him or her to commit any offence under this Act with such person with disabilities; makes available, offers or engages such person with disabilities for purposes of the commission of any offence under this Act with any person; supplies, recruits, transports, transfers, harbours or receives such person with disabilities, within or across the borders of Kenya, for purposes of the commission of any offence under this Act with any person; allows or knowingly permits the commission of any offence under this Act by any person with such person with disabilities; knowingly or intentionally owns, leases, rents, manages, occupies or has control of any movable or immovable property used for purposes of the commission of any offence under this Act with such person with disabilities by any person;

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<sup>73</sup> Section 16(1)

detains such person with disabilities, whether under threat, coercion, deception, abuse of power or force for purposes of the commission of any offence under this Act with any person; or participates in, is involved in, promotes, encourages or facilitates the commission of any offence under this Act with such person with disabilities by any person, is, in addition to any other offence which he or she may be convicted, guilty of the offence of being involved in the prostitution of a person with disabilities and shall, upon conviction, be liable to imprisonment for a term of not less than ten years.<sup>74</sup>

Any person including a juristic person who: knowingly or intentionally makes or organizes any travel arrangements for or on behalf of any person, whether that person is resident within or outside the borders of Kenya, with the intention of facilitating the commission of any sexual offence against a person with disabilities, irrespective of whether that offence is committed or not; or prints or publishes, in any manner, any information that is intended to promote or facilitate conduct that would constitute a sexual offence against a person with disabilities, is guilty of an offence of promoting sex tourism with persons with disabilities and is liable upon conviction to imprisonment for a term of not less than ten years or to a fine of not less than two million shillings.<sup>75</sup>

## **4.2. South Africa**

### **4.2.1. Films and Publications Act, 1996 [No. 65 of 1996]**

This Act came into being shortly after South Africa achieved its liberation from the apartheid regime. It repealed a number of pieces of draconian legislation that had been promulgated under the apartheid regime and its satellite semi-autonomous and dependent race based geographical

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<sup>74</sup> Section 19(1)

<sup>75</sup> Section 19(3)

entities<sup>76</sup>. It established a Film and Publication Board ("Board"), and Review Board. The Board's function would be to receive complaints, or applications to evaluate, a film or publication, to classify it according to its suitability for different audiences. The classification of a film or publication would trigger various prohibitions on possessing, exhibiting, distributing or advertising the film or publication. Focus was on defining and enforcing various prohibitions on films or publications that advocated war, violence, and hatred especially if based on race, ethnicity, gender and religion. Certain key exemptions from prohibitions were made to the scientific community (in regard to bona fide scientific, documentary, dramatic, artistic, literary or religious films and publications), and the media (in that those holding a broadcasting license were exempt from the duty to apply for classification).

The object of this Act is to regulate the distribution of certain publications and the exhibition and distribution of certain films, in the main by means of classification, the imposition of age restrictions and the giving of consumer advice, due regard being had to the fundamental rights enshrined in the Constitution of the Republic.<sup>77</sup>

The Act establishes: a juristic person which shall be known as the Film and Publication Board; and a juristic person which shall be known as the Film and Publication Review Board, which is required to perform the functions, exercise the powers and carry out the duties, assigned to, conferred on or imposed upon them in terms of this Act.<sup>78</sup> The Board and Review Board shall

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<sup>76</sup> 12<sup>th</sup> Schedule

<sup>77</sup> Section 2

<sup>78</sup> Section 3

function without any bias and shall be independent, and the seat of the Board and Review Board shall be determined by the Minister.<sup>79</sup>

Under this Act, any person who knowingly: exhibits in public or distributes any film which has not been classified by the Board, or which has been classified as XX in terms of a decision of the Board which has been published in the Gazette; exhibits in public or distributes any film which has been classified as X18 in terms of such a decision which has been so published; does not in an advertisement of a film contained in a publication, including a newspaper or advertisement referred to in section 22(3) or (4), or on the cover and packaging of a film indicate the classification, age restriction and consumer advice which in terms of a decision of the Board applies in respect exhibits in public or distributes any film without having been registered with the Board as an exhibitor or distributor of films; without the approval of the chief executive officer exhibits in public or distributes an advertisement or a trailer of a film which has been classified as X18 in terms of a decision of the Board published in the Gazette, during the same screening session or on the same video as a film or video which may not be exhibited or distributed to persons under the age of 18; exhibits in public or distributes any film in conflict with any condition imposed by the Board in terms of section 18(4)(b), shall be guilty of an offence.<sup>80</sup>

Furthermore, a person who knowingly broadcasts a film which has been classified as XX in terms of a decision of the Board which has been published in the Gazette or who knowingly

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<sup>79</sup> Section 4(1)

<sup>80</sup> Section 26

broadcasts a film which has not been classified but which falls within Schedule 6 read with Schedule 9, or Schedule 10, shall be guilty of an offence.<sup>81</sup>

Again, a person who knowingly distributes a publication which contains a visual presentation or a description referred to in Schedule 1, read with Schedule 5<sup>82</sup>, is guilty of an offence.<sup>83</sup> Any person who knowingly distributes a publication which contains a visual presentation or a description referred to in Schedule 2<sup>84</sup>, read with Schedule 5, or which contains the descriptions referred to in clause (2) of Schedule 2, read with Schedule 5, shall be guilty of an offence.<sup>85</sup>

Any person who knowingly: produces, imports or is in possession of a publication which contains a visual presentation of Schedule 1<sup>86</sup>, read with Schedule 5; or produces, imports or is in possession of a film which contains a scene or scenes referred to in clause (I) of Schedule 6<sup>87</sup>, read with Schedule 9<sup>88</sup>, shall be guilty of an offence.<sup>89</sup>

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<sup>81</sup> Ibid

<sup>82</sup> Art and science exemption for publications. The XX or X18 classification shall not be applied in respect of a bona fide scientific, documentary, literary or, except in the case of Schedule 1(1)(a), an artistic publication, or any part of a publication which, judged within context, is of such a nature.

<sup>83</sup> Section 28

<sup>84</sup> X18 classification for publications. A publication shall be classified as X18 if, judged within context- (1) it contains a visual presentation, simulated or real, of explicit sexual conduct which in the case of sexual intercourse, includes an explicit visual presentation of genitals; (2) it describes, otherwise than in the case provided for in Schedule 1(2), predominantly and explicitly any or all of the acts described in Schedule I or clause (1).

<sup>85</sup> Ibid

<sup>86</sup> XX classification for publications. A publication shall be classified as XX if, judged within context (1) it contains a visual presentation, simulated or real of: (a) a person who is, or is depicted as being, under the age of 18 years, participating in, engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity; (b) explicit violent sexual conduct; (c) bestiality; (d) explicit sexual conduct which degrades a person and which constitutes incitement to cause harm; or (e) the explicit infliction of or explicit effect of extreme violence which constitutes incitement to cause harm; (2) it or any independent part thereof, describes predominantly and explicitly the acts defined in clause (1)(a).

<sup>87</sup> A film shall be classified as XX if, judged within context, it contains a scene or scenes, simulated or real, of any of a person who is, or is depicted as being, under the age of 18 years, participating in, engaging in or assisting another person to engage in sexual conduct or a lewd display of nudity

<sup>88</sup> Art and science exemption for films. The XX or X18 classification shall not be applicable to a bona fide scientific, documentary, dramatic or, except in the case of Schedule 6(1), an artistic film or any part of a film which, judged within context, is of such a nature.

<sup>89</sup> Section 27

#### **4.2.2. Internet and Cell Phone Pornography Bill**

The purpose of the bill is to make it illegal for Internet and Mobile phone service providers in the Republic of South Africa to distribute or permit to be distributed pornography, so as to ensure protection for children and women.

## **CHAPTER 5**

### **RESEARCH FINDINGS, RECOMMENDATIONS AND CONCLUSION**

#### **5.1. Research findings and recommendations**

The current legal framework also does not give effective solutions to the status quo. The Computer Misuse Act 2011, which is the main cyber law legislation in Uganda, is rather a problem instead. It contains ambiguous, vague, imprecise, sweeping, broad and confusing provisions that have potential to gravely affect the data rights as a whole.

Some of these Sections are 9, 10 and 11 (in relation to right to privacy), 3, 21(2), 24, 25 and 28(5) (imprecise) and 5, 12, 18 which unduly limit access to information in a broad manner and does not conform to the standards set out within the Constitution of the Republic of Uganda, Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Consequently, whereas the government is allowed to limit the enjoyment of freedoms, the restrictions must be narrowly defined and should conform to international standards of which Uganda is a party. The Computer Misuse Act falls short of these standards.

The Anti-Pornography Act, 2014 does not clearly define pornography. The law mentions sexual images, indecency, but there is no distinction between soft and hard-core pornography, for example. There is a possibility that the government may use “moral” filters introduced by this law for targeting people for political reasons. Because of this unclear definition of pornography, undressing of women who put on miniskirts cropped up. In my opinion, this is an unfair act against women. This is because the word mini skirt is not stated anywhere in the Law. All this is



a clear violation of women's right of privacy. The government should therefore come out and clearly define what pornography really means.

Furthermore, Ugandans are not taking the laws seriously; release of sex tapes to the public is a violation of the Anti-pornography Act. This calls for strong emphasis on the law. However both the man and woman should be put under law. This can be done by cracking down on perpetrators for violation of women's rights to privacy. The police should arrest people who leak sex videos. The Uganda communications commission should also bring to law the people who circulate these videos on the social media.

The Uganda Communications Act, 2013, which was passed by parliament in September 2012 and signed by the president in December 2012, consolidated the provisions of the 1996 Electronic Media Act and 2000 Uganda Communications Act, and merged the old UCC and Uganda Broadcasting Council into a new Uganda Communications Commission. The new regulatory body lacks independence from the government. In particular, the law places disproportionate power in the hands of the ICT minister, who has the authority to approve the new regulator's budget and appoint members of its board with approval from the Cabinet. There are no independent mechanisms in place to hold the regulator accountable to the public. While the new law provides for the creation of the Uganda Communications Tribunal, which is an appeals body with powers of the High Court, its membership and advisors are appointed by the president and ICT minister.

The State should take all steps to prevent and eliminate violence against women. In relation to the internet this means ensuring that laws, policies and practices do not permit but create new

forms of violence against women such as cyber stalking, digital surveillance, data monitoring and other transgressions of women's rights.

The state should also endeavour to apprehend the perpetrators of such crime and protect women from continued abuse. Women's human rights must be respected and protected and not restricted, directly or indirectly, in the name of 'security' or other law enforcement measures except as determined in accordance with agreed human rights standards, including women's human rights standards.

The state should put up measures to promote respect for human rights online and offline. Promote ICT use and a strategy of information, education and communication in online spaces to combat violence against women and girls and to enhance women's and girls' rights. Engage in the political discussion about the promotion of internet development and internet governance with a vision of gender inclusion, gender justice and respect for human rights.

Government should take a holistic approach to the issue of violence against women through ICT laws, which recognizes the interconnection between multiple forms of discrimination and the generation of different forms of violence. Attention must be paid to these emerging forms of technology mediated violence that compromise women's security and safety. Restrictions (whether due to state, family or cultural reasons) to women's use of the internet and communication technologies adversely affect women and girls rights to participate fully in cultural life and to enjoy the full exercise of their citizenship of the evolving information society.

## **5.2. Conclusion**

In conclusion therefore, the law on ICT in Uganda is still weak, and is not strong enough to fight against the sex tapes, nude pictures, and the conduct of some Uganda female celebrities like Desire Luzinda. The parliament should therefore pick a leaf from other countries like South Africa, and strengthen the laws against publication of sex tapes and nude pictures.

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