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Electronic protests: Hacktivism as a form of protest in Uganda

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A B S T R A C T

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In a number of reported incidents government ministry and agency websites in Uganda have been defaced as a form of protest in a phenomenon known as 'hacktivism'. The all-pervading digital age has affected virtually every facet of our lives and 'hacktivists' argue that this applies to the effective modes of protest available. Hacking and in effect hacktivism has been criminalised under the Computer Misuse Act 2011. This paper examines the viability of hacktivism as a legitimate form of protest in Uganda's legal regime, particularly under article 29 of the Constitution of the Republic of Uganda 1995, which guarantees freedom of expression.

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1. Introduction

On Saturday 29 May 2010 a hacker calling himself 'Kaka Argentine' hacked into the Ugandan State House website and posted a conspicuous picture of Adolf Hitler with the swastika, a Nazi Party symbol. The picture was posted below that of President Museveni meeting with a Member of Parliament. The State House staff struggled for 24 hours to remove that picture and only succeeded in doing so at 4:00 pm Sunday.¹ A year earlier, in March 2009, Uganda's defence ministry website had been closed after hackers calling themselves "the Ayyildiz

team" hacked into the site and published anti-Israel messages on it.² These two incidents are examples of the use of hacking as a form of protest to achieve political ends in Uganda.

Uganda is a small developing landlocked East African country with a population of 34.6 million people.³ As of June 2016 the estimated number of Internet subscribers was 7,461,035 and Internet users were 14,564,660 placing Internet penetration at 39.8%.⁴ Computer based social networking sites such as Facebook, WhatsApp and Twitter now have a large number of subscribers in Uganda.⁵ E-commerce has grown in Uganda as Internet banking, offering speed and convenience in financial transactions, has become increasingly popular with most

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¹ Kasasira Risdell, 'Hacker posts Hitler photo on State House website' *Daily Monitor*, (Kampala, 31 May 2010, <http://www.monitor.co.ug/News/National/688334-929108-brnt54z/index.html> accessed on 16/09/2016.

² 'Uganda hit by anti-Israel hackers' BBC News, 9 March 2009, <http://news.bbc.co.uk/2/hi/africa/7932544.stm> accessed 16 September 2016.

³ Uganda Bureau of Statistics, *The National Population and Housing Census 2014 – Main Report*, Kampala, Uganda 2016.

⁴ Uganda Communications Commission, *Post, Broadcasting and Telecommunications Market and Industry Report*, First Quarter (January–March 2016), 8.

⁵ Uganda had 2,200,000 Facebook subscribers as of June, 2016 representing a 5.7 percent penetration rate: Internet World Stats: Usage and Population Statistics, <http://www.internetworldstats.com/africa.htm> accessed 7 February 2017; Rachel K., 'How social media has evolved in Uganda' *Daily Monitor*, (Kampala, 2 July 2015) <http://www.monitor.co.ug/artsculture/Reviews/How-social-media-has-evolved-in-Uganda/-/691232/2771872/-/15q1foh/-/index.html> accessed 5 February 2016.

banks introducing it⁶ and the number of web-based businesses in the country is on the rise.⁷ Most of the large corporations in Uganda today maintain a website and many other businesses advertise online in one form or another.⁸ The widespread use of computers has enabled the government of Uganda to adapt the emerging concept of 'e-Government'. This is the 'use of information and communication technologies to deliver public services in a convenient, efficient customer-oriented and cost-effective way.'⁹ Under 'e-Government', public services are delivered via the Internet, telephone, electronic media, community centres, wireless devices or other communications systems.¹⁰ Most government ministries and agencies have websites most of which have an interactive component that enables citizens to communicate to the government. Government agencies such as Uganda Revenue Authority (URA) and the National Registration and Identification Authority as well as ministries like the Ministry of Finance Planning and Economic Development and the Ministry of Lands are now using computer systems to improve their efficiency.¹¹

The all-pervading digital age has affected virtually every facet of our lives and 'hacktivists' argue that this applies to the effective modes of protest available. This paper examines whether there is legal room for hacking as a legitimate form of protest in Uganda's legal regime, particularly under article 29 of the Constitution of the Republic of Uganda 1995, which guarantees freedom of expression. The legitimacy of hacktivism is examined in light of the criminalisation of hacking under the Computer Misuse Act (CMA). The paper argues that as the legal regime stands today, the common forms of hacktivism have no constitutional protection and are legally indistinguishable from hacking. However, it goes on to conclude that as cyberspace takes over as the new public space, particularly with the

government's and large corporations' efforts to build a massive cyber presence, the law will have to adapt to accommodate the less destructive forms of cyber protests.

The paper proceeds in four parts. **Section 2** examines the phenomenon of hacking and hacktivism distinguishing the motives of the two activities. The section also looks at the different forms of hacktivism and their consequences. **Section 3** analyses the provisions of the Computer Misuse Act that criminalise the various forms of hacktivism and the justification for the criminalisation. **Section 4** examines hacktivism as a form of protest and the extent to which it is protected under article 29. **Section 5** gives the conclusion of the paper.

2. Hacking and hacktivism

2.1. Hacking

Hacking involves unauthorised accessing of computers and computer systems, using other people's Internet accounts illegally, distribution of viruses, unauthorised browsing of other system users' files, stealing computer-stored information and crashing computer systems.¹² Hacking, like any other criminal offence, is often motivated by self-serving goals.¹³ In January 2013 MTN Uganda, a leading telecommunications company which also offers money transfer services for subscribers, had its system hacked into by former employees who attempted unsuccessfully to make away with over 3.1 billion shillings (USD 900,000).¹⁴ In February 2013 an Ugandan Member of Parliament lost over Shs 300 million (USD 90,000) to hackers who hacked into his e-mail and corrupted communication between him and his suppliers in China causing him to pay money into false accounts.¹⁵ The Uganda Police Annual Crime and Road Safety Report of 2012 stated that 62 cases of hacking occurred in that year alone leading to a loss of about 1.5 billion UGX (USD 579,000).¹⁶ The Uganda Police Annual Crime Report of 2014 reported 35 cases of hacking and noted that e-mail

⁶ Ephraim K. & Beatrice N., 'Laws underway to regulate Internet banking' *Daily Monitor*, (Kampala 21, February 2014) Available at <http://www.monitor.co.ug/Business/Commodities/Laws-underway-to-regulate-Internet-banking/-/688610/2215020/-/9byyq7z/-/index.html> accessed 5 February 2016.

⁷ 'Making a home-based business work for you' *New Vision* (Kampala, 16 October 2012) http://www.newvision.co.ug/new_vision/news/1308737/home-business accessed on 5 February 2016; 'The future of e-business and its contribution to Uganda's economy' *New Vision* (Kampala, 30 June 2015), http://www.newvision.co.ug/new_vision/news/1329359/future-business-contribution-ugandas-economy accessed 29 September 2016.

⁸ Online business gains popularity in Uganda, *East African Business Week*, (Kampala, 12 March 2016) <http://www.busiweek.com/index1.php?Ctp=2&pl=4917&pLv=3&srI=69&spI=221> accessed 30 October 2016.

⁹ **Section 2** of The National Information Technology Authority, Uganda Act, 2009.

¹⁰ Ministry of Information and Communications Technology, *National Electronic Government (e-Government) Policy Framework*, p 1, http://www.nita.go.ug/sites/default/files/publications/Final%20Draft%20E-govt_framework_June%202010.pdf (June 2011) accessed 7 February 2017.

¹¹ Waiswa, R. & Okello O. C., 'To what extent have ICTs contributed to e-Governance in Uganda?' (2014) *Library Philosophy and Practice* (e-journal). Paper 1125, <http://digitalcommons.unl.edu/libphilprac/1125> accessed 29 October 2016, 4; David Luyombya and Dennis Fred Obbo, *The State of Digitisation of the Land Registry Operations in Uganda*, *Journal of the South African Society of Archivists*, (2013) Vol. 46.

¹² Orly Turgeman-Goldschmidt, 'Meanings that Hackers Assign to their Being a Hacker' *International Journal of Cyber Criminology* (IJCC) ISSN: 0974 – 2891, July – December 2008, Vol. 2 (2): 382–396.

¹³ Noah C.N. Hampson, 'Hacktivism: A New Breed of Protest in a Networked World' 35 *B.C. Int'l & Comp. L. Rev.* 511 (2012), <http://lawdigitalcommons.bc.edu/iclr/vol35/iss2/6> accessed 22 September 2016.

¹⁴ Edward Anyoli, Report on MTN mobile money fraud accurate – witness, *New Vision* (Kampala, 16 July 2014) http://www.newvision.co.ug/new_vision/news/1342734/report-mtn-mobile-money-fraud-accurate-witness#sthash.K2UTcr6b.dpuf accessed 14 September 2016; *Uganda v Guster Nsubuga & Others* HCT-00-AC-SC-0084-2012.

¹⁵ Stephen Otage, Forensics lab for computer crime opened in Kampala, *Daily Monitor* (Kampala 11 March 2013) http://www.monitor.co.ug/News/National/Forensics-lab-for-computer-crime-opened-in-Kampala/-/688334/1716526/-/1590_cm1z/-/2523 accessed 14 September 2016.

¹⁶ Haguma Jimmy, 'Cybercrime Barometer, a Uganda Police Centenary Plus Awareness Campaign Paper Overview' The Uganda Police, <http://www.upf.go.ug/cyber-barometer/> accessed 16 February 2016.

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