



MEDIA LAW AND POLICY IN UGANDA

**An Appraisal on Legal and Policy
Issues in Journalism in Uganda**

ISAAC CHRISTOPHER LUBOGO



Media Law And Policy:



©ISAAC CHRISTOPHER LUBOGO

First Edition

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Journalism in Uganda**

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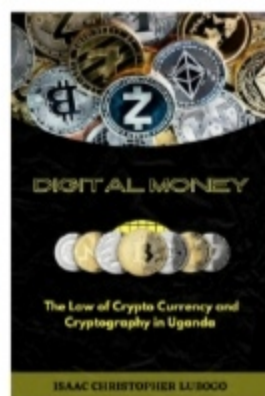
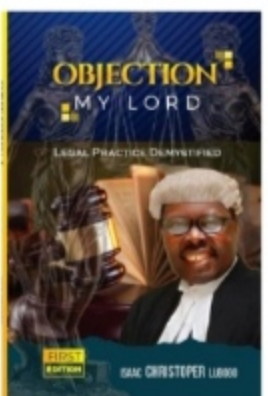
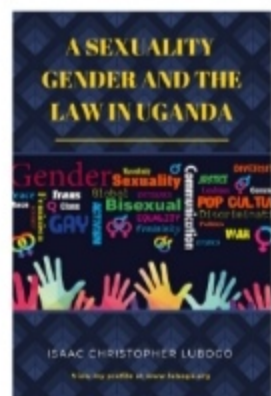
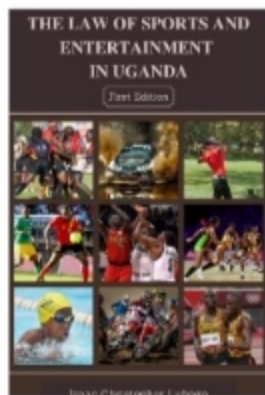
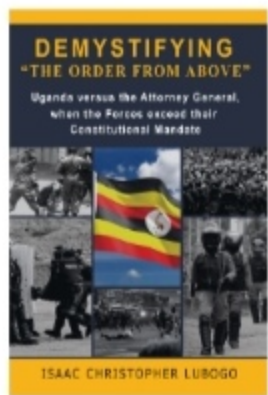
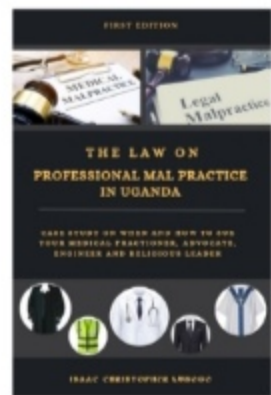
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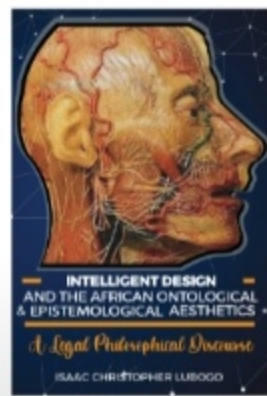
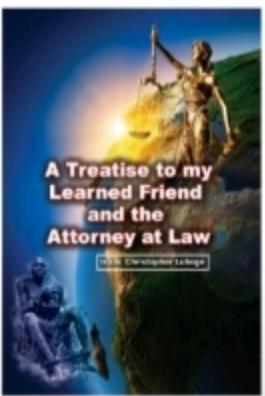
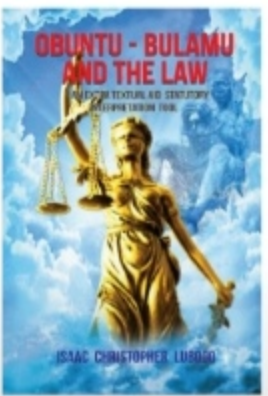
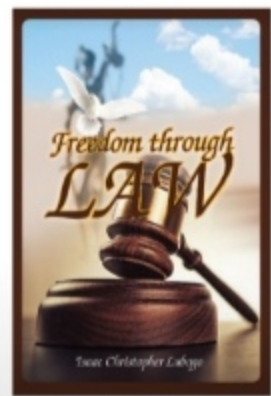
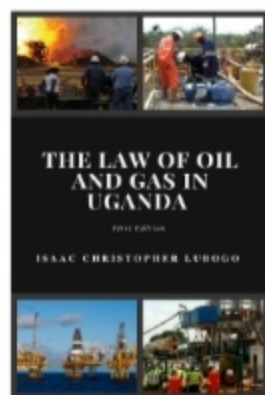
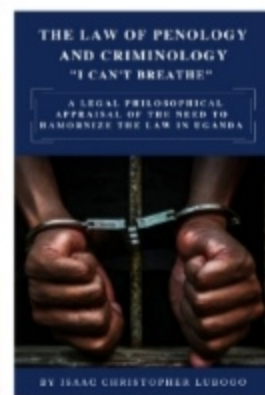
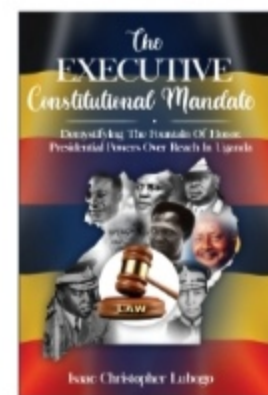
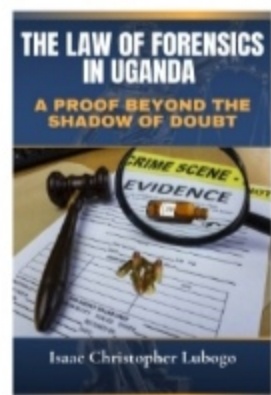
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Isaac Christopher Lubogo



DEDICATION



To The Lord Who Breathes Life And Spirit On Me ... Be My Guide
Oh Lord Of
The Entire Universe.

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CHAPTER ONE.



THE ORIGIN OF MEDIA LAW IN UGANDA

INTRODUCTION.

The word "media" is adopted from the plural of the Latin word "medium". To mean news, entertainment, education, data and promotional messages are sent worldwide through this type of communication channels. Every broadcasting medium like newspapers, magazines, TV, radio, billboards, direct mail, telephone, fax and internet are part of what is the media.¹

In Uganda a system of customary law applied in Uganda prior to Britain declaring it a protectorate in 1884 and establishing colonial administrative law throughout the territory.² In Buganda, largest of the traditional kingdoms in present-day Uganda, the kabaka (king) appointed a trusted official, the katikkiro, to be in charge of the kingdoms administrative and judicial systems. The country was never fully colonized as non-Africans were not allowed to acquire freeholds.³

¹ The blacks law dictionary 2nd edition.

² MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

³T Skjerdal & Charles M Ngugi, Institutional and governmental challenges for journalism education in East Africa, African Journalism Studies, 28 (1&2), 2007, pp 176-189, last accessed 26 October 2021.



Following the rise of African nationalism, a constitutional monarchy with a government based on the British model was implemented in 1955, and in 1957 political parties emerged and direct elections were held. Uganda became an independent commonwealth nation on 9th October 1962 with Milton Obote as prime minister.⁴

Within four years, however, Obote abrogated this constitution and declared himself president under an interim constitution.⁵ Following an attempt on his life in 1969, Obote banned opposition political parties, leaving himself the country de facto absolute ruler.⁶ Less than two years later, on 25th January 1971, Obote was ousted in a military coup led by armed forces commander Idi Amin Dada. Amin declared himself president, dissolved parliament and amended the constitution to give himself absolute power.⁷ The subsequent eight years proved a reign of terror marked by political repression, ethnic persecution, gross human rights abuses (including extra judicial killings) nepotism, corruption and economic mismanagement.⁸

Obote was given sanctuary by Tanzanian leader Julius Nyerere, and was joined by some 20,000 followers. A year later, a group of these exiles attempted, unsuccessfully, to invade Uganda and remove Amin, who blamed Nyerere for backing and arming his enemies. Relations between the two states remained strained for many years.⁹

⁴ Martin Zhuwakinyu, Falling African Electricity-Access Levels Could Undermine Growth. Available at: <http://www.engineeringnews.co.za/article/falling-african-electricityaccess-levelscould-under>

⁵ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

⁶ <http://www.achpr.org/mechanisms/freedom-of-expression/>, last accessed 27 October 2021.

⁷ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

⁸ <http://data.worldbank.org/indicator/EG.ELC.ACCS.ZS>, last accessed 27 October 2021.

⁹ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

By 1977, the Uganda economy was floundering as was Amin's hold on power. In an attempt to bolster his position, Amin ordered troops to attack Ugandan exiles in the Kagera salient, a narrow strip of Tanzania that juts north past Rwanda and Burundi and forms part of the southern border of Uganda.¹⁰

On 21 January 1979, Nyerere ordered a Tanzanian invasion of Uganda. By early April, Tanzanian forces had captured the capital, Kampala and Amin had fled the country. Tanzanian troops then spread throughout Uganda to maintain law and order during preparations for elections. As there was no potential successor who enjoyed national support, Obote was returned to the presidency in December 1980, but his government struggled to suppress opposition.¹¹

In 1985, Obote was ousted in another military coup, this time led by Brigadier General Tito Okello, who ruled for six months before being deposed by the rebel National Resistance Army led by Yoweri Museveni, who was installed as president. Following promulgation of a new constitution in October 1995, Museveni won Uganda's first ever direct presidential election.¹²

In a referendum in July 2005, 92.5% supported restoring multiparty politics. The following month, parliament voted to change the constitution to allow Museveni to run for more than two terms.¹³ He is now in his fifth five-year term of office, opposition leaders claimed, however, that the 2016 election was marred by voter intimidation, arrests of opposition leaders and other irregularities.¹⁴

¹⁰ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

¹¹ <http://www.achpr.org/sessions/29th/resolutions/54/>, last accessed 27 October 2021.

¹² <http://www.achpr.org/sessions/32nd/resolutions/62/>, last accessed 27 October 2021.

¹³ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

¹⁴ <http://www.achpr.org/mechanisms/freedom-of-expression/>, last accessed 27 October 2021



The Museveni years have proved a period of relative political and economic stability. Gross domestic product (GDP) in Uganda was worth US\$26.37 billion in 2015,¹⁵ with GDP per capita ranking 37th of 53 African nations.¹⁶ While Uganda surpassed the millennium Development Goals target of halving poverty by 2015, and made significant progress in reducing hunger and empowering women, a large proportion of its current (2016) population of 37.8 million¹⁷ almost half of whom are aged under 15 years remains vulnerable to falling back into poverty.

The country has substantial natural resources, including fertile soils, regular rainfall, small deposits of copper, gold and other minerals, and recently discovered oil, with estimated deposits of at least 3.5 billion barrels.¹⁸ Agriculture is the most important economic sector, employing more than two-thirds of the workforce. Coffee accounts for the bulk of export revenues.¹⁹

Until the late 1990s, Uganda had only one television station, the state-owned Uganda Television, which began broadcasting the year after independence.²⁰ It is now called the Uganda Broadcasting Corporation, and also operates five radio stations. Competition came in the form of Sanyu TV and Wavah, and opened the way for other stations.²¹

¹⁵ <http://www.achpr.org/sessions/48th/resolutions/169/>, last accessed 27 October 2021

¹⁶ <http://www.ujuh.co.za/midrand-declaration-on-press-freedom-in-africa/>, last accessed 27 October 2021.

¹⁷ <http://www.ijrcenter.org/wp-content/uploads/2015/02/Konate-DecisionEnglish.pdf>, last accessed 27 October 2021.

¹⁸ [by-the-pan-african-parliament-on-world-pressfreedom-day-03042011-2011-05-03](http://www.ijrcenter.org/wp-content/uploads/2015/02/Konate-DecisionEnglish.pdf) last accessed 26 October 2021

¹⁹ Faso, <http://www.ijrcenter.org/wp-content/uploads/2015/02/Konate-DecisionEnglish.pdf>, last accessed 27 October 2021

²⁰ <http://www.bizcommunity.com/Article/410/15/150895.html>, last accessed 30 October 2021.

²¹ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

Radio was dominated by the state-owned Radio Uganda until the early 1990s, when the first independent radio stations received licenses to operate. There are now more than 200 radio stations serving the country.²²

There are some 30 newspapers in Uganda, almost all of them publishing in English. The state-owned New Vision is Uganda's oldest newspaper and has the largest national circulation. The Daily Monitor is independent, and the second oldest newspaper in the country.²³ Red Pepper, a daily tabloid that began publication in 2001, is arguably Uganda's most controversial news medium with its mix of politics, sensationalism and scandal.²⁴ When, in May 2013, Red Pepper and the rival Daily Monitor published a confidential letter purportedly written by Army general David Sejjsa calling for an investigation into allegations of a plot to assassinate people who were opposed to the Museveni family holding on to political power in perpetuity, the offices of both publications were raided by the police, who shut down operations for several days.²⁵

Since then, however, Red Pepper has extended its reach by upgrading its online presence. Social media have made a significant impact on the country, but were ordered blocked by the Uganda Communication Commission in advance of Museveni's latest inauguration.²⁶ Some analysts fear this could become a routine government practice. That said, relations between the media and the government are widely recognized as having improved since the mid-1980s, with government

²² <https://cpj.org/2015/04/eritrea-most-censored-country-in-the-world.php>, last accessed 30 October 2021.

²³ <https://cpj.org/2015/04/eritrea-most-censored-country-in-the-world.php>, last accessed 30 October 2021.

²⁴ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

²⁵ https://freedomhouse.org/sites/default/files/FreedomofthePress_2015_FINAL.pdf, last accessed 27 October 2021.

²⁶ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

members holding open press briefings and making television appearances. This may, it is noted, have much to do with the fact that journalists now have avenues of legal recourse available to them.²⁷

Media plays an important role in our lives as we experience the outer world more by print and digital media than directly. Media and journalism practice in Uganda is regulated by the laws of the land, supreme of which is the Uganda constitution. But over time, legislation in the country have ended up controlling instead of regulating in an acrimonious relationship between the media resulting in an acrimonious relationship between the media and successive regimes alongside other non-state actors.

There are indeed over a dozen post-independence laws that have been enacted and have a bearing on the practice of draconian laws still remain in the law books. Those that have been amended such as the Electronic Media Act 2000 have been replaced by pieces of legislations that are vague and or retrogressive.

Some specific sections of these laws have been ruled unconstitutional by the courts of law, such as the sedition and publication of false news provisions in the penal code act. However, these still remain on the law books and have been used to charge journalists even when it is clear the charges would be dropped. For many observers, the aim has always been to fatigue the journalists in the process.

Where the laws have been in adequate in squeezing the life out of media, the state has tended to resort to other forms of control such as economic sanctions and closures of media houses, physical attacks, threats and harassment of journalists, among others, including denial of adverting revenue. Indeed, in 1993, the government slapped an advertising ban on the monitor (now daily monitor) as

²⁷MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

punishment for its critical reporting on government. The ban was later lifted in 1997, but the damage had already been done.

In May 2013, the government closed down operations of two media houses- Red pepper and Monitor Publications for 11 days, together with their subsidiaries leading to massive losses in revenue. The closure followed the publication of a letter by Daily monitor, purported to have been written by the then Coordinator of intelligence,²⁸ Gen David Sejusa to his junior instructing them to investigate allegations of assassination plot against those opposed to the installation of Brigadier Muhoozi Keinerugaba (President Museveni's son) as the president's heir. The subsequent public debate in both social and main stream media licensed the government.²⁹

Three daily monitor journalists: Richard Wanambwa, Risdell Kasasira and Don Wanyama, the Managing Editor, had been interrogated by the criminal investigations over the source of the letter. They were ordered to handover the letter but even before the interrogations could be concluded, the police obtained a court order to search both daily monitor and red pepper premises for the said letter and other sensitive information respectively.³⁰

In the process, however, police suspended the operation of the two publications by switching off the printing presses and cordoning off daily monitor's sister radio stations: KFM and Dembe fm.³¹ These acts by the state have led to a situation where the media operates in fear of the repercussions of their actions, with several reported cases of self-censorship and spiking of public interest investigative stories

²⁸ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

²⁹ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by JUSTINE LIMPITLAW

³⁰ Justine Limpitlaw - MEDIA LAW HANDBOOK FOR EASTERN AFRICA – 2nd Edition

³¹ Justine Limpitlaw - MEDIA LAW HANDBOOK FOR EASTERN AFRICA – 2nd Edition

deemed to be critical to the establishment and thus dangerous to publish or broadcast.³²

In June 2, 2013, a few days after the state lifted the ban on monitor publications, the Sunday monitor publications, the Sunday monitor (daily monitors Sunday edition) was forced to pull down a lead story “Museveni ranks low in East Africa” that was adjudged to have cast the president in what some thought was bad light. In his explanation for the story’s removal, Monitor Publications Managing Editor, Mr. Alex Asimwe, said: “We agreed to hold back the story because it had not been handled very well.”³³

The importance of media freedom and freedom of expression in the realization of other human rights and democratic processes cannot be overestimated due to the central role the media plays in decision making processes. In circumstances where the free flow of information and ideas is constrained, other human rights as well as democracy itself, are under threat. Particularly mechanisms, which are cornerstone of good governance, depend on the free flow of information and ideas, since citizen engagement can only be effective if people are informed and have the means to express themselves. Other social values including good governance, public accountability and individual fulfillment, combating corruption also depend on respect for freedom of expression. Given its power, those in leadership have always sought means to tame the media using a number of avenues including very restrictive legislation, which prescribe punitive measures in case of breach.

For journalists therefore, an understanding of the legal and policy frameworks that affect media and freedom of expression in Uganda is critical since this empowers them not only to appreciate but also to take full control of their situations. This is

³² Justine Limpitlaw - MEDIA LAW HANDBOOK FOR EASTERN AFRICA – 2nd Edition

³³ Justine Limpitlaw - MEDIA LAW HANDBOOK FOR EASTERN AFRICA – 2nd Edition

particularly so for freelance journalists and others working for small media houses who may fall victim to the different provisions without the readily available legal support that their colleagues working for big media house enjoy.

As a country, Uganda has ratified and assented to several international legal instruments that bind her to respect the human rights provisions there in and these can therefore be cited to challenge some of the provisions in our national laws that are not compliant, but also in demanding that the government guarantees the respect and protection of human rights in any new legislation.

Historical background of media in Uganda

The Ugandan media originates from colonial days when Uganda was still a British protectorate; the British colonial master introduced the media industry in Uganda in 1954, aimed at supporting the imperial agenda of the government³⁴. The Uganda Broadcasting Cooperation (UBC), State owned rebroadcasted BBC and other local programs meant to counter anti British pro independent voices by the local Pan Africanists. Even in colonial days media freedom was restricted because the black Pan Africanists used the media to attack the colonial masters³⁵. The colonial masters' reaction to this was the arrest and jailing of critical African writers and closing down their publications (Lugalambi, 2010:13). When Uganda eventually got her independence on 9th October 1962, the post independent Ugandan government took over the control of the UBC and continued with the same aggression towards the media. It is reported that, critical politicians and journalists

³⁴ The British colonial government needed a communication system to execute and promote colonial policies and programs.

³⁵ Bob Denis Odongo; Human Rights and Media in Uganda; A critical Analysis of the Mass Media Freedom. (2002)



were arrested and jailed during Obote's government with publications called '*Ssekanyolya*' being banned after the 1966 Uganda crisis

As Lugalambi puts it, at this time Uganda had two media channels and these remained under the control of Ministry of Information with its employees being public servants. The funds for its operation and administration came from the state coffers (2010:20). For very long period, the UBC remained a government mouth piece, with very little independence in its broadcasting programmes³⁶. The concept of public broadcasting therefore lost meaning; there were no laws to protect the media practitioners in the way they were doing their job. This meant much coercion and interference from the state in the matters concerning the national broadcasters. As Lugalambi 2010 reports, the '*Uganda Television and radio*' became a symbol of state power with a biased approach to reporting.

The stage of liberalization

From the time of independence, the media remained under the control of the government until the time of liberalization of the economy in 1993. The media monopolies were broken; the public media industry had proved to be one of the sectors that were difficult to work in because the media professionals were not protected by the law and there was a lot of interference, intimidation, and harassment and in some cases coercion by state apparatus³⁷. With the change of the media laws, several independent media outlets both print and the broad cast sprang up mostly operated by private individuals, politicians, churches, and business proprietors. According to the Uganda Communication Commission

³⁶ Bob Denis Odongo; Human Rights and Media in Uganda; A critical Analysis of the Mass Media Freedom. (2002)

³⁷ This followed the pressure from international communities especially the World Bank for Uganda to liberalise the economy.

(UCC)³⁸, the number of local FM radio media stations increased from 14 in December 1996 to 158 by March 2007 and to date Uganda has over 200 FM Stations, whereas the private television stations increased from four to 45 including Cable channels in the same period (IREX, 2008:388).

In terms of freedom of expression, this seems to be very good for the sector. However, from 2002, the same ruling government of National Resistance Movement (NRM) began to censor the media industry, through creating conditions that make media operation difficult³⁹. This was done by allowing very little freedom of expression and diversity of views and introduction of stiff and stringent domestic laws against the media. To date, these laws have been met with resistance by most Media outlets, International bodies, Civil Society Organisations (CSOs), and Journalist Associations. The argument is that the government is violating both national, regional and International laws on freedom of expression (Article 19, 2010; HRW, 2010; Amnesty International, 2011).⁴⁰ Most journalists are of the view that the Ugandan government looks at media as a big threat to their existence rather than a partner in development and democratization process hence the enactment of domestic laws that undermine media freedom and independence⁴¹.

With the liberalization policy in place, media groups sprang up, major forms being websites, radio stations, newspapers and television channels, which BB are state,

³⁸ Uganda Communications Commission (UCC) is the regulator of the communications industry in Uganda. UCC regulates and promotes the developments in the communications industry.

³⁹ Bob Denis Odongo; Human Rights and Media in Uganda; A critical Analysis of the Mass Media Freedom. (2002)

⁴⁰ Bob Denis Odongo; Human Rights and Media in Uganda; A critical Analysis of the Mass Media Freedom. (2002)

⁴¹ Such laws include Press and Journalist Act (Cap 105) of the Laws of Uganda (2000), Electronic Media Act (Cap 104) of the Laws of Uganda (2000) and the Proposed Press and Journalist Bill 2010 to which may has viewed it as attempt to suffocate the media industry in Uganda.



church or privately owned. The state owned media are known as the Vision Group which is the market leader in the newspaper, radio and television sector. Meanwhile, the Nation Media Group (NMG) is respected for its independent coverage and owns the Daily Monitor, National Television (NTV) and KFM radio.⁴² Both the Vision group and NMG attract the biggest market among the public both at national and international level. Besides these two, there are private individuals in Uganda who have heavily invested in the media industry mostly in local FM radio stations⁴³.

THE PRESS UNDER THE 1995 CONSTITUTION

The 1995 constitution of Uganda under article 20 [1] recognised for the first time in the constitutional history of Uganda that fundamental rights and freedom of an individual are inherent and not just granted by the state. Article 29[a] provides that " every person has the right to freedom of speech and expression which shall include freedom of press and the media".

However this good pronouncement is watered down by article 43[2] which restricts these fundamental rights and freedoms. This article provides inter .. alia that in the enjoyed of the right and freedoms no person shall prejudice the fundamental freedoms of human rights of others or the public interest. However clause 2 of article 43 of the constitution defines the extent to which public interest shall limit the expression of peoples rights and freedom in that, such limitations shall not go beyond what is demonstrably justifiable in a free and democratic society.

It is actually evident from those provision in the constitution that at the time of enactment of the 1995 constitution constituent assembly members were still suffering from the hysterical effects created by the successive regimes in Uganda .The term public interest is a vague and would not have found its way in the so much appraised 1995 constitution ,public interest has turned out to mean state interest and as such an enactment ensured the states continuous intimidating in the

⁴² Bob Denis Odongo; Human Rights and Media in Uganda; A critical Analysis of the Mass Media Freedom. (2002)

⁴³ See; Uganda Communication Commission website <http://www.ucc.co.ug>

freedom of expression which rights some one acquires at birth. Such an enactment is devoid of substance since every one has a right of recourse to courts of law in case he feels that his rights are infringed upon due to the expression of another. This does and really did not call for a constitutional enactment.

The fall of Tito Okello Lutwa in 1986 suddenly removed all repression and surged in freedom

of the press, also it was thought by 26th 8.1989]News'papers had registered with G.P.O due to the N.R.M Government of a free political system based on a broad based approach .Although the government has tolerated critical coverage of issues concerning corruption by government has tolerated critical coverage of issues concerning corruption by government officials and Human rights violations especially in the army, it cannot be credited of ensuring freedom of the press.

In the last ten years, at least seven Newspapers, have been banned directly or erased out of print. The weekly digest was banned very early when it was declared a prohibited publication by a law in the form of statutory instrument. The " Uganda review" was disabled when its editor was jailed on charges of committing treason.

Other papers died out in proposition to the creeping exclusion of adverts on which they derived existence. For instance when the New vision got government adverts monopoly many papers could not survive.

On the other hand while the journalist have since the time of the arrest of the enigmatic Ben

Bella llakut, been relatively free. However several journalists have seen the behind of bars in

the N.R.M era. In the last ten years at last twelve years at least ten journalists have either fled

the country or changed the profession. Thus John kiwanuka, Henry gombya, Joga adhola,

Alfred okwaire,Hussein abdi and Francis odida are no longer members of the press today.

(Amnesty international 1986-1989].



Under the N.R.M the print media has been subjected to a number of threats for instance in

1989, president Museveni is quoted to have said,

"They are two types of criminals that interest me journalism and common criminals. lam

putting journalism on notice if they malign the good name of the N.R.M They might be locked

up under the detention laws". [Edward Twine may 23rd 1989).

Such utterance are characteristic of Amin in his era. Not only have journalists been entertained to such threats but only a battery of other repressive laws have been put in place to check freedom of press under the N.R.M era. In 1988, the government introduced an amendment to the penal code providing for the punishment of any one publishing information regarding the armed forces.⁴⁴

This is essence limited journalists from publishing matters concerning the army. An editorial in the weekly topic criticised the law as being,

Couched in a language that leaves the media workers totally un clear about how much more

freedom they will be left with to report on matter involving soldiers, this section is bound to

be abused by undemocratic elements within the army to terrorise media workers and cover up

anti-government activity [weekly topic 12th march 1989 page 3].

The fatal breach of press freedom under the N.R.M government came on February 10th 1990

when three journalists were charged under s.51 of the penal code for the defamation of a foreign dignitary with interest to disturb peace and friendship between Uganda and the country to which the dignitary belongs .. The case arose out of the critical questioning of the journalists encountered by the visiting president Kaunda of Zambia at a press conference on January 29th 1990.

⁴⁴ [Section 39 A penal code].

Kaunda had been asked about the failure of the Zambian authorities to prosecute Kaundas son

for an alleged murder, among others, the case was eventually dismissed, however as Tamale Balaba asserts;

Although the case was dismissed it was highly illustrative of the status of the press ji-eedom in

Uganda today. The fact that the state can invoke such colonial laws to suppress responsible

and principled Journalism is reminiscent of the past Amin and Obote dictatorship Tamale

Balabain 1993 the government issued a ban on advertisements by government parastatals in

the private media for what cabinet ministers slammed as due to the persistent smuggling of

government secrets and publishing them. According to Charles Onyango Obbo this advert

*ban which was aimed at protecting the regime but the individual in the regime.*⁴⁵

Never the less private papers have survived. Such a move however is a violation of universal rights .Surely it is a way in which the N.R.M can undermine newspapers that are critical of corruption by government ministers and officials and whatever reason given for the implementation of such a policy of censorship a mounts to a denial of press freedom and deliberate sapping of the strength and courage of the press. This was unconstitutional and ought to be condemned.

Like the previous regimes, journalists under the N.R.M have been harassed and intimidated, which action are deliberately aimed at preventing journalists from carrying out their work. For instance in 1994 the police tore to pieces an international press card and accreditation card belonging to Robert Musaaazi who had gone to cover constituent assembly proceedings and threatened to lock him up [weekly Topic 19 may 1994]. The late Hussein Musa Njuki former editor in chief

⁴⁵ [Monitor August 24th, 1993]



of the shariat News paper and Haruna Kanabi, as sub editor on the paper were held for 11 days and nearly three weeks respectively in October 1993 before being bailed out on sedition charges. No further official action was taken, later the editor in chief of the monitor, Wafula Oguttu never escaped the N.R.M wrath also ,he was arrested on three charges of defamation and on charges of "publishing false statements likely to raise a harm" in October 1994 after publishing a story claiming that President Museveni had strongly criticised government ministers at a meeting. He was detained overnight and taken to court next morning at which the charges were dropped. Not only is criminal defamation now used to effectively silence its critics, but also the N.R.M government has gone as far as to make any criticism of government treasonable Charles odida was charged with treason when he evidently published a fictitious interview with a rebel leader.⁴⁶

In **conclusion**, the history of media law has a root in the traditional customary practice as evidenced in the structural division of responsibilities by traditional leaders before colonialism. Whereas media houses and so media law in Uganda are a creation of yesterday, the practice of disseminating information has for long existed in Uganda and at all levels of society. In light of the foregoing, it is important to emphasize the need for further appropriate regulatory measures in the media sector, to contain all situations falling within media precincts.

⁴⁶ [New vision may 25th 1992]

CHAPTER TWO



THE LEGAL FRAMEWORK ON MEDIA IN UGANDA

The main laws governing media law are

1. The 1995 constitution of Uganda (*as variously amended*).

The freedom of the media and expression is expressly provided for in the 1995 constitution, which is the supreme law of the land.⁴⁷ A constitution is a set of rules that are foundational to the country, institution or organization to which they relate. For example, you can have a constitution for a soccer club or a professional association, such as a press council. Such constitutions set out the rules by which members of the organization agree to operate.⁴⁸

The Constitution of the Republic of Uganda, which came into force on 8 October 1995 and which has been amended numerous times since then, sets out the foundational rules for the Republic of Uganda. These are the rules upon which the

⁴⁷ Media Regulation and Practice in Uganda A Journalists' Handbook by Paul Kimumwe

⁴⁸ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw



entire country operates. The Constitution contains the underlying principles and values of Uganda.⁴⁹

The Preamble to the Constitution contains clear references to Uganda's violent history in its references to its 'struggles against the forces of tyranny, oppression and exploitation', and to building a better future 'by establishing a socio-economic and political order through a popular and durable national constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress.'⁵⁰

Additional constitutional provisions which set out the principles and values of Uganda are contained in Article 1(i) of the part of the Constitution headed 'National objectives and directive principles of state policy', which states that: The following objectives and principles shall guide all organs and agencies of state, all citizens, organizations and other bodies and persons in applying or interpreting the constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society.⁵¹ The objectives and principles referred to are those set out in articles II–XXIX of that part of the Constitution, namely:

- a) Democratic principles
- b) National unity and stability
- c) National sovereignty, independence and territorial integrity
- d) Guaranteeing and protecting institutions responsible for protecting and promoting human rights
- e) Gender equality and fair representation of marginalized groups, including persons with disabilities

⁴⁹MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

⁵⁰ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

⁵¹ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

- f) Providing adequate resources for organs of state
- g) Right to balanced and equitable development, and the roles of the people and the state in that development.
- h) Protection of natural resources and the environment } State promotion of recreation, sports, education, the family, medical services, water, food security, cultural values, Ugandan languages, public property and heritage, accountability (including taking measures to combat corruption and abuse of power) and foreign policy objectives
- i) Effective responses to natural disasters
- j) Duties of citizens, which include promoting democracy and the rule of law and contributing to the well-being of the community.⁵²

Similarly, Article 1 of Chapter 1 of the Constitution is headed ‘Sovereignty of the people’ and it too sets out certain values of democratic governance, including, that:

- *The authority of the state emanates from the people, who shall be governed through their will and consent*
- *The people’s will and consent on who shall govern them shall be expressed through regular, free and fair elections or referenda.*⁵³

Definition of constitutional supremacy Constitutional supremacy means that the constitution takes precedence over all other law in a particular country, for example, legislation or case law. It is important to ensure that a constitution has legal supremacy.⁵⁴

⁵² MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

⁵³ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

⁵⁴ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

If a government passed a law that violated the constitution, was not in accordance with or conflicted with a constitutional provision, such a law could be challenged in a court of law and could be overturned on the ground that it is ‘unconstitutional.’⁵⁵

The Constitution of Uganda makes provision for constitutional supremacy. *Article 2(1)* of Chapter 1 of the Constitution specifically states that, this Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.’

Article 2(2) expands on this, stating that if any law or any custom is inconsistent with any of the provisions of the Constitution, ‘the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void’.

Constitutional provisions that protect the media.

Article 27 provides for privacy of persons in the course of conducting investigations for stories, unearthing and exposing certain facts/truths about people or issues journalists use a number of methods that include posing as undercover investigators to acquire this information.

Article 27(2) of the constitution seeks to protect the privacy of individuals or the right to “left alone” and states thus, “no person shall be subjected to interference with the privacy of that persons home, correspondence, communication or other property.”

Article 29(1) (a) of the Ugandan constitution states that:

“Every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media. Article 29(1)(b), part of the article

⁵⁵ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

headed ‘Protection of freedom of conscience, expression, movement, religion, assembly and association’, which states: Every person shall have the right to – freedom of thought, conscience ... Freedom of thought and conscience is important for the media as it protects the right to think and to hold opinions. This protects commentary on public issues of importance, which is critically important for the media as it protects editorials, opinion pieces, etc. As the right is available to ‘every person’, media houses, as well as individual journalists and editors, enjoy this right.

Article 29(1)(e), part of the article headed ‘Protection of freedom of conscience, expression, movement, religion, assembly and association’, which states: Every person shall have the right to – freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations.

Similarly, article 40(3)(a) provides that ‘every worker has the right to join a trade union of his or her choice for the promotion and protection of his or her economic and social interests’.

These provisions need some explanation:

- 1. These rights guarantee the right of the press to form press associations as well as to form media houses and media operations more generally.*
- 2. Further, the specific freedom to join and form trade unions is an important right for working journalists.⁵⁶*

⁵⁶ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw



The right to seek, receive and access information which is the backbone of any democracy and the enabler of a free media⁵⁷ is also provided for in Article 41 which states that:

“(1) Every citizen has a right of access to information in the possession of the state or any other organ or agency of the state except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to the privacy of any other person.

“(2) “ public interest in the article shall not permit (a) political persecution; (b) detention without trial; (c) any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in this constitution.”

Freedom Of Movement

Another important provision that protects the media is Article 29(2) (a), part of the article headed ‘Protection of freedom of conscience, expression, movement, religion, assembly and association’, which states: Every Ugandan shall have the right to move freely throughout Uganda. This is important as it makes it clear that all Ugandan journalists have the right to move freely in Uganda. This is useful when covering stories that require travelling to different parts of the country. Note that this would not apply to foreign journalists.⁵⁸

Right To Privacy Of Person, Home And Other Property

Another important right that protects the working journalist is the right to privacy, which is contained in Article 27 of the Ugandan Constitution. The right provides

⁵⁷ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

⁵⁸ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

as follows: (1) No person shall be subjected to (a) the unlawful search of the person, home or other property of that person; or (b) unlawful entry by others of the premises of that person. (2) No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property. This requires some explanation: 1. This right applies to all persons and not just citizens. 2. The protection given to correspondence and communication is particularly important for working journalists as it gives additional protection to their sources of information.⁵⁹

Civic Rights And Activities.

Another important provision that protects the media is article 38(2), part of the article headed 'Civic rights and activities', which states: Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organizations. This is important as it makes it clear that all Ugandan journalists, media owners and media activists have the right to form or participate in media-related organizations in order to influence government-related media policy. This right does not apply to foreigners.

Right Of Access To Information

Another important right for the media is article 41(1) of the Ugandan Constitution, part of the right of 'access to information'. It provides: Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.

⁵⁹ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw



Article 42(2) provides that Parliament is to make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information. The right is available to citizens only and not to everyone, the right is against the state and organs and agencies of the state. Consequently, it is not available in respect of privately held information, the right is subject to an internal limitation, namely that the right does not apply in cases ‘where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person. It is clear that Parliament is to give effect to the right through legislation.’⁶⁰

Right To Just And Fair Treatment In Administrative Decisions

Another important right for the media is article 42 of the Ugandan Constitution, which is the right to ‘fair treatment in administrative decisions’. It provides: Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

This provision protects journalists and the media (as it does all people) from administrative officials, such as broadcasting regulatory authorities, who act unjustly and unfairly.⁶¹

An administrative body is not necessarily a state body; indeed, these bodies are often private or quasi-private institutions.⁶² These constitutional requirements would therefore apply to non-state bodies too. Many decisions taken by bodies are ‘administrative’ in nature, and this requirement of just and fair administrative

⁶⁰ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

⁶¹ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

⁶² MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

decision-making is a powerful one that prevents or corrects unjust and unfair conduct on the part of administrative officials.⁶³ The reference to applying to a ‘court of law’ is clearly a reference to the right to seek judicial review of administrative action in terms of which judges consider the exercise of administrative discretion on the part of the decision-maker.⁶⁴

Other constitutional provisions that are important and assist the media in performing its functions. Article 97(1) of the Ugandan Constitution provides that the speaker, the deputy speaker, members of Parliament (MPs) and any other person participating in, assisting in or acting in connection with or reporting, the proceedings of Parliament or any of its committees shall be entitled to such immunities and privileges as Parliament shall by law prescribe.

These immunities and privileges were already provided for in the Parliament (Powers and Privileges) Act, 1955, Chapter 258, which act remains in force. Section 2 provides, among other things, that no civil or criminal proceedings may be instituted against any MP for words spoken before, or written in a report to, Parliament or to a committee. These provisions assist the media by protecting the right of parliamentarians to speak freely in Parliament without facing arrest or civil or criminal proceedings for what they say.

Parliament has incorporated the provisions of the Parliament (Powers and Privileges) Act, 1955, Chapter 258, relating to privilege in its prescribed Rules of Procedure of the Parliament of Uganda, and the latest version thereof is dated 2012.

In terms of section 22(1) of the Rules of Procedure of the Parliament, the sitting of Parliament shall be public, subject to those rules. Section 22(2) does allow the

⁶³ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

⁶⁴ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 by Justine Limpitlaw

speaker, with the approval of the House, and having regard to national security, to move into a closed sitting. No strangers are permitted to be present during a closed sitting. Section 22(3) provides that no person other than someone specifically authorized by the speaker may purport to describe the proceedings or any decision of a closed sitting as per section 22(6).

Section 216 of the Rules of Procedure of the Parliament provides that parliamentary proceedings may be broadcast by electronic media, having due regard to the dignity of the House. In terms of section 217(1) of the Rules of Procedure of the Parliament the parliamentary session shall be available for broadcast on radio and/or television during all hours of sitting unless determined otherwise by the House or speaker.

Annexure G to the Rules of Procedure of the Parliament sets out the rules relating to television coverage of parliamentary proceedings. These provisions assist the media by ensuring that it has a great deal of access to the workings of Parliament by being able to be physically present in Parliament and to broadcast the proceeding thereof.

2. The Penal Code Act Cap 120 Of The Laws Of Uganda (1950)

This is the widely used legal weapon against media freedom in Uganda by the government. The code establishes and defines offences related to sedition, promotion of sectarianism, criminal libel/defamation and terrorism.⁶⁵

S. 34 to 36 of the Penal Code Act provide for the prohibition of importation of publications; and S.34 specifically gives the minister discretionary powers on the type of publications to be imported or banned.

⁶⁵ Media Regulation and Practice in Uganda A Journalists' Handbook by Paul Kimumwe

Whenever the minister considers it in the public interest so to do, he or she may, in his or her absolute discretion, prohibit by statutory order, the importation of all publications, or any of them, periodical or otherwise: and where the prohibition is in respect of any periodical publications, the same or any subsequent order may relate to all or any of the past or future issues of a periodical publication.⁶⁶ The Minister may be writing in his or her handwriting, at any time and from time to time, exempt any of the publications the importation of which has been prohibited under this section, or permit any person or class of persons to import all or any such publications.

On the other hand, a seditious intention as defined in S.39 of the code is an intention, among other things, “to bring into hatred or contempt or to excite disaffection against the person of the President, the Government as by law established”. Section 40 of the code provides for a jail sentence of up to five (5) years on conviction for this offence.

According to section 41 of the Penal Code: A person who prints; publishes; makes or utters any statement or does any act which is likely to; (a) degrade, revile or expose to hatred or contempt; (b) create alienation or despondency of; (c) raise discontent or disaffection among; or (d) promote, in any other way, feelings of ill will or hostility among or against any group or body of persons on account of religion, tribe or ethnic or regional origin, commits the offence of promoting sectarianism and is liable on conviction to imprisonment for a period of no more than five (5) years 3.

The Penal Code Act (Cap 120) of the Laws of Uganda (1950) of the code criminalizes “defamation of foreign princes” by stating thus;. Any person who,

⁶⁶Media Regulation and Practice in Uganda A Journalists’ Handbook by Paul Kimumwe



without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between Uganda and the country to which such prince, potentate, ambassador or dignitary belongs, commits a misdemeanor. This provision alone poses a challenge to journalists who would like to ask what may be regarded as uncomfortable questions when provided with an opportunity to hold leaders accountable for their human rights record or involvement in questionable dealings in their home countries.

In 1990, the section claimed its first victims, when three journalists, Festo Ebongu, then working with The New Vision, Alfred Okware (RIP) then with News desk Magazine and Hussein Abdi (RIP) who was a BBC correspondent based in Kampala were charged accused of asking “embarrassing” questions to Dr. Kenneth Kaunda during a 26th January 1990 press conference in Entebbe and subsequently to court to answer charges relating to defamation of a foreign dignitary under Section 53 of the Penal Code Act.⁶⁷

Although they have been few and far between, the media has scored some few successes in its quest to have the draconian provisions in the respective media legislations quashed. Indeed in 2004, journalists Charles Onyango Obbo and Andrew Mwenda successfully challenged the constitutionality of section 50 of the Penal Code (publication of false news).⁶⁸

⁶⁷ For details of the questions and the conclusion of the case; see Mbaine A. (2003) The Effects of Criminalising Publication Offences on the Freedom of the Press in Uganda 1986-2000; MA Thesis, Rhodes University, SA

⁶⁸ Media Regulation and Practice in Uganda A Journalists’ Handbook by Paul Kimumwe

The Supreme Court, with a majority decision ruled thus; "... It is evident that the right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. It is not confined to categories, such as correct opinions, sound ideas or truthful information. Subject to the limitation under Article 43, a person's expression or statement is not precluded from the constitutional protection simply because it is thought by another or others to be false, erroneous, and controversial. Everyone is free to express his or her views. Indeed, the protection is most relevant and required where a person's views are opposed or objected to by society or any part thereof, as 'false' or 'wrong.'"⁶⁹

Prior to going to the Supreme Court, and scoring this wonderful victory, the two journalists (Mwenda and Obbo) had themselves been victims when in 1997 were dragged to court and charged with publication of false news under S.50 of the Penal code. The charge resulted from a story published in the Sunday Monitor on 27 September 1997, written by Andrew Mujuni Mwenda, alleging that the former president of the Democratic Republic of Congo (DRC) Laurent Kabila (RIP) had paid Uganda in gold for the services rendered during the struggle to overthrow the Mobutu dictatorship.⁷⁰

Again, in 2010, another problematic Section 39(1) of the Penal Code, which defined and criminalized sedition,⁷¹ was ruled unconstitutional. Unfortunately,

⁶⁹ Lead Judgement by Justice Joseph Mulenga (Supreme Court of Uganda, 2004) in Constitutional Appeal No. 2 of 2002 between Charles Onyango Obbo and Andrew Mujuni Mwenda (Appellants) and Attorney General (Respondent).

⁷⁰Media Regulation and Practice in Uganda A Journalists' Handbook by Paul Kimumwe

⁷¹an intention – (a) to bring into hatred or contempt or to excite disaffection against the person of the President, the Government as by law established or the Constitution; (b) to excite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter in state as by law established; (c) to bring into hatred or contempt or to excite disaffection against the administration of justice; (d) to subvert or promote the subversion of the Government or the administration of justice



even with this ruling, many journalists are still charged with these frivolous charges relating to sedition and publication of false news. These sorts of charges have had a chilling effect on many newsrooms with journalists and media houses getting fatigued with the constant trips they must make to police stations and courts of law only for the cases to be dismissed.

3. The Uganda Communications Act 2013 (Amended 2017)⁷²

This Act, assented to on 23rd December 2012 sought to among other things; “... consolidate and harmonize the Uganda Communications Act, 1997⁷³ and the Electronic Media Act, 1996,⁷⁴ 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.”

Section 3 of the Acts sets out the key objective of the acts are; to develop a modern communications sector, which includes telecommunications, broadcasting, radio communications, postal communications, data communication and infrastructure by;

- a) establishing one regulatory body for communications in accordance with international best practice;
- b) enhancing national coverage of communications services
- c) expanding the existing variety of communications services available in Uganda to include modern and innovative communications services;

⁷²UCC Act 2013 <https://www.ug-cert.ug/files/downloads/UCC%20Act%202013.pdf>

⁷³Uganda Communications Act 1997 <http://www.itu.int/ITU-D/ict/webs/ucc/uca1997.pdf>

⁷⁴ Electronic Media Act 1996 <https://ulii.org/ug/legislation/consolidated-act/104>.

- d) reducing the direct role of Government as an operator in the communications sector and minimizing the subsidies paid by the Government to the communications sector
- e) Encouraging the participation of the private sector in the development of the communications sector.
- f) introducing, encouraging and enabling competition in the communications sector through regulation and licensing of competitive operators to achieve rapid network expansion, standardization as well as operation of competitively priced and quality services; and
- g) establishing and administering a fund for the development of rural communications and information and communication technology in the country.

Two of the Commissions' functions are; to monitor, inspect, license, supervise, control and regulate communications services; and 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; (sections 5(1) b and c respectively).

The Commission has on several occasions cited Section 5 as basis for withdrawing, threatening to withdraw, of suspend licenses of communication service providers. In May 2019, citing powers given to it under Section 5, ordered the suspension of Producers, Head of News and Head of Programmers in the following broadcasting stations; AKABOOZI FM, BBS TV, BEAT FM, BUKEDDE TV, CAPITAL FM, CBS FM, KINGDOM TV, NBS TV, NTV, PEARL FM, SALT TV, SAPIENTIA FM and SIMBA FM⁷⁵ for alleged breach of minimum

⁷⁵ UCC (2019) SUSPENDED – REPEATED BREACH OF MINIMUM BROADCASTING STANDARDS
<https://uccinfo.blog/2019/05/01/suspended-repeated-breach-of-minimum-broadcasting-standards/>



broadcasting standards as enshrined in Section 31 schedule 4 of the Uganda Communications Act, 2013.

Earlier in March 2018, the Commission directed online data communication service providers, including online publishers, online news platforms and online radio and television operators to apply and obtain authorization from the commission within a period of one month or risk having their websites and/or streams being blocked by Internet Service Providers (ISPs).⁷⁶

The act gives powers to the minister to give policy guidelines to the commission, regarding its functions, which the commission must comply with; section 7(2) states thus; “The Commission shall comply with the policy guidelines given by the Minister under this section.”

This section therefore makes a mockery of section 8, which provides for the independence of the commission. This is because, all the board members are appointed by the Minister, according to S.9 (3). Under S.29, the act puts the responsibility of ensuring that what is broadcast is not contrary to public morality as well as retaining a record of what has been broadcast for a minimum of sixty (60) days solely on the license holder and or the producer.

The Act retained word for word, S.5 of the Electronic Media Act (now numbered section 30), regarding the disqualification of a producer.

A person shall not be appointed a producer of a broadcasting station if that person—

A) Is less than eighteen years of age

⁷⁶ See The Registration Of Online Data Communication And Broadcast Service Providers notice at [http://www.ucc.co.ug/wp-content/uploads/2018/03/UCC_ONLINE DATA COMMUNICATIONS SERVICES.pdf](http://www.ucc.co.ug/wp-content/uploads/2018/03/UCC_ONLINE_DATA_COMMUNICATIONS_SERVICES.pdf).

B) is of unsound mind;

C) Is not ordinarily resident in Uganda;

d) Does not possess the requisite qualifications prescribed by the Media Council.⁷⁷

Although the Act provides for a right to broadcast, any broadcasts that infringes on other peoples' privacy or broadcasting of pornographic materials⁷⁸ is prohibited. This S.28 is however prone to abuse and misinterpretation.

The Act also provides for the establishment of a Communications Tribunal mandated to hear and determine all matters relating to communications services arising from decisions made by the Commission or the Minister under this Act.

The tribunal has powers of the High Court as all its judgments and orders of the tribunal are executed and enforced in the same manner as judgments and orders of the High Court. But by August 2019, the Tribunal was yet to be set up, with lack of funds cited as one of the reasons for failure to set it up.⁷⁹

The Act also provides for the regulation of postal services in Uganda by the Uganda Post Limited (S. 66) as well as the regulation of Video and Cinema operations. Specifically, S. 37(1) prohibits anyone from operating a cinematograph theatre of video of film library without a licence that is issued by the commission.

⁷⁷ The qualifications as specified under Section 15(2) of the Press and Journalist Act, 2000 that sets up the Media Council, include possession of a university degree plus a qualification in journalism or mass communication

⁷⁸ The Anti-Pornography Act, 2014 defines pornography as any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real, or(simulated) explicit sexual activities or any representation of sexual parts of a person for primarily sexual excitement

⁷⁹ Gov't to finally set up Communication Tribunal <https://ugandaradionetwork.net/story/govt-to-finally-set-up-communication-tribunal>

Broadcasters and video operators need to be cautious to meet the minimum broadcasting standards outlined under Schedule 4 of the Act.

These include;

(a) ensuring 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

(b) Programmers that are broadcast are balanced to ensure harmony in such programmes;

(c) adult-oriented programmers are appropriately scheduled;

(d) 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;

(e) Where a broadcast relates to national security, the contents of the broadcast are verified before broadcasting.

In 2016, the Minister of Information and Communications Technology gazetted the Communications (Amendment) Bill, 2016 that sought to amend section 93(1) of the Communications Act, 2013 to enable the minister to make statutory instruments without seeking parliamentary approval. The current law requires the minister to lay regulations before parliament for approval, hence the amendment was aimed at ousting parliamentary oversight powers.

The Amendment not only removed the requirement for parliamentary approval for regulations made by the minister under the Act, but also the requirement to inform

parliament of the new legislation made through laying the regulation before parliament.⁸⁰

4. The Right Of Access To Information Act 2005⁸¹

Section 2(1) of the Access to Information Act sets out the entities to which the act applies. These include:

- a) Government ministries*
- b) Government departments*
- c) Local government*
- d) Statutory corporations and bodies*
- e) Commissions*
- f) Government organs and agencies.*

It should be noted that sections 2(2) excludes the following records:

- a) Cabinet records and those of its committees
- b) Records of court proceedings before the conclusion of a case.⁸²

The purpose of the Right of Access to Information Act is expressly stated as; “to empower the public to effectively scrutinize and participate in Government decisions that affect them.”

⁸⁰ Media Regulation and Practice in Uganda A Journalists’ Handbook by Paul Kimumwe

⁸¹ Access to Information Act, 2005

<http://judiciary.go.ug/files/downloads/access%20to%20informatioinformation%20Act2005.pdf>

⁸² MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 BY JUSTINE LIMPITLAW



The Act applies strictly to information in possession of the state or public body. Section 5 of the Act restates the right of access to information in almost similar terms as Article 41 of the Constitution. It obligates information officers to supply only accurate and up to date information.⁸³

The right to freedom of information is based on the fundamental premise that a government is supposed to serve the people. Information itself has been called ‘the oxygen of democracy’, essential for openness, accountability, and good governance. The establishment of a legal right to government information by citizens is therefore a critical principle in the quest for more accountable governments.⁸⁴

The passage of the law provided the citizens and civil society groups a platform for engagement with the state and advocacy efforts for greater accountability. But beyond this, the law, whose regulation were passed five years later, did not succeed as a tool to mobilize or operationalize latent demand among citizens for information, nor has it serve as a tool for making government officials responsive to such requests.⁸⁵

The regulations, as provided for in article 41 (2) of the constitution specify the kind of information, procedure and other issues related to how information may be requested and obtained. The regulations themselves are however problematic as they put restrictions, such as access fees (regulation 7) of twenty thousand shillings (equivalent to USD 8) and reproduction costs of the information requested for. While this fee appears modest, it is by far unaffordable to majority of Ugandans

⁸³ Access to Information in Africa Project An Executive Summary. The Case of Uganda
<https://www.greenwatch.or.ug/sites/default/-files/2019-07/Access%20to%20Information%20In%20Africa%20Project%20Summary.pdf>

⁸⁴ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

⁸⁵ Anupama Dokeniya (2013) Implementing Right to Information: A case study of Uganda; World Bank

who still live below one dollar a day. The set fee of Ushs. 20,000 contradict the spirit of the Act which is to the effect that fees payable must be reflective of the actual cost incurred to retrieve and reproduce the sought record.⁸⁶

The Act also contains several exemptions to the right of access to information including Cabinet records and those of its committees,⁸⁷ information relating to privacy of another person,⁸⁸ commercial information of a third party, confidential information,⁸⁹ and information prejudicial to safety of persons and property⁹⁰ among others.

Additionally, the maximum of 21 days within which a citizen's information request is responded to provide new challenges as the delay in releasing critical information may lead to loss of usability of information especially for investigative journalistic work.⁹¹

In 2009, two former Daily Monitor journalists, Angelo Izama and Charles Mpagi, sued the government over the failure by the Solicitor General to grant them access to information regarding oil production, prospecting and exploitation agreements.⁹² Their case was dismissed by then Chief Magistrate Deo Ssejjemba of the Nakawa Court, who stated, "I would like to think that government business is not in its entirety supposed to be in the public domain. There are cases where the

⁸⁶ Access to Information in Africa Project An Executive Summary. The Case of Uganda <https://www.greenwatch.or.ug/sites/default/-files/2019-07/Access%20to%20Information%20In%20Africa%20Project%20Summary.pdf>

⁸⁷ Section 25 of the ATI

⁸⁸ Section 26 of the ATI

⁸⁹ Section 28 of the ATI

⁹⁰ Section 29 of the ATI

⁹¹ Media Regulation and Practice in Uganda A Journalists' Handbook By Paul Kimumwe

⁹² Charles Mwanguhya Mpagi & Izama Angelo v. Attorney General (2009), Miscellaneous Cause 751 of 2009



keeping of certain class of documents secret is necessary for proper functioning of public service.”⁹³ This was a big setback in the quest for openness and accountability of government processes. However, a minor victory was to be registered in 2015, when court ruled that that the reasons for which information is requested or the belief about how it will be used “are irrelevant considerations” in determining government’s approval or denial of a request.⁹⁴ The landmark ruling, sets a precedent that could make it easier for journalists and citizens to exercise the right to information.⁹⁵

In Uganda, the failure for the successful implementation of the RTI law has largely been blamed on the lack of capacity and influence of key institutions of accountability, particularly the civil society groups and media to hold government departments accountable. But also, the existence of retrogressive legislations such as the Official secrets act (discussed below) that prohibit state officials from disclosing information.⁹⁶

5. The Official Secrets Act Cap 302 (1964)⁹⁷

It is 50 years since this act came into force. While it would be reasonable to articulate the relevance of this draconian act at that time in our history, it is hard to imagine what it is still doing on our statutory books 50 years later.⁹⁸

⁹³ Court dismisses petition to reveal Uganda’s oil agreements

<http://www.monitor.co.ug/News/National/-/688334/855348/-/whycdr/-/index.html>.

⁹⁴ Access to Information Ruling – Hub for Investigative Media vs. National Forestry Authority

<http://acme-ug.org/2015/02/17/uganda-media-silence-on-access-to-information-victory-a-travesty>

⁹⁵ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

⁹⁶ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

⁹⁷ Came into force on 30th December 1964

⁹⁸ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

The act was established to deal with protection of state secrets and security. According to section 2(3), anybody who obtains, collects, records, or publishes or communicates in whatever manner to any other person any secret official code word, or password or any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power, commits an offence under this Act.⁹⁹

The act prohibits anyone, especially state officials from communicating with “foreign power” directly or indirectly information that is considered secret and could therefore be prejudicial to the safety or interests of Uganda, commits an offence under this Act.¹⁰⁰

For the media, it is one of the drawbacks to the gains the media has made in fighting for freedom of the media. The act has almost rendered irrelevant the right of access to information law as it has been invoked severally by state officials to frustrate efforts to access government documents, many of which have no bearing to national security.¹⁰¹

The act provides very harsh penalties, for offences committed against the act. Section 15 states that; Where no specific penalty is provided in this Act, any person who commits an offence under this Act shall be deemed to be guilty of an indictable offence and is liable on conviction on indictment to imprisonment for a term not exceeding fourteen years, but that person may, at the election of the Director of Public Prosecutions, be prosecuted before a magistrate under Part XIV of the Magistrates Courts Act, and, if so prosecuted, shall be punishable by imprisonment for a term not exceeding seven years. While not excusable, it is

⁹⁹ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹⁰⁰ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹⁰¹ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe



understandable why many state officials, many of whom have taken the oaths of secrecy, are scared of responding positively to information requests.¹⁰²

6. The Anti Terrorism Act 2002¹⁰³ (Ammended 2017)

While the Anti-Terrorism act should ideally be helping to fight terrorism, it has got provisions which directly affect the practice of media in Uganda. The most troublesome provision for the media is section 9 which provides that: “Any person, who establishes, runs or supports any institution for publishing and disseminating news or materials that promote terrorism ... commits an offence and shall be liable on conviction, to suffer death.”

There are two singularly critical problems with this law: one is that the authorities have typically interpreted and invoked them based on political rather than legal imperatives; the other is that terrorism’ is not precisely defined, leaving its parameters so elastic that the provisions of the law can be exploited to prefer any sorts of charges against an individual, group, or organization.¹⁰⁴

In 2016, journalists Joy Doreen Biira, who was at the time working with Kenyan Television Network (KTN) in Kenya was arrested and later charged with abetting terrorism after she filmed and shared videos and photos of the burning palace during the Uganda Peoples’ Defence Forces (UPDF) clashes with the armed royal guards of the Rwenzururu kingdom in Kasese, western Uganda.¹⁰⁵

Also, section 3(1) c of the Third Schedule of the Act violates journalistic ethics by clearly excluding “journalistic material which a person holds other than

¹⁰² Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹⁰³ Anti-Terrorism Act 2002 <https://ulii.org/ug/legislation/act/2015/2002>

¹⁰⁴ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹⁰⁵ Daily Monitor (2016) Kasese clashes: KTN journalist charged with abetting terrorism <https://www.monitor.co.ug/News/National/Kasese-clashes-KTN-journalist-terrorism/688334-3468084-5xn8u/index.html>

documents” from the list of items that are subject to legal privilege during terrorist investigations.¹⁰⁶ Journalists need to be aware of these provisions and ensure they operate within these parameters.¹⁰⁷

7. THE PUBLIC ORDER MANAGEMENT ACT (2013)¹⁰⁸

The Public Order Management Act was enacted to provide a regulatory framework for gathering and meetings, as well as prescribe measures to ensure public order.¹⁰⁹

Section 8 of the Public Order Management Act gives the Inspector General of Police sweeping powers to arbitrarily prevent or stop public gatherings organized by opposition politicians, and to crack down on protests. And it is this provision that had been used on several occasions to prevent, or disband public assemblies or demonstrations, especially those organized by the opposition politicians.

The Act fails to establish a presumption in favor of the exercise of the right to freedom of peaceful assembly, or the duty on the State to facilitate peaceful assemblies. Also, the Act’s definition of “public meeting” under Section 4, by reference to “public interest,” potentially excluding critical meetings from the scope of the Act. Indeed, the Act establishes a de facto authorisation procedure for

¹⁰⁶ ACME (2010) Freedom of Expression Factsheet

¹⁰⁷ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹⁰⁸ POMA Act <http://old.ulii.org/files/PUBLIC%20ORDER%20MANAGEMENT%20ACT.pdf>

¹⁰⁹ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe



peaceful assemblies that are unnecessarily bureaucratic with broad discretion for the State to refuse notifications.¹¹⁰

The obligation on organisers under Section 10(1) (d) to “ensure that statements made to the media and public by the organizer do not conflict with any law” serves no purpose other than to deter organizers and participants from speaking to the media. Additionally, the law contains no provisions relating to the access of media to assemblies.

International law requires that states protect, promote, and always respect the right to freedom of expression and media freedom, including during assemblies. Journalists and the media, including bloggers, play an important role in informing the public about assemblies.¹¹¹ Under Section 12, the Act allows the Internal Affairs Minister broad powers to designate “gazetted” areas where assemblies are prohibited at all. For the media and freedom of expression activists, this law indeed takes the nation a few years backwards from the gains that the country achieved through the promulgation of the 1995 Constitution.

8. The Uganda Broadcasting Corporation Act 2005¹¹²

The Uganda Broadcasting Corporation Act 2005 is the founding legal instrument for the public broadcaster. The law was the first attempt to transform Uganda Television (UTV) and Radio Uganda from state broadcasters into independent public broadcasters.¹¹³

¹¹⁰For a detailed analysis of the Act, see ARTICLE 19
<http://www.article19.org/resources.php/legal/>.

¹¹¹ ARTICLE 19 (2013) Legal analysis of the Uganda Public Order Management Law.

¹¹² UBC Act, 2005 <https://ugandajournalistsresourcecentre.com/wp-content/uploads/2013/08/uganda-broadcasting-corporation-act-2005.pdf>.

¹¹³ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

However, the purpose of the act does not specify the transformation in those terms. Among its objectives, the Corporation is to “develop the broadcasting bodies into a public national broadcasting Centre of excellence, for the purpose of providing electronic media and consultancy services that educate and guide the public.”¹¹⁴

The extent to which the Corporation has achieved this particular objective almost 20 years since its creation requires further investigation.¹¹⁵ However, while the objective was to develop the Corporation into a “public national broadcaster”, the functions require that the Corporation; “reflects the Government vision regarding the objectives, composition and overall management of the broadcasting services.”¹¹⁶

The challenge with this function is that it undermines the core objective of the Corporation. What if the government of the day has no "vision"?¹¹⁷ The Act neither defines public broadcasting nor identifies Uganda Broadcasting Corporation (UBC) explicitly as a public broadcaster.¹¹⁸

It is also not clear whether the vagueness of the law was a result of innocent omissions or a deliberate attempt by the government not to cede full control of the national broadcaster.¹¹⁹

Section 3(3) states thus; “The Corporation shall be wholly owned by the Government.” In 2016, Uganda Broadcasting Corporation, the state broadcaster

¹¹⁴ Section 4(a) of the Act

¹¹⁵ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹¹⁶ Section 5(1)(b)

¹¹⁷ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹¹⁸ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹¹⁹ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe



was found, by the Supreme Court in its ruling on the **AMAMA MBABAZI V MUSEVENI AND ORS (PRESIDENTIAL ELECTION PETITION NO. 01 OF 2016) [2016] UGSC 3 (31 March 2016)**¹²⁰, to have failed to provide equal coverage to all the presidential candidates as required by the Article 67(3) of the Constitution and section 24(1) of the Presidential Elections Act

9. THE REGULATION OF INTERCEPTION OF COMMUNICATIONS ACT 2010¹²¹.

The Act seeks to make it legal for the state to intercept and monitor communication in telecommunications, postal or any other related system as a means of detecting and combating the coordination of international terrorism through telecommunications¹²².

Additionally, the Act under section 3 gives authority to the Minister of security to establish a Monitoring Centre and gives him the ‘final responsibility over the administration and functioning’ of this Centre. Although the act in S.5(1) provides grounds under which an interception warranty may be issued by stating that; “A warrant shall be issued by a designated judge to an authorized person referred ... if there are reasonable grounds for a designated judge to believe that;

(a) An offence which may result to loss of life or threat to life has been or is being or will probably be committed;

(b) An offence of drug trafficking or human trafficking has been or is being or will probably be committed;

¹²⁰ (PRESIDENTIAL ELECTION PETITION NO. 01 OF 2016) [2016] UGSC 3 (31 March 2016) <https://ulii.org/ug/judgment/supreme-court/2016/3>

¹²¹ RICA 2010 <https://ulii.org/ug/legislation/act/2015/18-2>

¹²² Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

(c) The gathering of information concerning an actual threat to national security or to any national economic interest is necessary;

(d) The gathering of information concerning a potential threat to public safety, national security or any national economic interest is necessary; or

(e) There is a threat to the national interest involving the State's international relations or obligations.

Under section 8 of this Act, communication service providers are required to aid in intercepting communication by ensuring that their telecommunication systems are always technically capable of supporting lawful interception. Non-compliance by service providers is punishable by a fine not exceeding UGX2.24 million (US\$896) or imprisonment for a period not exceeding five years or both and it could also lead to the cancellation of an operator's license.¹²³

10. The Computer Misuse Act 2011¹²⁴.

According to section 2, the Act seeks to provide for safety and security of electronic transactions and information systems and to prevent unlawful access, abuse or misuse of information systems among other things.

However, the Act includes provisions that can specifically limit freedom of expression online.

Section 24 of the Act defines and criminalizes cyber harassment as “the use of a computer for any of the following purposes;

¹²³ Media Regulation and Practice in Uganda A Journalists' Handbook By Paul Kimumwe

¹²⁴ Uganda Computer Misuse Act 2011 <https://ulii.org/ug/legislation/act/2015/2-6>



a) Making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent;

b) Threatening to inflict injury or physical harm to the person or property of any person;

c) Knowingly permits any electronic communications device to be used for any of the purposes mentioned in this section.

Upon conviction, one is liable to a fine not exceeding seventy-two currency points or imprisonment not exceeding three years or both upon conviction.

Section 25 defines and criminalizes offensive communication as the use of “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 misdemeanor and is liable on conviction to a fine not exceeding Uganda Shillings 480,000 (about USD 140) or imprisonment not exceeding one year or both.”

While section 26 defines criminalises cyber stalking stating thus; “Any person who willfully, maliciously, and repeatedly uses electronic communication to harass another person and makes a threat with the intent to place that person in reasonable fear for his or her safety or to a member of that person's immediate family commits the crime of cyberstalking and is liable on conviction to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both.”

Since its enactment, the Act has been used to arrest and charge several individuals due to their online communication. On August 1, 2019, Ugandan academic and human rights activist, Dr. Stella Nyanzi, was convicted for cyber harassment (and acquitted of offensive communication) against President Yoweri Museveni under

sections 24 (1) and (2) (a) of the Computer Misuse Act 2011¹²⁵. However she was later acquitted and immediately released from prison after she appealed both the conviction and sentencing¹²⁶.

Besides Dr. Nyanzi, other individuals who have been arrested and charged with offensive communication and cyber harassment include Swaibu Nsamba Gwogyolonga, a political activist, was arrested in 2016 and charged with offensive communication. The charge stemmed from a picture of President Yoweri Museveni lying dead in a coffin that Gwogyolonga had posted on Facebook¹²⁷.

In 2017, two other people, Mr. David Mugema, a musician and his producer Jonah Muwanguzi, were arrested and charged with offensive communication. The two are alleged to have composed, recorded, produced and distributed a song in which they attacked and disturbed the peace of President Museveni.¹²⁸

In 2015, Robert Shaka, an IT specialist was charged with offensive communication, centrally to section 25 of the Computer Misuse Act 2011. Prosecution alleged that between 2011 and 2015, Robert Shaka, who disguised himself as Tom Voltaire Okwalinga, in Kampala, willfully and repeatedly using a computer with no purpose of legitimate communication, disturbed the right to

¹²⁵ Al Jazeera, "Ugandan academic Stella Nyanzi jailed for 'harassing' Museveni," August 3, 2019, available at <https://www.aljazeera.com/news/2019/08/ugandan-academic-stella-nyanzi-jailed-harassing-museveni-190803141>

¹²⁶ Daily Nation (2020) Uganda Court sets Stella Nyanzi Free <https://www.msn.com/en-xl/africa/top-stories/uganda-court-sets-stella-nyanzi-free/ar-8810cDOW>

¹²⁷ FDC chairperson arrested over posting Museveni in coffin on Facebook <https://www.monitor.co.ug/News/National/FDC-chairperson-arrested-over-posting-Museveni-in-coffin/688334-3485026-6ikhc9z/index.html>

¹²⁸ Musician arrested for disturbing Museveni's peace <https://mobile.nation.co.ke/news/africa/Musician-arrested-for-disturbing-museveni's-peace/3126394-4216504-1mpkhhz/index.html>



privacy of the President by posing statements regarding his health condition on facebook.

11. The Anti Pornography Act 2014

Unknown to many journalists, this Act seems to primarily be targeting media industries and NOT the “mini skirt” as has been popularly written/published.¹²⁹ The Act defines pornography under section 2 as; "any representation through publication, cinematography, indecent show, information technology or by whatever means. Or a person engaged in real, or (simulated) explicit sexual activities or any representation or sexual parts of a person for primarily sexual excitement.

The Act under Sections 13 and 14 creates seven offences of which four rotate around production and distribution of pornographic materials. A person shall not produce, traffic in, publish, broadcast, procure, import, export, sell or abet any form of pornography. On conviction, the offences attract a fine up to Uganda shillings ten (10) million¹³⁰ (about USD 4,000) or imprisonment not exceeding 10 years or both.¹³¹

On the other hand, S.14 goes further to prohibit child pornography which involves the production, publication, broadcasting, procuring, importing, exporting or any form of abetting materials that depict images of children. This offence attracts a fine not exceeding Uganda shillings fifteen (15) millions about (about USD 6000).

¹²⁹ Media Regulation and Practice in Uganda A Journalists' Handbook By Paul Kimumwe

¹³⁰ Section 3(1) of the anti-pornographic act

¹³¹ Section 3(2) of the anti- pornographic act

The above two sections should however be read together with S.2 which provides specific interpretations of terms such as pornography and the offences referred to, including (broadcasting, publishing, trafficking, procuring, etc.) for which people will be charged.

The Act defines pornography as; “any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real, or (simulated) explicit sexual activities or any representation of sexual parts of a person for primarily sexual excitement”

According to Act, “broadcast” refers to the dissemination of information to the public or person through any electronic media;

“Publish” refers to the dissemination of written information through the print medium;

“Traffic” refers to the circulation of pornographic matter through sales or publishing, entertainment, or programming or unrestricted internet access or any other means or purpose.

Consumers of pornographic matter are also not spared by the Act as it is an offence under the Act to import or be found in possession, custody or being found viewing/reading pornographic matter, “except when authorized in writing by the Committee for appropriate and pornographic purposes such as education.”

More importantly for media freedom and freedom of expression is the fact that a police officer under S.16 can write to a media house and direct them to stop a likely production at the discretion of the said officer if he/she deems the matter to be pornographic. With failure to comply with the directive constituting an offence



attract a fine not exceeding Uganda shillings five (5) million (about USD 2000) or imprisonment not exceeding five year or both.

Section 3 of the Act provides for the establishment of a Pornography Control Committee charged with the implementation of law, including ensuring that perpetrators of pornography are apprehended and prosecuted as well as collecting and destroying pornographic materials, among other functions.

Section 17 requires Internet Service Providers (ISPs) not to allow their protocols and systems to be used for publishing pornography. It places an obligation on ISPs to monitor and carry out surveillance on their subscribers for them to be able to identify and remove content considered pornographic.

In 2014, a nine-member committee, chaired by Dr. Annete Kezaabu Kasimbazi, was set up.¹³² Since its enactment, the law has been used to arrest and charge several people. In 2018, a Ugandan online broadcaster and founder of the Ghetto TV, Ashiraf Kato, was charged with and remanded for broadcasting pornographic materials.¹³³

In November 2014, a Ugandan musician, Kansiime Jemimah, was arrested together with her manager, Didi Muchwa Mugisha and later charged under the anti-Pornography law.¹³⁴

¹³² New Vision (2014) Pornography control committee named

https://www.newvision.co.ug/new_vision/news/1422110/anti-pornographic-committee-n

¹³³ Uganda Radio Network (2018). Ghetto TV Founder Remanded for Broadcasting Pornography <https://ugandaradionetwork.net/story/blogger-remanded-over-publication-of-pornographic-material>.

¹³⁴ The Guardian (2015) Ugandan singer faces 10 years in jail for risqué pop video

<https://www.theguardian.com/world/2015/may/21/ugandan-jemimah-kansiime-video-anti-pornography>.

In 2019, there were threats by the chair of the pornography Committee to shut-down two popular Facebook groups, Mama Tendo¹³⁵ and Rebel Parents¹³⁶, accusing them of spreading pornography.¹³⁷

Again in 2018, there were media reports that the Committee was set to arrest at least 6 people and charge them under the Anti-Pornography Act. The six include Ugandan socialites Judith Heard, Jack Pemba and a police constable among others. Both Jack Pemba¹³⁸ and Judith Heard¹³⁹ were alleged to have separately leaked sex videos in which they involved. It has been argued that this law is mostly unfavorable to women as section 13 is likely to discourage victims of revenge pornography from reporting cases to authorities in fear of retribution as the victim and perpetrator are equally liable.¹⁴⁰

12. The Referendum And Other Provisions Act¹⁴¹

The most important sections in this Act relate to the use and access to state owned media by the respective sides during the referendum campaigns.

Section 23(1) of the act states that; “Agents of each side shall be given equal access and opportunity to use the State-owned communication media.” As to whether the managers of the then state-owned communication media (Uganda Television and

¹³⁵<https://web.facebook.com/groups/mamatendo/>

¹³⁶ <https://web.facebook.com/groups/678063942960952/>

¹³⁷ Watchdog News (2019) Mama Tendo, Rebel Parents Facebook groups to be shut down <https://www.watchdoguganda.com/entertainment/lifestyle/20190807/mama-tendo-rebel-parents-facebook-groups-to-be-shutdown.html>.

¹³⁸ The Daily Monitor (2018) Minister Lokodo hunting for socialite Jack Pemba over leaked sex tape <https://www.monitor.co.ug/News/National/Minister-Lokodo-hunting-socialite-Jack-Pemba-leaked-sex-tape/688334-4541942-10ojl1t/monitor.co.ug>

¹³⁹ The Daily Monitor (2018) Minister Lokodo hunting for socialite Jack Pemba over leaked sex tape <https://www.monitor.co.ug/News/National/Minister-Lokodo-hunting-socialite-Jack-Pemba-leaked-sex-tape/688334-4541942-10ojl1t/monitor.co.ug>

¹⁴⁰ Cipesa (2016) State of Internet Freedom in Uganda http://cipesa.org/?wpfb_dl=233

¹⁴¹ It was assented to on 10th February, 2005 and came into force on 22nd February 2005



Radio Uganda)¹⁴² complied with this provision is a question of academic interrogation on the media coverage of the 2005 referendum.

Primarily, the Act allowed the sides participating in the referendum to use all communications media available to them, including electronic media and print, but also to avoid making malicious and false statements, abusive as well as sectarian statements.¹⁴³

For media managers and proprietors, section 6 specifically bars them from allowing their media houses to be used by the competing sides to malign one another, thus; “A proprietor or operator of an electronic media shall not knowingly use the media or allow it to be used to do any of the acts prohibited....” Contravention of the provisions of the act is an offence and the person was liable on conviction to a maximum of one year in jail.

13. The Presidential Elections Act 2005¹⁴⁴

This Act sought to, “provide for elections to the office of President; to repeal and replace the Presidential Elections Act, to provide for qualifications and disqualifications for candidates and the manner of establishing equivalent qualifications, to provide for the nomination, campaigning, polling procedure, counting and tallying and declaration of results of a presidential election and the procedure for challenging the results, and for other related matters.”¹⁴⁵

¹⁴²After the enactment of the Uganda Broadcasting Corporations Act 2005, the two were turned into the Uganda Broadcasting Corporation (UBC)

¹⁴³ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹⁴⁴ Assented to on 16th November 2005 and commenced on the 21st of November 2005

¹⁴⁵ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

As media stakeholders, our focus is drawn onto sections 23,24,66,68 and 69 which deal with issues of freedom of expression and access to information; the rights of candidates; publication of false statements; the penalties involved; and false statements regarding characters of fellow candidates respectively.

Section 23(2) for example states that; “Subject to the Constitution and any other law, every candidate shall enjoy complete and unhindered freedom of expression and access to information in the exercise of the right to campaign under this Act.” The same section however prohibits the use of language that can incite violence and threatens war. Additionally, defamatory language that also incites hatred is also prohibited and punishable.¹⁴⁶

Presidential candidates are also entitled to equal treatment on state-owned media to present their manifestos and campaigns¹⁴⁷, as well as being allowed to use private electronic media for their campaign.¹⁴⁸ Again, there are caveats in this section that prohibit candidates not to use abusive and derogatory language to other candidates while campaigning.¹⁴⁹

In addition, media proprietors and practitioners are thus required not to permit candidates use their media to insult and abuse other candidates. Journalists need to be very wary of sections 66 and 69 which prohibit publication of false statements of the illness, death or withdrawal of a candidate at given election as well as personal character of a candidate “for the purpose of promoting or procuring the election of another candidate knowing that statement to be false or not knowing or

¹⁴⁶Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹⁴⁷ Section 24(1) of the presidential elections act 2005

¹⁴⁸ Section 24(4) of the presidential elections act 2005

¹⁴⁹Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe



believing it on reasonable grounds to be true.”. This is because, there is a lot of allegations that candidates make for the sake of discrediting their competitors and win over voters. Care should be taken to crosscheck all statements made by candidates, as failure to do this can land the journalist and media house into trouble.¹⁵⁰

14. The Parliamentary Elections Act 2005¹⁵¹

This Act provides for parliamentary elections and related matters in accordance with article 76 of the Constitution; to repeal and replace the Parliamentary and Elections Act, 2001, to provide for the qualifications and disqualifications for election, the manner of establishing equivalent of advanced level, nomination, campaigning, polling, counting of votes, tallying and declaration of election results; to provide for petitions for challenging election results, election offences, parliamentary constituencies and tenure of office of members of Parliament; to make provision for parliamentary elections whether under the movement political system or under the multiparty political system; and to provide for other matters related to the foregoing.

Just like the Presidential Elections Act discussed above; the Parliamentary Elections Act guarantees candidates the right to unhindered freedom of expression and access to information; as well as reasonable access to and use of state-owned communication media under sections 21(2) and 22(1) respectively. The candidates are also permitted to use private electronic media during their campaigns. The candidates are however barred from making false statements or using any language that is derogatory abusive and defamatory as well insulting to fellow candidates,

¹⁵⁰Media Regulation and Practice in Uganda A Journalists' Handbook By Paul Kimumwe

¹⁵¹ Assented to on 16th November 2005 and commenced on 21st November 2005

or incites violence during the campaigns, including using private electronic media to de-campaign fellow or any other candidates. Under section 22(6), it is the responsibility of the proprietor or operators of private electronic media to disallow candidates to use their media to abuse or defame others.

Just like as discussed under the Presidential Elections Act, journalists need to be very wary of sections 70 and 73 which prohibit publication of false statements of the illness, death or withdrawal of a candidate at given election as well as personal character of a candidate “for the purpose of promoting or procuring the election of another candidate knowing that statement to be false or not knowing or believing it on reasonable grounds to be true.”. This is because, there is a lot of allegations that candidates make for the sake of discrediting their competitors and win over voters. Care should be taken to cross-check all statements made by candidates, as failure to do this can land the journalist and media house into trouble.

15. The Copyright And Neighbouring Rights Act 2006

This is a very critical piece of legislation that media practitioners need to familiarize themselves with, as it touches on the core of their work as both originators as well as publishers of knowledge and information. This act which came into force on the 4th August 2006 repealed and replaced the Copyright Act, and provides for the protection of literary, scientific, and artistic intellectual works and their neighboring rights.

According to S.4 (1), the author of any work specified in S. 5 (below) shall have a right of protection of the work, where work is original and is reduced to material form in whatever method irrespective of quality of the work or the purpose for which it is created. The literary, scientific and artistic works that are eligible for copyright (S. 5) include; articles, books, pamphlets, lectures, addresses, sermons and other works of a similar nature; dramatic, dramatic-musical and



musical works; audio-visual works and sound recording, including cinematographic works and other work of a similar nature; choreographic works and pantomimes; computer programmes and electronic data banks and other accompanying materials; works of drawing, painting, photography, typography, mosaic, architecture, sculpture, engraving, lithography and tapestry; works of applied art, whether handicraft or produced on industrial scale, and works of all types of designing; illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science; derivative work which by selection and arrangement of its content, constitute original work; any other work in the field of literature, traditional folklore and knowledge, science and art in whatever manner delivered, known or to be known in the future.

Other protected materials according include derivative works such as translations, adaptations and other transformations of pre-existing works and collections of preexisting works like encyclopedia and anthologies; which by selection and arrangement of their contents constitute original works. However, the Act under S. 6 does not protect ideas, concepts, procedures, methods or other things of similar nature.

The Act gives exclusive economic rights to the owner of a protected work to do or authorize other persons to do the following to publish, produce or reproduce the work; to distribute or make available to the public the original or copies of the work through sale or other means of transfer of ownership; as well broadcast the work. The owner could as well commercially rent or sell the original or copies of the work. According to S.10, the author of any work protected by copyright also has a moral right to claim authorship of that work, except where the work is included incidentally or accidentally in reporting of current events through the media.

The moral right also extends to the author to have his/her name or pseudonym mentioned or acknowledged each time the work is used. Infringements of Copyright According to S. 46, Infringement of copyright or neighboring right occurs where, without a valid transfer, license, assignment or other authorization under this Act a person deals with any work or performance contrary to the permitted free use and in particular where that person does or causes or permits another person to—

a) Reproduce, fix, duplicate, extract, imitate or import into Uganda otherwise than for his or her own private use;

b) Distribute in Uganda by way of sale, hire, rental or like manner; or

c) Exhibit to the public for commercial purposes by way of broadcast, public performance or otherwise

Additionally, the use of a piece of work in a manner prejudicial to the honor or reputation of the author shall be deemed an infringement of the right of the owner of the right.

In December 2019, Daily Monitor photojournalist Alex Esagala filed a lawsuit against New Vision Printing and Publishing Company Limited, alleging copyright infringement. The suit claims, Vision Group didn't get the authority to publish one of his images in its Luganda paper the Bukedde.¹⁵²

Offences and Penalties.

Any person who does any of the following; publishes, distributes or reproduces the work; performs the work in public; broadcasts the work;

¹⁵² Daily Monitor lensman Esagala takes on Vision Group in court copyright battle <https://www.pmldaily.com/news/2019/12/daily-monitor-lensman-esagala-takes-on-vision-group-in-court-copyright-battle.htm>

communicates the work to the public; or imports any work and uses it in a manner which, were it work made in Uganda, would constitute an infringement of copyright; without the authorization of or license from the rights owner or his or her agent commits an offence and is liable on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both. However, fair use of the copyrighted materials is a defense against an infringement suit.

Section 15 provides instances of fair use, which include; where the production, translation, adaptation, arrangement or other transformation of the work is for private personal use only; also, where a quotation from a published work is used in another work, including a quotation from a newspaper or periodical in the form of press summary.

Also, it is considered fair where a published work is used for teaching purpose to the extent justified for the purpose by way of illustration in a publication, broadcast or sound or visual recording in so far as the use is compatible with fair practice and acknowledgment is given to the work and the author; And if the work is communicated to the public for teaching purposes for schools, colleges, universities or other educational institution or for professional training or public education in so far as the use is compatible with fair practice and acknowledgment is given to the work and the author; Fair use can also be cited where the work is reproduced, broadcast or communicated to the public with acknowledgment of the work, in any article printed in a newspaper, periodical or work broadcast on current economic, social, political or religious topic unless the article or work expressly prohibits its reproduction, broadcast or communication to the public.

16. The Press And Journalist Act 2000.

The underlying principle for the enactment of the Press and Journalists act was to professionalize media and to institute minimum standards for editors and journalists as well as empowering the government to oversee licensing and certification of journalists. The government is tasked with overseeing the enforcement of these requirements critics have called the measures “retrogressive.”¹⁵³

The Press and Journalist Act 1995 also establishes the National Institute of Journalists Uganda (NIJU) whose objective is to establish and maintain professional standards for Journalists.

Requirements for full membership include that a journalist be "a holder or a University Degree in Journalism or Mass Communication," or if the degree is not in journalism or mass Communication that in addition to a university degree, the journalist has qualification in Journalism or mass communication: and has practiced journalism for at least one year.”

The act is to ensure the freedom of the press, to provide for a council responsible for the regulation of mass media and to establish an institute of journalists of Uganda.¹⁵⁴

It prohibits the publication of pornographic matters and obscene publications insofar as they tend to offend or corrupt public morals: prohibits any publication which improperly infringes on the privacy of an individual or which contains false information.¹⁵⁵

¹⁵³ Uganda media development foundation “the state of media freedom in Uganda.” 2006 pg 15

¹⁵⁴ Long title of press and journalist act.

¹⁵⁵ Section 3 of the press and journalist act cap 1995

The promoters of The Press and Journalist Act in 1995 argued that it was intended professionalize journalism just like the legal and the medical profession by creating structures and processes through which one can become a journalist and practice journalism as a profession.

However the act endangers the right to expression which is guaranteed by the Constitution of Uganda. It criminalizes practice of journalism without a practicing certificate issued by a statutory body under the control of the minister of information: it conscripts journalists into one association and sets an onerous process of enrolling as a journalist before receiving a practicing certificate.

Section 6 of the act spells out the functions of an editor to include ensuring that what is published is not contrary to "public morality." The definition of what amounts to public morality is ambiguous. This provision leaves the enforcement at the mercy or media council. The journalist is left in uncertainty since he/she could face possible action anytime.

In addition, the complaints system enshrined in the Act fails to meet the international standards in various respects, including that it rooted in clear and appropriate rules regarding what was prohibited.¹⁵⁶

17. The Media Council.

The media council is an establishment of the Press and Journalist Act, its primary task is to regulate the conduct, ethical standards and discipline of journalists and the media at large. To archive the standards discussed below are required. Consequently, publishers are required¹⁵⁷ to register editors while TV and radio station owners are expected to register procedures, with the council. The council is responsible for issuing certificates to journalists as well as accreditation

¹⁵⁶ Article 10(2010) memo on the press and journalists amendments bill 2010.

¹⁵⁷ Section 5 of the press and journalist act cap 105

cards for foreign journalists and freelancers. However, certificates can only be issued if journalists are first enrolled by NIJU. It is observed therefore, that the work of the council can be affected by the performance of NIJU. The strict requirement of issuance of a practicing certificate violates the fundamental right to freedom of expression. The clear argument is that one needs no permission to enjoy practicing this right.¹⁵⁸

The media council also performs functions of regulating the conduct and promotion of good ethical standards and discipline of journalists, arbitrates disputes between the public and the media; the state and the media; exercises disciplinary control over journalists, editors and publishers, promoters, generally the flow of information; it can censor films, videotapes, plays and other comprised of members of the media council. The disciplinary committee is mandated to hear complaints against journalists and give remedies.¹⁵⁹ However disputes are often taken to court as government has not brought journalists before the committee. Hence, stakeholders may easily lost trust in the institution.

Professor Fredrick Jjuko asserts that¹⁶⁰, the Media Council is not an independent self-regulatory institution for effective functioning. For now all that the law has done is to introduce a statutory professional body (NIJU) which has been dysfunctional for the last five years. Unfortunately the media Council is supposed to issue practicing certificates to journalists: it is not doing so; it is supposed to be

¹⁵⁸ It was established during a consultative meeting with journalists held in February 2012 at Hotel Africana. The commission also holds the view that enjoyment of a right or freedom shouldnot be subjected to strict regulation likely to hinder effective enjoyment though standardization is appropriate.

¹⁵⁹Section 30-33 of the press and journalist act

¹⁶⁰ supra



the conflict mediation center in media disputes, it is not performing this task because most cases are either referred to the Courts or other government agencies.

Failure to exercise its powers granted by the law, makes it difficult for the public to appreciate its relevance. By implication even the state has no proven confidence in the Council that and it prefers to take presumed errant journalists to court instead or producing them before the Council. Therefore, the Media Council is perceived by the public and the media fraternity as having failed to justify its functions but rather a suppression tool of the media.

INTERNATIONAL INSTRUMENTS ON MEDIA AND FREEDOM OF EXPRESSION

Uganda is a signatory to several international instruments that guarantee media freedom and freedom of expression. Chief among these is the 1945 Universal Declaration of Human Rights; others being the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR).¹⁶¹

Some of these instruments are binding and thus form part and parcel of laws of Uganda because they were either ratified or assented to by the government of Uganda.¹⁶² The government is therefore under obligation to respect the key provisions. For purposes of this handbook, only sections/articles of the various instruments that deal with media and or freedom of expression will be discussed.¹⁶³

1. Universal Declaration Of Human Rights.

¹⁶¹ Media Regulation and Practice in Uganda A Journalists' Handbook By Paul Kimumwe

¹⁶² Media Regulation and Practice in Uganda A Journalists' Handbook By Paul Kimumwe

¹⁶³ Media Regulation and Practice in Uganda A Journalists' Handbook By Paul Kimumwe

One of the first international instruments to guarantee media freedom and freedom of expression is the 1948 Universal Declaration on Human Rights.

Specifically, Article 19 of the declaration states that; everyone has the right to freedom of opinion and expression. This right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers. While the UDHR is not a treaty that must be ratified (meaning it's not legally binding), it is widely regarded and treated as an international customary law that states must respect its provisions.¹⁶⁴

2. THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.¹⁶⁵

The ICCPR, to which Uganda acceded on 21 June 1995, imposes formal legal obligations on State parties to respect its provisions. Article 19(2) of the ICCPR guarantees the right to freedom of expression and that of the media in the following terms: Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

For the media therefore, this is a very critical provision that should be used to demand the government to respect the freedom of the media and enact legislations that not only protect but also are progressive enough to promote the rights to peoples' freedom of expression.¹⁶⁶

¹⁶⁴ Media Regulation and Practice in Uganda A Journalists' Handbook By Paul Kimumwe

¹⁶⁵ UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976

¹⁶⁶ Media Regulation and Practice in Uganda A Journalists' Handbook By Paul Kimumwe



As mentioned earlier, the right to freedom of expression is not absolute and it must thus be exercised with some level of responsibilities and duties. However, any limitations should remain within strictly defined parameters. Indeed article 19(3) of the ICCPR stipulates conditions to which any restriction on freedom of expression must conform: The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.¹⁶⁷

3. The African Charter On Human And Peoples Rights¹⁶⁸

Article 9 of the ACHPR provides that; every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law. Again, the key phrase here is, “within the law.” This phrase underscores the importance of the media to exercise their freedoms as stipulated in the legislation of the land. The challenge therefore is for media to ensure that the laws enacted by the state respect these rights and comply with international standards. The African Commission on Human and Peoples’ Rights (ACHPR) has also adopted several resolutions aimed at promoting right to information and freedom of expression on the internet in Africa amongst which include ACHPR/Res. 362 (LIX) 2016,¹⁶⁹ adopted in Banjul on 4 November 2016. The resolution reaffirms the fundamental right to freedom of information and

¹⁶⁷ Media Regulation and Practice in Uganda A Journalists’ Handbook By Paul Kimumwe

¹⁶⁸ Adopted 26 June 1981, in force 21 October 1986

¹⁶⁹ <https://www.achpr.org/sessions/resolutions?id=374>

expression enshrined under Article 9 of the African Charter on Human and People's Rights and in other international human rights instruments and recognizes the role of the internet in advancing human and peoples right in Africa.

4. The African Charter On Democracy, Elections And Good Governance (2007)¹⁷⁰

Relevant articles under this charter for media practitioners and freedom of expression advocates in Uganda include; article 2(10) where state parties commit to; "Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;" Under article 17, State Parties further re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union's Declaration on the Principles Governing Democratic Elections in Africa. For us again, we need to take cognizant of article 17(3); where the state parties are obligated to; "Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections." This particular provision is in line with provisions sections 23(1); 24(1) and section 22(1) of the Referendum and other Provisions Act; Presidential Elections Act and the Parliamentary Elections Act respectively, which also provide for equal and fair access to state media by the parties in an election.

5. The Windhoek Declaration On Promoting An Independent And Pluralistic African Press.¹⁷¹

¹⁷⁰article 1, 2, 17 adopted by the Eighth Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia, 30 January 2007

¹⁷¹ Adopted by the general assembly of the UN Educational, Scientific and Cultural Organisation - UNESCO - in 1991

Under article 9 of the Windhoek Declaration, states made commitments to ensure the existence of free and independent media in their respective countries, free from government interference and market forces that could otherwise hamper the development of a pluralistic press;

We (declare) that;

1) Consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.

2) By an independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals.

3) By a pluralistic press, we mean the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community.

For this to work however, governments must indeed enact laws that seek to achieve the above undertakings. Legal and policy frameworks relating to the media are however a matter of both form and substance. This is because a country may have good laws relating to freedom of expression and the right to information, but they may not be implemented or enforced. Their functionality may be hampered by a culture of secrecy or corruption, institutional resistance, or a lack of technical and institutional capacity in the public administration.¹⁷²

¹⁷² UNESCO (2008)Media Development Indicators: A framework for assessing media development; Paris, France

6. Declaration Of Principles Of Freedom Of Expression In Africa.¹⁷³

In 2002, the African Commission adopted this Declaration to provide a detailed interpretation for member states of the AU of the rights to freedom of expression outlined in the African Charter.¹⁷⁴ Article 1 of the declaration states that; Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

The Declaration goes on to say in Article II: No one shall be subject to arbitrary interference with his or her freedom of expression; and any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society. This declaration is especially relevant to the media in Uganda, as it is very detailed and provides guidelines on how states can ensure that freedom of expression is achieved.

Specifically, article VI; State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

1) Public broadcasters should be governed by a board which is protected against interference, particularly of a political or economic nature;

¹⁷³ Adopted by the African Commission on Human and Peoples' Rights at its 32nd Session, 17-23 October 2002.

¹⁷⁴ Open Society Initiative for Eastern Africa (2010) Public Broadcasting in Africa Series: Uganda Pg. 25



2) The editorial independence of public service broadcasters should be guaranteed;

3) Public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets.

4) Public broadcasters should strive to ensure that their transmission system covers the whole territory of the country

5) The public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.

The Declaration furthermore provides for freedom of access to information and states that ‘the right to information shall be guaranteed by law’ (Article IV)

7. Protocol On Management Of Information And Communication.

Uganda is a member of the International Conference on the Great Lakes Region, established in 2000 in response to UN Security Council resolutions calling for an international conference on peace, security, democracy and development in the Great Lakes region.¹⁷⁵

In December 2006 heads of state and government of the member states agreed a Pact on Security, Stability and Development in the Great Lakes Region, with several protocols, including a Protocol on Management of Information and Communication which enjoins member states to respect a wide range of principles related to freedom of expression and the media.¹⁷⁶

¹⁷⁵Open Society Initiative for Eastern Africa (2010) Public Broadcasting in Africa Series: Uganda; Nairobi, Kenya Page 27

¹⁷⁶Ibid

Among the objectives of the protocol established by Article 2 are for member states to:

1) Promote freedom of opinion and expression and the free exchange of ideas in the Great Lakes Region;

2) Promote freedom of the media to receive and to impart information and ideas in the Great Lakes Region;

3) Promote pluralistic media and the new information and communications technologies, and expand access to information in the Great lakes Region;

4) Foster the emergence of independent and responsible media in the Great Lakes Region, namely by promoting media regulation and self-regulation bodies;

5) Promote professionalism in the media, namely through the establishment of adequate financial assistance mechanisms and strategies for strengthening Press professionals capacities.

These regional and international instruments can be used to challenge the government on provisions in the national legislations that are inconsistent with the constitution, particularly article 29, as well as international principles on freedom of expression.

8. International Events And Plans on Media Freedom And Access To Information.

The United Nations, through its agencies, such as the UNESCO is the United Nations Educational, Scientific and Cultural Organization (UNESCO),¹⁷⁷ has adopted several resolutions and set aside key events or plans such as the World

¹⁷⁷<https://en.unesco.org/about-us/introducing-unesco>

Press Freedom Day, the International day for Universal Access to Information and UN Plan of Action Against Impunity for Crimes Against Journalists to celebrate media freedoms including access to information and raise awareness on the rights and freedoms of journalists, including their safety.

(a) United Nations World Press Freedom Day.

Every year, May 3rd is a date which celebrates the fundamental principles of press freedom; to evaluate press freedom around the world, to defend the media from attacks on their independence and to pay tribute to journalists who have lost their lives in the exercise of their profession.¹⁷⁸ The Day was proclaimed by the UN General Assembly in December 1993, following the recommendation of UNESCO's General Conference at the 26th session in 1991. Since then, 3 May, the anniversary of the Declaration of Windhoek is celebrated worldwide as World Press Freedom Day.

The day serves as an occasion to inform citizens of violations of press freedom, a reminder that in dozens of countries around the world, publications are censored, fined, suspended and closed down, while journalists, editors and publishers are harassed, attacked, detained and even murdered.¹⁷⁹ It also provides an annual opportunity to encourage and develop initiatives in favor of press freedom, and to assess the state of press freedom worldwide.

(b) International day for universal access to information.

On 17 November 2015, the United Nations Educational, Scientific and Cultural Organization (UNESCO) declared 28 September as International Day for

¹⁷⁸ <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/about-world-press-freedom-day>

¹⁷⁹ Ibid

Universal Access to Information.¹⁸⁰ And since September 2016, UNESCO marks 28 September as the “International Day for Universal Access to Information” (IDUAI).¹⁸¹ Considering that several civil society organizations and government bodies in the world have adopted and currently celebrate this observance, the UN General Assembly, in its resolution 74/5¹⁸² from 15 October 2019, also adopted 28 September as the International Day for Universal Access to Information.¹⁸³ The African Platform on Access to Information, an inter-agency working group supported by UNESCO, the African Union, and others, even recognized the right to information as a human right and as a fundamental to development.¹⁸⁴

¹⁸⁰<https://www.un.org/en/events/informationaccessday/background.shtml/>

¹⁸¹<https://en.unesco.org/commemorations/accesstoinformationday>

¹⁸²<https://unesdoc.unesco.org/ark:/48223/pf0000243325.locale=en>

¹⁸³<https://www.un.org/en/events/informationaccessday/background.shtml>

¹⁸⁴ Ibid



Chapter Three.



BREACHES OF MEDIA LAW.

Introduction.

Promoting human rights is a vital means to ensure their protection and respect. In the 21st century, the word “promotion” by itself is simply associated with the media. With the wide range access to different types of media and with the ever growing interest of the people to keep abreast of the topics of the day, the media has become irreplaceable choice to spread information of any kind. A person’s perception of reality is the result of their beliefs and in the age of information many of the beliefs are the result of the mainstream media.

Journalists often fail to adopt a comprehensive approach in reporting human rights abuses. Even in the absence of such abuses, the media often fail to formulate their broadcast policy to incorporate human rights programs. The prioritization of profitmaking over societal wellbeing dominates media agenda. Many studies conducted on media and human rights mostly dwell on analyzing the frequency of human rights terms, especially in the print media such as newspapers and magazines. None or few of them center on an in-depth analysis of media broadcast programs to find out the possibility of such programs having an implicit or in-depth treatment of human rights issues.

However, human rights in Uganda continue to be abused by both state and nonstate actors relentlessly for example the police using the Public Order Management Act has been suppressing meetings following the murder of ASP Ariongoin 2013 which the organization has not been able to pursue successfully, the killing of Kasirye in ritual killings in 2008, the murder of women in Wakiso and other places between 2016 and 2017 have not been addressed by Media, and also the state actors hold people incommunicado for example in August 2018 to September 33 pro-Wadri politicians were humiliated and held in custody by police and the army and police in Arua, Gulu and Kampala, Susan Magara was killed by

terrorists demanding for ransom on her life in February 2018, and many countless human rights abuses which Media has tried to address but with little success. The current study will thus assess the effectiveness of human rights bodies in promotion of human rights in Uganda focusing on Media.

Media reports on human rights abuses in Uganda

The effect of such a restrictive requirement is that those citizens without national IDs or a foreigner without a passport or refugee without a refugee ID will not have their SIM cards verified and therefore will be denied access to telephone services including mobile banking or mobile money facilities. The Commission notes that such a development would not only be discriminatory but could lead to the violation of economic rights among others of those whose livelihood depends on such businesses.

The Uganda media and indeed the rest of the world were appalled to see television footages of the scuffle between some sections of the media and the police on Wednesday 3rd May 2017, which ironically was World Press Freedom Day. I condemn the excessive use of force by some elements in the police against the journalists which was witnessed that day. In August 2018 in Arua, in Kampala in February 2019, Ugandans have been battered by police and other security organs and this has created state of insecurity in the country. Also on Monday, August 20, 2018, Ugandan security forces beat then detain a protester in downtown Kampala, Uganda, Monday, November. 20, 2020, Ugandan police fired bullets and tear gas to disperse a crowd of protesters demanding the release of jailed lawmaker, pop star, and government critic *Hon. Kyagulanyi Ssentamu*, whose stage name is Bobi Wine.

Violations of rights to freedoms of association, expression, and assembly persist, as security forces beat and at times, torture and arbitrarily detained protesters, journalists and opposition members. Thirty-three people, including six parliamentarians, arrested during by-election campaigns in Arua, northwestern Uganda, faced treason charges and alleged torture by security forces. Police and soldiers beat and detained journalists reporting in Arua and at ensuing protests. Despite various government commitments to hold security forces accountable for their conduct, many investigations into military and police abuses of civilians

failed to progress, including into the November 2016 killing of more than 100 civilians in Kasese, western Uganda.

In July, 2018, the government implemented a social media tax requiring users of WhatsApp, Twitter, and Facebook, among other sites, to pay a daily fee of 200 Ugandan Shillings (US\$0.05). At a protest march against the tax in Kampala on July 11th, police fired live bullets and tear gas to disperse the demonstration which the police deemed “illegal.” Protestors argued the tax violated Ugandans rights to free expression and information. In June, security officials in Kitgum, northern Ugandan, banned a song by musician *Bosmic Otim* that was critical of government officials for being “misleading” and “inciting violence.” The song criticized four parliamentarians for allegedly being sycophants of government and unresponsive to citizens’ problems in northern Uganda.

On June 5th, police arrested six people as they attempted to petition police leadership at Naguru Police Headquarters in Kampala as part of a protest over numerous kidnappings and unresolved murders of women and children. Antiterrorism and anti-riot police were deployed to block the activists from accessing the premises. On February 14th, five unidentified men wearing military uniforms seized Charles Etukuri, an investigative journalist with New Vision, outside the newspaper’s Kampala offices days after he published an article linking Internal

Security Organisation agents to the death of a Finnish businessman. Etukuri said his abductors demanded he reveal his sources. He was released after six days following a court ruling.

On August 13th, security personnel arrested journalists Herbert Zziwa and Ronald Muwanga as they covered the Arua by-election and the military’s fatal shooting of

Yasin Kawuma, parliamentarian Robert Kyagulanyi’s (aka Bobi Wine) driver. Security forces tied and beat Zziwa and Muwanga before holding them overnight in Gulu, charging them with malicious damage to property and incitement of violence. They were later released on bond. On August 20, 2018 soldiers beat and detained journalists covering protests, including photojournalist James Akena, confiscating and damaging his equipment. In September, police detained at least eight journalists and confiscated their equipment as they sought to report on Kyagulanyi’s return from the United States for medical treatment following his

alleged torture by soldiers. Despite the military's stated commitment to investigate soldiers for beating journalists, no one had been held accountable at time of writing.

On April 29, 2019, the Uganda Communications Commission ordered internet service providers to shut down all unauthorized news sites following a directive requiring online data communication service providers, including publishers, news platforms, radio and television operators to obtain authorization. Nixon Agasirwe, Aguma, Kitatta, Kale Kayihura have been lukewarmly prosecuted and most of the charges brought against them for commanding units involved in torture or extrajudicial killings, despite credible allegations of such crimes during their tenure of office have not been openly handled. The police Flying Squad Unit, established in 2013 to counter armed robberies, was implicated in multiple serious allegations of extortion and torture.

On August 13, 2018, Ugandan police and military arrested and beat six opposition members of parliament, including Francis Zaake and Kyagulanyi, and 28 other people in advance of the August 15 by-elections in Arua. Prosecutors charged all 34 with treason for allegedly throwing stones at a presidential convoy on August 13. The media reported that men in military uniform took Zaake, who was unconscious, to a hospital in Kampala and abandoned him. Kyagulanyi alleged Special Forces Command soldiers tortured him while was detained for 10 days by the military. He was also charged before a military court for illegal possession of firearms and ammunition, but the charges were later dropped. Authorities promised to investigate Kyagulanyi's allegations of torture. Police and military shot and killed at least six people in Kampala, Mityana, Katwe and Gomba, during protests against security forces' abusive conduct in the period around the Arua by-election.

There is also an internet case of Apaa, which states by reading the contents of a report thus;

„Years of security forces" forced evictions in Apaa, Northern Uganda gained attention in June when 200 residents traveled 100 kilometers to seek refuge at the UN Office of the High Commissioner for Human Rights (OHCHR) in Gulu after soldiers allegedly torched homes, beating and killing a resident".



Following a month of negotiations between UN Office of the High Commissioner for Human Rights, the community and government, residents elected to return home, but reported that forced evictions have continued to date.

Riots and Demonstrations and their impact on the Media.

Committee to Protect Journalists (CPJ 2009, 2010), Human Rights Watch (HRW, 2010), Uganda Human Rights Commissions (UHRC, 2011), Amnesty International (2011) reported many cases of violation of media freedom in Uganda occurring mostly during political elections period, demonstrations and riots. The 2006, 2011 elections, the April 2011 '*walk to work protest*'¹⁸⁵ and September 11, 2009 riots in Kampala are examples. Actions like the closure of five FM stations by the Broadcasting Council on accusation of '*inciting the public*' on directives of the government provides further example. Media Council actions, such as banning live TV coverage showing the inhuman capture and arrest of the opposition leader Dr. Kizza Besigye, and images of security officers firing into private homes, schools and hospitals, all portray how free media has been compromised in Uganda and are all clear illustrations of intimidation and harassment of the media. (HRNJ-U, 2011:22).

Meanwhile, journalists continue to be prevented from reporting from the scene of events which may reflect negatively on the Ugandan government, and many have been physically beaten and tortured by security¹⁸⁶. Last year 2011, two social

¹⁸⁵ Starting April 11, 2011, Activists for Change (A4C) began a country wide protest against escalating fuel and food prices in the name walk to work protest.

¹⁸⁶ According to CPJ, 8 journalists were injured ; Ali Mabule and Dismus Buregyeya of the daily *New Vision*, Francis Mukasa of WBS TV, Ronald Muyinda of Radio One, Michael Kakumirizi and Stuart Iga of *The Red Pepper*, Yunusu Ntale of CBS Radio FM, and Isa Aliga of Nation TV available at <http://cpj.org/blog/2011/04/ugandan-media-censored-over-walk-to-workprotests.php> (Accessed on 24.2.2012)

networks, Facebook and Twitter were blocked on orders of the UCC for 24 hours on April 14, 2011 before being allowed back (CPJ, 2011; HRNJ-U, 2011:22; Amnesty International, 2011)). The political talk show programme named '*ebimeeza*'¹⁸⁷ remains banned by the government to date. It is therefore clear that mass media are in theory protected by the law but in practice heavily censored in Uganda (Human Rights House Network, 2010).

1. Tumwekwsize And 2 Others V Attorney General,¹⁸⁸

in this case, the applicants was employed by WBS TV as a reporter as was assigned as a news editor to cover a story relating to the sanitary situation at Namboole stadium as the issue was raised by the public as a concern that the special police constables who were residing in Namboole stadium had made it unsanitary. Upon reaching the trio was pulled out by the SPCs and beaten with batons, kicks, sticks and metals, took away their camera and set their dogs at them. They were later set free but denied access to the stadium. It was held that this amounted to a breach of the applicants freedom of the press under article 29(1) (a) of the 1995 constitution.

2. Nyeko V Uganda Broadcasting Corporation Company Limited And Another¹⁸⁹

In this case, the two defendants on or about 11th December 2011 on the 1st defendants radio (Mega FM) in Gulu, falsely and maliciously broadcast during

¹⁸⁷ This was an open public out of radio studio political, social and economic discussions on the issues affecting Ugandans that used to be broadcast live on various radio stations especially in Kampala

¹⁸⁸ (HCT-00-CV-MC 36 OF 2009) [2010] UGHC 36

¹⁸⁹ (HCT-02-CR-CS 44 OF 2013) [2014]



prime news time, defamatory information about the plaintiff to the effect that the plaintiff an LCV councilor of Gulu committed adultery with his neighbors

3. On February 17, military police beat at least ten journalists covering Uganda's opposition leader Robert kyagulanyi also known as 'Bobi Wine' as he delivered a petition to the United Nations Office of the high commissioner for Human Rights in Kampala. His petition was to protest human rights abuses and abductions of his supporters in the run up to and after January's contested presidential election. The next day, the army issued an apology for the beatings and announced that a military court had given seven members of the military police a "severe reprimand" for assaulting the journalists, and sentenced them to two months detention in a military facility. While an important step, the army did not share details about its investigations or the military trial process. Two of the assaulted journalists told Human Rights watch they hadnot even been informed about the proceedings far less called to testify.

4. Violence against journalists in Uganda is not new. During the recent election campaign security forces beat and shot at journalists who were covering opposition rallies. In November 2020, police shot Moses Bwayo in the face with a rubber bullet as he filmed Kyagulanyi arriving at his party's office and in December the journalist Ashiraf Kasirye was badly injured after police short him while covering a Kyagulanyi rally Security forces have also beaten journalists covering students protests and used enforcement of covid-19 regulations as a pretext forother beatings. The authorities have even threatened direct violence against journalists. On January 8, police chief Martin Okoth Ochora said at a news conference a head of the elections that, "we shall beat you journalist for your own sake."

Ugandan law incorporates many of the government's human rights obligations, including protection on torture and inhumane and degrading treatment and explicitly provides for the prosecution of officials committing such abuses. The

authorities should uphold these laws and build on the measures taken against the military police, including reforming the sector, conducting transparent investigations and fair trails for abuses against journalists and others, and properly compensating victims.

4. Another journalist beaten by soldiers, days after apology, a NBS TV journalist was beaten by UPDF soldiers, nine days after the army apologized for a similar incident. Joshua Mujunga was covering a demonstration in kamwokya, Kampala from 8:30 am before trouble began. His employer NBS said: NBS journalist Joshua Mujunga, has faced the wrath of the UPDF this morning. The video journalist was beaten while covering a riot that started in kamwokya.”Speaking from his hospital bed in Kampala Hospital, Joshua said he covered the protests, which the police later quelled, without incident until a military jeep arrived carrying armed men in UPDF fatigues.

“When they noticed I was taking pictures, they jumped off (the vehicle) and came after me and tried to run up to Kira road but they surrounded me. They started beating me all over the body...” Joshua, said, speaking to NBS TV.

The protests in kamwokya were sparked off by last night’s re-arresting of tortured kyadondo East legislator MP Robert Kyagulanyi (alias Bobi wine) at the airport by security agents.

On August 13, several journalists were beaten and arrested as they covered the last day of campaigns for the Arua Municipality MP seat by election . they were later released.

On August 20, Reuters journalist James Akena was captured on camera being beaten by UPDF soldiers as he covered the protests in down town Kampala. The protests were in response to the arrests and detention of several MPs including MP



kyagulanyi in Arua. Mr Akena has since opened a case against the officers. The next day defense spokesperson Brig. Richard Karemiire condemned the attack by the officers. In a press statement, he said the “UPDF wishes to express its displeasure over such behaviors by those individuals and as a result, the chief of Defense Forces (CDF) has ordered their arrest and punishment.”

“...We wish to reiterate our strong commitment to maintain a strong partnership with the media fraternity in the course of executing all our core functions as laid out in the constitution.” Journalists and media rights defenders are now wondering if the army played lip service omits promise.

Human rights network for journalists, Uganda coordinator Robert Ssempala said they had given the army the benefit of the doubt after their apology but the recent beating of the NBS journalist calls for new course of action.

He said a meeting with members of the media fraternity had been convened this afternoon to hart a way forward. “We are in very trying times. Journalists are not at ease. We are under attack, especially from the army,” he said, speaking to NBS. Government spokesperson Ofwono Opondo said beating of the NBS journalist will be investigated and the culpable officers punished. “Every reported matter of mistreatment, brutality or high handedness shall be investigated and punished, ’he tweeted.

5. Between October 2015 and February 25th 2016, seventeen journalists were assaulted by contestants, their supporters, police and UPDF Special Forces Command.

On February 1st 2016, Margaret Kayondo, correspondent of Radio Simba in Sembabule was assaulted by four UPDF officers while covering a scuffle between NRM supporters and the police in Lwemiyaga, Sembabule District. Her audio

recorder and smart phone which she was using to take pictures were confiscated. They deleted all the recorded material from the recorder and the phone.

On 11th January 2016, Golooba Ali of Buddu Fm in Masaka was battered by the private guards of Hajji Muyanja Mbabali, the NRM Member of Parliament elect for Bukoto south Constituency in Masaka District.

On the election Day (18th February 2016) Latif Maganda of step Radio and TV in Mbale and Denis Oluka the Bureau chief of Uganda Radio Network in Mbale were mobbed, allegedly by supporters of the NRM Bulambuli District Woman Member of Parliament elect, Sarah Wekomba.

On 16th November 2015, Isaac kugonza of Delta TV was shot in the head by police as they stopped and arrested the Lord Mayor Elias Lukwago. He had been going to the electoral commission to seek clarification on Mayoral nominations. The other victim journalists were Enoch Matovu of NTV, based in Mityana and Radio Ones Mukisa Vincent based in Jinja.

On 20th February 2016, a security officer in civilian clothes pepper sprayed Isaac Kasamani a correspondent for AFP while he was covering the arrest of Dr.kizza Besigye at kasangati, Wakiso district. The DPC for kasangati police, James Kawalya, declined to reveal the identity of the officer, but instead blamed journalists for disobeying security orders not to access the Besigye arrest news. As a result, the police is threatening to arrest all journalists who demanded that kawalya reveals the identity of the culprit. Most foreign correspondents have since fled Uganda out to fear of arrest.

Twelve cases of malicious damage to property and confiscation of journalistic tools were also recorded during the electioneering period. On 10th January 2016, Ronald Galiwango of Ntv had his camera confiscated by the district police commander of



Moroto George Obia while he was covering the opposition presidential candidate Dr.Kizza Besigye's campaigns other journalists whose tools were confiscated by the same police officer include: Ernest Kyazze of Bukedde Tv. and Julius Ariongo A daily monitor correspondent in Moroto district who had his camera savagely damaged. None of the cases has been investigated to their logical conclusion.

HRNJ Uganda documented ten cases of journalists arrested and detained over electoral related reporting. On 13th February, police in Lira raided Radio North, arrested and detained the editor, Richard Mungu Jackican with other six politicians who were discussing the presidential elections debate that was being relayed live from kampala Serena Hotel. The police accused them of defacing candidate Museveni's campaign posters. Among them were parliamentary contestants on the Go Forward ticket. They were charged with malicious damage to property and granted bail after four days in detention. The affected radio station belongs to Go Forward areas mobilizer.

On 6th February 2016, police in Abim district arrested three journalists including the BBC's Catherine Byaruhanga, kelvin Brown (who is based in Kenya) and NTV'S Sam Lawino while they were filming Abim hospital. The news team was forced to delete their footage before releasing them, but they declined. They were released after four hours without any charges preferred.

HRNJ, Uganda recorded over thirty cases in which journalists were blocked from covering events by police. Since February 20th 2016, when Dr. kizza Besigye was put under house arrest at his home in kasangati, Wakiso district, on different occasions the police and army forces have blocked over 20 local reporters and over 10 foreign correspondents and denied them access to covering the news of his arrest at a time when he tries to leave his home. No explanation is advanced by the security for denying journalists access to news coverage.

On 10th February 2016, police in Kalangala district stooped for journalists from covering the arrest of a parliamentary contestant for Bujumba constituency. In January, NTV was barred from reporting about President Museveni's campaign rallies because they declined to a directive to use news video footage provided by the candidate's press team, reportedly captured by a drone.

The Inspector General of Police, Gen. Kale Kayihura, senior police officers, political candidates and their supporters in different parts of the country together with H.E President Museveni and some ruling NRM party spokespersons have on several occasions threatened journalists over what they have termed as biased and unprofessional reporting of electoral issues, hence branding journalists over what they have termed as biased and unprofessional reporting of electoral issues, hence branding journalists as "rumor mongers" and "traitors" among others names. In October 2015, Gen Kayihura warned journalists against extensive coverage of the opposition saying that "we are going to go after you." He was responding to media coverage of the alleged police undressing of FDC activist during her arrest along Masaka –Mbarara road. The Arua District Police Commander, Jonathan Musinguzi, threatened an Arua One FM journalist as to why she "was moving with FDC politicians."

In Iganga, a parliamentary candidate for Kigulu North constituency, Kyakulanga Bwino Fred, made calls and sent a threatening next message to a Red pepper journalists on 5th February that said "you are in for a shock of your life, watch this space." The message was in reference to a news story weighing the performance and rating of the candidates in the race. Although the matter was reported to police, no investigations have been carried out.

On 21st January 2016, Endigyito FM in western Uganda was switched off by the state broadcasting regulator, Uganda communications commission (UCC) under



unclear circumstances. The radio had just hosted former Prime Minister of Uganda and Presidential candidate John Patrick Amama Mbabazi.

During the elections, in Lwengo district, the returning officer cancelled accreditation of a Bukedde TV journalist, accusing her of being biased in her reporting. It was only re-instated after intervention by fellow colleagues and other players.

In Lira district, the voice of Lango owned by the NRM leaning Member of Parliament for Dokolo county and former youth Minister Hon. Okot Ogong Felix had to apologize to the state house for hosting the Uganda People's Congress presidential ambassador Dr. Olara Otunou.¹⁹⁰ This is really embarrassing in such a country where freedom of press, of speech and expression are constitutionally provided.

The Approaches employed by the Media Organizations to curb Human and Media Rights breaches.

In media platforms including internet based, there are no regular programs solely focused on the promotion of human rights. However, the media institutions address human rights and related issues occasionally through diverse approaches. Both the broadcast and print media cover human rights in the course of their news, regular programs, special coverage on contemporary issues and on programs and articles prepared in collaboration with national human rights institutions and non-governmental actors.

¹⁹⁰ HRNJ-U, (2011) Unwanted witness, Press Freedom Index Report, April 2011, P.13, Kampala Uganda (online) available at: <http://www.ifex.org/uganda/2011/05/05/press> index report april 2011.pdf. (Accessed on 19.03.2012)

Coverage of Human Rights on regular programs of the Media

Even though, the media institutions there do not have regular programs and coverage solely committed to human rights, on their regular programs and articles, occasionally discuss human rights and related matters. For instance, NBS, according to Kim Kariisa while on a talk show often covers human rights in its regular programs. Programs like Amasengejje and the programs on women and children known as Barometer televise programs related to human rights.

“Know your rights” is a weekly program on BBS television which exclusively focuses on legal issues with an objective of making the society conscious about the rights and duties provided under different national laws. The program airs, among other legal and policy topics, matters related to human rights. It uses constitutionally guaranteed human rights as a reference for its programs. The program answers critical legal and policy related questions with expert opinions and explanations which sometimes address questions and discussions relevant to human rights.

NBS Frontline is another weekly regular program which mainly focuses on good governance issues. The program, directly or indirectly, covers matters related to human rights. Barometer is also a weekly program which presents programs on the rights of nation, nationalities and peoples“ of Uganda established on the Constitutional provisions of the rights given to nations, nationalities and people the program teaches about the meaning and rational of democracy as well as the rights and opportunities it brought to the people of Uganda.

Canary Mugume and Sudhir Byaruhanga, which are the only notable examples of investigative journalists in Uganda, also present programs that reveal violations of rights. The program usually challenges government officials as well as private actors for the violations of the rights of citizens and investigates the cause and the consequence of such violation. So far, Canary has presented a number of controversial violations of human rights by government officials including massive killings around Kampala.

These programs gave the victims solutions to their problems and at the same time educate the society about human rights and means of their protection. In addition,

the program deters officials from violating rights including human rights and, to a lesser extent; it demonstrates the role of media as a watchdog of the government activities. The programs usually approach human rights through discussion and investigative reports on violation of human rights.

The programs on children and women also address several human rights issues.

For example the children’s program known as T NATION on NTV presents entertaining and educative programs for children about the right to education, health, human dignity and other rights provided for children under the Constitution, like the right to get a name, the right to know and cared for by ones parents etc. The women’s program known as AMAKA on Radio West also addresses and educates about harmful traditional practices, gender based violence and empowerment of women both economically, socially and psychologically. Several discussions have been held by the program on the pros and cons of affirmative actions, empowerment of women, harmful traditional practices including early marriage and FGM, the role of women in the family and many other socio-economic problems of women and their solutions.

The print media in Uganda, in addition to their news coverage, address human rights on their weekly articles on politics, economy, business, women and free opinions of their readers. For instance, a regular article about women on UBC, every now and then raise issues related to equality, economic and social empowerment of women, affirmative actions, harmful traditional practices especially FGM and early marriage and the general socioeconomic status and day today life of Ugandan women. The articles comment, criticize and evaluate the pros and cons of the laws, policies and regulations affecting women.

The articles of NEW VISION and DAILY MONITOR both on internet and paper based on society and culture also address problems and constructive aspects of societal and cultural setups of the community. It, occasionally, publishes about matters related to social and cultural rights of the society, like the right to education, health, religion the right to use ones language and the right to practice once culture. The business and economy articles of new vision usually evolve on the countries current economic and business situations. They raise the economic problems of the society and try to come up with a solution. The articles question the country’s economic development comparing with the current living standard of the people.

The regular articles on Daily Monitor also, one way or another raise issues relevant to human rights. Twice a week, the monitor publishes articles on politics, business and economics, society, women and law. In addition, political affiliations are articles mostly revolve on the social, economic, cultural and political life of the country. The articles on politics, business and economics are well known for discussing critical legal and policy matters. These articles raise numerous debatable questions which sporadically are related to human rights.

In study findings the print media approaches matters on human rights under its regular articles by employing expert opinions and explaining and justifying the matters in light of national and international human rights laws. Accordingly, the rights in question under the articles on human rights explain, argue, comment and criticize the rights in light of the government actions taken towards the enforcement and protection of human rights.

Special programs on Human Rights on the Media

In Uganda every now and then, human rights make a highlight of media coverage. Whenever the media considers the matters related to human rights are news worthy the news hour of the broadcast media and front pages of the print media report and discuss human rights. Particularly, media highlights human rights when there are activities related to politics like election, massive human rights violation like famine, internal conflict and activities of international and national human rights institutions and non-governmental actors like annual and irregular meetings, annual reports, fund raising or allocating and awareness creation programs.

In addition to the news, UBC radio and Television, for instance, conducts special coverage which is broadcasted whenever there is an issue that does not fail in its regular programs or urgent by nature. Such programs are devoted in promoting, discussing, commenting or criticizing the contemporary matter relevant to human rights. The print media also devotes its front page whenever there is news worthy event or occurrences related to human rights. Both New Vision and the Daily Monitor follow this trend as a means of approaching the promotion of human rights.



A study conducted¹⁹¹ revealed that Media exposes gross and moderate human rights abuses including battering of women, children and men, being held in custody incommunicado against the law and such other related abuses, the organization publishes bulletins in which they expose human rights abusers like the police, army and other security agencies, individuals and gangs as well as the organization exposes and documents evidence both video, audio published and also pictorial on human rights abuses in Uganda. When these are brought to the attention of government usually some culprits are punished.

It has been established that media help to promote the enjoyment of human rights, the organization advocates for the right legislation to promote human rights observance and the organization carries out lobbying and advocacy for human rights promotion in Uganda and beyond, in government and the private sector, among the Civil Society and Non-Governmental organizations like Compassion International, SOS. This helps to promote and create more awareness about the human rights abuses and the action points to right the wrongs by stopping human rights abuses are undertaken.

Media in Uganda attempts to combat human rights abuses in Uganda, the management and staff of media create awareness about the need to promote the observance of human rights through the print media by writing messages on human rights situations in Uganda, use the online platforms to mobilize and let the world know the various abuses and conformities in place, whereas there is sensitization on the need to respect, promote and safeguard human rights. This includes holding meetings, symposia, seminars and community meetings to let people and stakeholders know the human rights situations and how to make it better.

Media in Uganda acts as a child advocacy organization to ensure a leveled playing field for all children. It is agreed that Human Rights Network and other bodies carries out advocacy work for the promotion in totality of the children rights to life which includes proper nutrition, descent living conditions and freedom from torture and threat to their lives, they advocate for the right to education through the 2007 Education Policy and the 2008 Early Childhood Learning Guidelines, partners with ANPCANN and other CSOs to promote education rights even for

¹⁹¹ Nalubowa Susan- The role of media in promotion of human rights LLB (UPU) 2020

the vulnerable and orphaned children like street children, and they adduce evidence if required by authorities like police, armed forces on the various children rights abuses.

In Uganda today, there are increased scenes of killings in the country that are published and investigated by the media personnel in which security personnel have been implicated for example the June 2019 murder of Sgt. Ouma at Nile Bridge by a fellow soldier, concerns over the activities of security forces for example the beating up of people opposed to government. Furthermore, there are forced evictions, sexual abuses, abuse of journalists' freedom, interference in media freedom by Uganda Communications Commission, there is banning of musicians from holding concerts, there is lack of accountability for torture, and there is occurrence of extrajudicial killings by police and the army.

In the documents, the Media is deeply concerned about the general escalation of killings in the country which have been prevalent in the last three months. The media condemns them in the strongest terms possible. The Media in Uganda has noted the reports about the gruesome killings occurring in Greater Masaka area, Metropolitan areas of Kampala, Bukomansimbi, Kalungu and Masaka Districts and Kayunga District. The security forces had not reprimanded the perpetrators of these acts. It is disheartening to note that the killings by unknown assailants have this year intensified and taken on a more dangerous and bold form in parts of the country, and between April and June, 23 innocent Ugandans had been killed. Consequently, they have caused a lot of anxiety among the citizens who are increasingly feeling insecure. The way the assailants operate, using intimidation tactics of dropping anonymous letters and seeming to know their victims, has caused a lot of fear and anxiety among the communities in the affected districts, the neighboring areas and the country at large. Fortunately, the media is trying to overcome this by publishing the letters and articles in all platforms.

There is continued abuse of human rights of the people more so those seen and imagined to be opponents to the regime in Kampala. The police is leading in blocking the rallies of those in opposition, demonstrations are outlawed by force but allowed constitutionally, the people are often held incommunicado by the police and other security organs which is contrary to Article 22 (1) of the 1995 Constitution of Uganda which prohibits the deprivation of the right to life except

in execution of a sentence after a fair trial. Nonetheless, we acknowledge that they could be outright crimes and matters of security which squarely fall within the jurisdiction of law enforcement agencies and the judiciary.

WEAKNESSES IN THE CONSTITUTION THAT OUGHT TO BE STRENGTHENED TO PROTECT THE MEDIA

There are a number of respects in which the Constitution of Uganda is weak. If these provisions were strengthened, there would be clear benefits for Uganda’s media and democratic credentials more broadly.¹⁹²

Remove internal constitutional qualifiers to certain rights The Constitution of Uganda, as has been set out above, makes provision for certain rights to be subject to ‘internal’ limitations that is, the provision dealing with a right contains its own limitations clause, setting out ways in which a government can legitimately limit the ambit of the right.¹⁹³ These internal limitations occur within a number of articles on rights in the Constitution of Uganda. They deal specifically and only with the limitation or qualification of the particular right that is dealt with in that article.¹⁹⁴ In other words, the article that contains the right also sets out the parameters or limitations allowable in respect of that right.

As has been more fully discussed above, the right to access to information contains such an internal limitation. The rights contained in the provisions dealing with fundamental human rights and freedoms, set out in Chapter Four of the Constitution of Uganda, would be strengthened if the rights were subject to a single

¹⁹² MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 BY Justine Limpitlaw

¹⁹³ Justine Limpitlaw - Media Law Handbook For Eastern Africa – Volume 2

¹⁹⁴ Justine Limpitlaw - Media Law Handbook For Eastern Africa – Volume 2

generally applicable limitations clause rather than each having its own limitations clause. Indeed, such a general limitations clause already exists in article 43 of the Ugandan Constitution and so it is not clear why the internal limitations clauses are necessary.¹⁹⁵

Amending the provisions of article 110 dealing with the state of emergency.

The Ugandan Constitution, at article 110, empowers the president, in consultation with Cabinet, to declare a state of emergency. In so doing, a number of rights that protect the media can be derogated or departed from. Article 110 is problematic because it appears to be subjectively framed that is, the president has to be ‘satisfied’ that the relevant circumstances exist. In our view it is important that the conditions for the declaration of a state of emergency must objectively exist and this ought not to be dependent on whether or not the president is satisfied that they do so exist.

Independent broadcasting regulator and public broadcaster

There is no doubt that the broadcasting sector would be greatly strengthened if the Ugandan Constitution made provision for an independent broadcasting regulator and public broadcaster. Given the importance of both of these institutions for ensuring access to news and information by the public, it is suggested that such amendments to the Constitution would be in the public interest and would serve to strengthen both the media and democracy more generally in Uganda.¹⁹⁶

¹⁹⁵Justine Limpitlaw - Media Law Handbook For Eastern Africa – Volume 2

¹⁹⁶ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 BY Justine Limpitlaw



THE ROLE OF THE MEDIA IN PROMOTING AND PROTECTING OF HUMAN RIGHTS IN UGANDA

Introduction.

The role of the media in promoting and protecting the nations awareness level, expanding the discourse and modern concepts like human rights, democracy and peace are obvious. They also affect the way governments function. Today, using the media within the international context for planning a major strategy of the great powers possess an important status. In such a way today such media for the colonial powers are of high importance for consolidating and fixing the cultural and political domination and are regarded effective tools for capturing identity and public opinion (Broadcasting service, 2002).¹⁹⁷

Background

As defined by Tierney (1997), human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. Everyone is entitled to these rights, without discrimination.

According to Edward Lawson in his Encyclopedia, Human Rights are entitlements everyone has equally by the virtue of being human. Human Rights are in character, inherent, inalienable, and equally applicable to all Human beings¹⁹⁸.

In addition, with the advent of the United Nations (UN) and the subsequent adoption of The *Universal Declaration of Human Rights (UDHR)* in 1948, the concept of human rights has turned out to be one of the most contemporary issues across the globe. The *UN Charter*, which was adopted in 1945, was the first international document to recognize the protection and promotion of human rights as an obligation to be carried out by individual, as well as collective states. The

¹⁹⁷ Broadcasting service, 2002

¹⁹⁸ Edward Lawson, Human Rights Encyclopedia, 1st edition 2002.

main reason behind the adoption of the charter was, to forestall the reoccurrence of the horrible events caused by two devastating world wars which were caused by massive violations of human rights and unbridled breach of territorial integrity. In addition to the effort of the UN, the state has basically been seen as the main actor in the promotion and protection of human rights¹⁹⁹. Unfortunately, states are often the very abuser of the rights of the citizens they are required to protect. However, it should be noted that though the state bears the primary responsibility in issues of human rights, other organs of the society, such as corporations are included in the protection of human rights.²⁰⁰

During the pre-colonial period, Ugandans used to live in separate societies. The societies were aligned along political settings including centralized systems of kingdoms and segmentary societies. The leaders governed their subjects on the basis of customs and traditional values which guaranteed social and political cohesion, justice and rule of law. Accordingly, there were no written constitutions for governing the people. Nonetheless, people were expected to know their individual rights and obligations.

During colonialism, the British discerned the unwritten law, which depended on cultural norms, values and obligations in validation of what human rights would then be called customary law. A clear example was in *R v. Amkeyo*²⁰¹ where African traditional marriages were disregarded for being a mere wife purchase and *Hyde v Hyde*²⁰² adopted for a one man one woman marriage relationship hence bringing in new rights and obligations.

In addition, the British in a bid to try and define Ugandan's rights and obligations, powers and limits codified many laws and first in time was the Buganda Agreement of 1900 where the problem of expansion tendency of the kingdoms was dealt with by strictly demarcating the boundaries of the kingdom of Buganda

¹⁹⁹ it is a state party to international laws and treaties, and therefore remains under obligation to safeguard human rights

²⁰⁰ The preamble of UDHR states that „...this declaration of human rights as a common standard of achievement...every individual and organ of society...shall strive by teaching and education to promote respect for these rights and freedoms...“

²⁰¹ [1914] KLR Pg 14

²⁰² (1866) KB Pg 47



hence giving a right to other kingdoms to own and enjoy their territories without Buganda ride attacks. The right to equality of was also looked into when Buganda was given an equal standing with the rest of other kingdoms²⁰³.

More and more Agreements were signed to define the rights of Ugandans and those of the colonialists including the 1902 Order in Council which ushered in the reception clause that allowed all laws that were applicable in the United Kingdom to be applied in Uganda an effect of which is more evident with the international Human Rights convention and courts applying in Uganda. For example, the international court of justice. The 1920 Order in council established the judicial system, the legislative council and the executive. Here Ugandans were allowed to be represented and hence future for the development of a right to self-determination was in light as Ugandan's views and opinions were to be aired out through those representatives, and the right to be heard was also in light by the establishment of the judiciary though the rulings were still being manipulated in the favour of the colonialists.

Several media platforms present at the time included, Uganda Argus Daily Print News Paper, Taifa Uganda Empya Newspaper started in 1961, Munno Newspaper, 1911, The Uganda News 1925, Radio Uganda, amongst others, all of which participated a great role in spreading news on injustices and Human Rights

Violations in the country at a large something that instigated knowledge to Ugandans and the need to come up and fight for their fellow countrymen whose rights were being violated.²⁰⁴ An example, Uganda Argus Daily Print News Paper and Magazine in 1957 published and criticized the murder of American men, Meredith and Bennet hence promoting the right to life of not only citizens but also that of foreigners. Also, it published and publicized on the law and procedure passed by the colonialists to regulate activities of both the natives and nonnatives hence quenching the right to information of the citizens of Uganda.

Today, the major tool for protecting and promotion of Human Rights in Uganda is the constitution to be specific in chapter four, with other subsidiary laws and

²⁰³ DJ Bakibinga, Constitutional History, 2nd edition, 2002.

²⁰⁴ Human Rights then margazine, Buloba High School, Human Rights Club, episode 3, 2019.

adopted conventions and treaties. However, the role of the media too can't go under estimated.

Advocates of human rights firmly believed that the vision proclaimed in the Universal Declaration of Human Rights and subsequent human rights treaties could never be realized in practice without widespread knowledge and popular support which is the role is best played by media. The idea is that abuse can only be overcome by information made possible through freedom of expression, freedom of the press and the rights of members of the society to seek, receive and impart information. Therefore promotion of human rights, however, is habitually associated with the effort of some countries and the UN to create awareness about human rights through different means.²⁰⁵ The methods include diplomacy, publishing reports and statements, conditioning access to trade or aid on human right improvements, economic sanctions, and military intervention. These efforts add some real power to the international human right system. However, to the ordinary people of the world these efforts do not provide adequate personal information about human rights.

In view of the fact that there is a revolutionary change and growth in every sphere of life and mainly in the communication and media world, media today, plays a decisive role in the development of society. Thus the role of media in promotion of human rights cannot be ignored or minimized. Media is a communicator of the public. Today its role extends not only to giving facts as news, it also analyses and comments on the facts and thus shapes the views of the people. The impact of media on society today is beyond doubt and debate. The media has been setting for the nation its social, political economic and even cultural agenda. With the advent of satellite channels its impact is even sharper and deeper. With twenty-four hours news-channels, people cannot remain neutral to and unaffected by what the channels are serving day and night. It is therefore, of paramount importance that the media plays an important and ethical role at all levels and in all parts of the country and the world.

Media can play a major role in promoting of human rights in the world. It can make people aware of the need to promote certain values in the cause of human

²⁰⁵ Francis M. Ssekandi and Cos Gitta "Protection of Fundamental Rights in the Uganda Constitution" (1994) 26 Columbia Human Rights Law Review 191 at 3



rights which are of eternal value to mankind. Peace, non-violence, disarmament, maintenance and promotion of ecological balances and unpolluted environment and ensuring human rights to all irrespective of caste, color and creed should be the minimum common agenda for the media. The media can perform this role in different ways. It can make people aware of their rights, expose its violations and focus attention on people and areas in need of the protection of human rights and pursue their case till the media can also give publicity to the individuals and organizations, which are engaged in securing human rights. This will encourage as well as motivate others to do the similar work. Media can inform and educate people of their rights and suggest ways and means by which they can solve their problems and thus empowering them to protect their rights.

Without freedom of information and active involvement of the media, which are considered to be the primary sources of information for the majority of ordinary people in the world, these actions of the international community are less understood or known by the society. The media plays a significant role in order to steer governments on the right path on their effort to protect, enforce and promote human rights. Sometimes, traditional free speech or freedom of expression arguments assume that the main concern is an individual and in particular the rights of speakers to express their opinion to others. However, there are overwhelming arguments to extend freedom of speech to the mass media. The media provides readers, listeners, viewers with information and the range of ideas and opinions which enable them to participate actively in a political democracy and educate them about their basic human rights. The relationship between press freedom and freedom of speech is even sometimes considered to be equivalent. They have broadly the same meaning. Freedom of speech can simply refer to the speech freedoms of the media owners, journalists and editors.²⁰⁶

Though Uganda is one of the founding members of the UN, human rights were barely an issue for the local media of the time. Since the media was under the complete control of the government and freedom of the press or the media was barely understood concept, it can be concluded that the media as an institution failed the role it could have played in promoting and preventing countless human rights violations which occurred during the Amin's regime. After the coming into

²⁰⁶ David Mukholi, *A Complete Guide to Uganda's Fourth Constitution: History, Politics and the Law* (1995), Fountain Publishers Limited, Kampala, Uganda at 1

power of the military regime, known as NRM the story was different. The media was not under more strict control of the government and censorship was one of the defining characters of the regime.

Human rights are generally moral rights claimed by everyone and held against everyone, especially against those who run social institutions. With the advent of the United Nations (UN) and the subsequent adoption of The Universal Declaration of Human Rights (UDHR) in 1948, the concept of human rights has turned out to be one of the most contemporary issues across the globe. The UN Charter, which was adopted in 1945, was the first international document to recognize the protection and promotion of human rights as an obligation to be carried out by individual, as well as collective states. The main reason behind the adoption of the charter was, to forestall the reoccurrence of the horrible events caused by the two devastating world wars which were caused by massive violations of human rights and unbridled breach of territorial integrity. In addition to the effort of the UN, the state has basically been seen as the main actor in the promotion and protection of human rights²⁰⁷. Unfortunately, states are often the very abuser of the rights of the citizens they are required to protect. However, it should be noted that though the state bears the primary responsibility in issues of human rights, other organs of the society, such as corporations are included in the protection of human rights.²⁰⁸

Comparatively, after the coming into power of the current regime in 1986, the media engaged with the disclosure of information not necessarily approved by the government. Primarily, the 1995 Constitution of Uganda recognizes the media as a free from censorship and institutional protection for its effective operation and affirms the rights of the people to seek receive and impart information of all kinds regardless of frontiers. This right has been specified in subsidiary legislations. Proclamation for Freedom of the Mass Media and Access to Information

²⁰⁷ it is a state party to international laws and treaties, and therefore remains under obligation to safeguard human rights

²⁰⁸ The preamble of UDHR states that „...this declaration of human rights as a common standard of achievement...every individual and organ of society...shall strive by teaching and education to promote respect for these rights and freedoms...”



guarantees the media the necessary freedom by guaranteeing freedom of information and prohibiting censorship.

In Uganda the provisions of international and regional human rights instruments have guided the judiciary in interpreting the rights of individuals. For example, freedom of expression which is crucial for the work of individuals has been a subject of court cases following attempts by the Government to impose limitations to its meaning. Guided by international human rights instruments, the Supreme Court in a judgment read by **Justice Joseph Mulenga** in 2002 considered whether Section 50 of the Penal Code Act (Chapter 120 Laws of Uganda) on publication of false news constituted an acceptable limitation on the constitutional right to freedom of expression²⁰⁹. Guided by the provisions of the ICCPR, the ACPHR and an African Union Declaration of the Principles on Freedom of Expression in Africa, the court stated that, *“It is evident that the right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. It is not confined to categories, such as correct opinions, sound ideas or truthful information”*.

The court ultimately ruled that Section 50 of the Penal code went beyond permissible restrictions for the limitation of the right to freedom of expression contained in the Constitution. All seven judges of the Supreme Court agreed that Section 50 of the Penal Code was inconsistent with the Constitution and was therefore declared void. While this case illustrates the value of international and regional instruments in guiding the judiciary, precedents such as this are part of the legal framework that protect individuals in Uganda. It also illustrates that individuals in Uganda can access justice at the national level. However, many individuals expressed their inability to go to court because of the expenses involved. They pointed out that cases like this one are often brought by high profile defenders who have financial backing from their organizations.

Freedom of expression is a sacred right well accepted over the globe and journalists should respect this freedom. In Ugandan Constitution, it finds place as a guaranteed fundamental right. The Government of Uganda in tune with constitutional mandate professes its anxiety to protect and safeguard this

²⁰⁹ Charles OnyangoObbo& Andrew MujuniMwenda v. Attorney General, Constitutional Appeal 2/2002 dated 11 February 2004.

fundamental right. But no right and for that matter the right to freedom of expression is absolute and unfettered in all circumstances but bound by duty to maintain peace and harmony of the body polity by exercising prudence and restraint in the exercise of right to freedom of speech. If exercise of this right is likely to inflame passion, the right to freedom of expression needs circumspection and consequent restraint for greater good of the society.

Similarly, Uganda's media sector has faced increased repression and restrictions from the Government. With escalating government constraints and intimidation, many journalists and media houses, which have been openly critical of the Government, have been forced to self-censor their coverage. During the election year of 2016, security forces carried out several attacks on the media and radio stations in the country. These all shared the common variable of expressing criticism against the Government.²¹⁰ These, and previous, acts have led to a situation where media outlets live in fear of state repercussions, which underline the deterioration of press freedoms and freedom of expression in the country.

STATE OF THE MEDIA NETWORK IN UGANDA

The identity of Media Network in Uganda lies with its diverse membership of 60 Media platforms and 120 radio stations including non-governmental and governmental. Members range from purely Ugandan and Non-Governmental Organizational to international media platforms.

UBC is the present administrator of the major broadcast media organizations of the country, the UBC radio and Television (UBCTV). The Agency encompasses a vision to be a vibrant competitive and reliable medium of information in Uganda and contribute to the democratic unity of Uganda. Its mission is to build up an image and national consensus through an interactive broadcast media that provides timely information and entertaining programs utilizing state of the art media technology. The mission and vision of the Agency to be a steady medium of information in Africa and contribute to build democratic culture in Uganda demonstrates the immense responsibility it assumes in the role of electronic media

²¹⁰ <https://www.amnesty.org/en/countries/africa/uganda/report-uganda/>

of the country. UBC, and Vision Group with 24 hours coverage, airs several programs in Luganda, Runyankore, Acholi as well as English. The contents habitually revolve on culture, politics, documentaries, economy and movies.

NEWVISION is a daily private newspaper established in 1992 in Kampala with a mission of creating a culture of free and independent dialogue among the people on issues related to politics, society, culture and democracy. It is published on every day including Saturdays and Sundays. Since its establishment, the new vision grew to be one of the few regularly read private newspapers in the entire country. It has a publication of 30,000 copies per issue on average, one of the highest in the country compare to other newspapers. Half of the publication is distributed in Kampala and the other half is circulated outside the capital in major cities of the country.

The Daily Monitor is also one of the broadsheets which have a status of being reliable and readable private newspaper in the country for the last fifteen years. While most private newspapers in the country fluctuate with political and economic outsets of the country, the Daily monitor is one of the few survivals of the ups and downs of the situations. The newspaper is in print three times a week on every day in English. It publishes around 35,000 copies on average for each issue, the highest in comparison with other private newspapers. 70% of these copies are sold in the capital while the rest are distributed in the major cities of the country. The daily monitor, in addition to its publication, addresses its readers through a website. Especially for Ugandans abroad, the website of the daily monitor serves as a source of information about political, economic and social aspect of the country.

Incorporation of Human Rights under Editorial Policies of the Media houses

Editorial policy is the main component of any media institution. It is a document that states the mission and vision of a given media as well as provides the journalists with guidance on how and what to select as a content of their coverage. If one reads an editorial policy of a certain media institution, it does not take much effort to understand its positions and convictions on several matters including human rights.

All of the media institutions in Uganda have editorial policies which, to a certain extent require and guide journalists to work on human rights and related matters. For example, the UBC editorial Policy guides the journalists on how to select the nature and context of their coverage. The Policy was first issued in 1981 and amended in 1993. However, it went through another amendment in 2007 with an objective of creating environment of accountability, integrity and respect while circulating information through government owned media institutions. The Policy provides a detailed direction on how the content of the media is determined on UBC Radio, UBC Television, and Ugandan News Agency (UNA) and government owned newspapers published by the Ugandan Press Agency. Accordingly, these media organizations determine their content in conformity with the provisions of the Constitution of Uganda and press and broadcast laws. The ultimate goal of the content is, according to the policy, to create mutual understanding and national consensus of the people of Uganda.²¹¹

The editorial policy in light of integrating human rights, first of all, it particularly requires the content of the media to be compatible with international and national human rights law as well as respect the rule of law. The policy states that the Constitution bestows the people of Uganda with human rights and fundamental freedoms and media has a responsibility to select its content in conformity and with the intent of promoting these guaranteed rights.

Furthermore, the policy recognizes the need for bringing national consensus in the country through the contents of its programs. This is relevant to the promotion of human rights since it demands the journalist to consider human rights provided under the Constitution as a means to realize the national consensus. In addition, the Policy requires the contents to prop up popular participation on building and strengthening democratic culture, support the struggle against poverty and bringing economic development to the country. Such requirements are directly related to civil and political as well as economic, social and cultural rights.

Also in study findings the indirect inclusion of the concept of human rights under purposes of UBCRA underlined in the policy. The purposes are:

²¹¹ UBC Radio and Television Agency Editorial policy, chapter two, section II (2.1), UBCTA, 1999.



- Serving the public: the policy provides that the information broadcasted by the media has to educate the rights and freedoms of the society, build good character and respect among the society and reveal maladministration and corruption. This purpose is recognition of the importance of incorporating national and international human rights in the contents. As a primary purpose, the policy requires the content to be educative of the rights and freedoms of citizens, and build good character and respect which can be interpreted as a stand taken by the policy on the importance of promoting human rights through the media.
- Integrity: the policy recognizes the rights of the public to get accurate and timely information. Accordingly it states, as one of the obligations of journalists working for government owned media organizations, to provide a correct and evidence based information to the society.
- Respect: information's that violate the human dignity, moral, family, personal liberty, group right, women and children rights and freedom on religion, ethnicity, language are excluded from the content of government owned media organizations. This imposes not only a responsibility of promoting the rights of citizens but also respecting human rights while performing their regular activities.

Finally, the policy takes democracy as a crucial and the only legitimate means of ensuring human rights and particularly articulates that only democracy get to the bottom of the problems of the country and the government media is ought to focus on it. The policy, almost in its every part, stresses the importance of building and strengthening democratic culture and requires the journalists to consider the matter in the information they provide to the public. Arguably, democracy and human rights are thought to be symbolic. Therefore, there is a strong argument by some scholars that the promotion of democracy as the only legitimate form of government inevitably supports claims for universal human rights. Such a conclusion is further supported by the growing acceptance of democracy as the best-indeed the only legitimate-form of government, since democracy and human rights are understood as 'two sides of the same coin.

Others scrutinize this position with a concern and suspicion. Those who argue that democracy has little to do with human rights, raise the failed of many “so called”

democratic states with multi party systems to respect and protect human rights. This argument further suggests that territorial state is the basic unit that defines the limits of democracy, and differentiates insiders from outsiders and citizens from non-citizens.²¹²

Human rights by nature are considered to be universal while democracy has not only a territorial limitation but also differentiate citizens and non-citizens to grant the rights provided. In addition, the historical relationship between democracy and human rights is often used to support this argument. While all democracy includes a concern of human rights to some extent, historically such rights were never extended to all people sharing a common territory. If one tends to follow the first line of argument and say “if democracy then human rights” it is possible to recognize the promotion of human rights as one of the main objectives of UBCTA, since it took a serious stand to contribute in building democratic culture in the country.³² To develop media as a viable source of information is to enable and support democracy which in turn will strengthen human rights and democratic institutions. This argument can be taken to a logical conclusion since Uganda is in a process of building democratic culture.

The editorial polices of the other two print Medias covered under the study namely, The New Vision and Daily Monitor. However, for several reasons it was not possible to get their editorial policy. Therefore, through them the researcher finds that the two media institutions have an editorial policy which requires journalists to focus on indirectly related matters like democracy while reporting and editing.

Although, the researcher admits that the policies of these two institutions do not specifically mention human rights, they provide that the information published shall promote democratic culture and encourage respect and tolerance among the people of Uganda. The editorial policy of the New Vision, according to Robert Kabushenga while appearing on BUKEDDE TV, he usually mentions that the

²¹² Tony Evans, ‘If Democracy, Then Human Rights?’ Third World Quarterly, Vol. 22, No. 4,(2001,Taylor ³² Background & General Characteristics of National Media in the Ethiopian context, available at www.SamuelOverton.com, (Last visited on September 4/2010)



responsibility of the journalists to report only accurate information that will provide the readers with timely reliable information.

Scholarly view on media related rights.

The definition of the term „media“ was adopted from that provided by the International Council on Human Rights Policy (ICHRP), which defined the word media as individuals and organizations that communicate with the public via print, radio, television and internet broadcast, and video and film production.²¹³

Despite the ubiquity of the problem, a depth of literature exists on the subject.¹⁶ Indeed, no country has yet expressly developed jurisdictional rules in the area of human rights infringement over the media. Thus, a systematic and comprehensive analysis of the topic is required. In this regard it is important to identify the most important academic literature in this research. The study will attempt to review relevant literatures on the role, contributions and challenges of the media related to promotion of human rights. In view of this, the study has set up the proper conceptual, legal and institutional frame work, which serves as a foundation to determine the role and contribution of the media in the promotion of human rights in Uganda.

Evaluating whether or not the media, as a complementary actor, is working to the level of their potential and expectation in the full realization of human rights; *Germander Alfredsson & Jonas Grimheden* in their book²¹⁴ stated that, the freedom of the press is an important concept in considering the role of the media in all aspects of the society. It is a necessary condition for the media to be effective in carrying out their functions. The right to press freedom warrants the media the right to determine the form which their programs will assume, as well as the appropriate form of reporting. However, the above authors highlight the conditions necessary for the media to collect information regarding the promotion and protection of human rights and clearly state its necessity but missed out on suggesting possible measures say enactment of laws to be followed so as the media personnel are protected while performing their work in the same quest of

²¹³ Hannah Arendt, *Human Rights awareness*, available at <http://www.hrawareness.org/> (Last visited June 15/2020). ¹⁶Fawcett (n 112) preface v-vi.

²¹⁴ *International Human Rights Monitoring Mechanisms*, (2001, MartinusNijhoff Publishers) p15

promoting and protecting human rights, a gap that was to be bridged by this research.

Article 19 guarantees press freedom,²¹⁵ but it does not define press freedom, however in this research authors such as *Charles Beitz*,²¹⁶ „argue that the concept of press freedom is controversial because it is unclear to ascertain the meaning of press freedom in terms of freedom from what and freedom for whom yet a free press is necessary condition for the exercise of Human Rights as it encourages transparency when Human Rights violators take note that they cannot hide from the law as due to a free media, everything is brought to the knowledge of the law.

The impact of the media in society is tremendous; *Marsh and Melville cited in (Wolfman, 2010)*.²¹⁷ The social responsibility of the media is fostered when the media engage in what is referred to as committed journalism, in which priority is placed on values such as, democracy, free choice, openness, morality, and serving the common good, thereby informing the public about political, social, economic, and cultural affairs. In concurrence, the terms of human rights promotion, the concepts of media social responsibility, committed journalism or watchdog journalism are perhaps irrelevant fragmentations of the role expected of the media as long as the media make sincere efforts in clinging to their professional codes of ethics. Nevertheless, in this all are useful to the media in forestalling human rights abuses, as well as uncovering the abuses, especially through investigative journalism. It is the role of investigative journalists to search and uncover the truth, the exposure of the truth is in harmony with the public interest, which, when effectively carried out may be productive in bringing about change. The roles performed by the media in the society are instrumental to the promotion of human rights.²¹ Thus the media provide most of the information about human rights, and in the event of failure of the media to do so fairly, accurately, or consistently, public perceptions will be unfair, inaccurate and inconsistent. The obligation to promote human rights is the prime responsibility of States, thereby conferring on

²¹⁵ UDHR, it states that „*everyone has the right to freedom of opinion...to seek, receive and impart information and ideas through any media and regardless of frontiers“.

²¹⁶ What Human Rights Mean’, *Daedalus On International Justice*, Vol. 132, No. 1, The MIT Press on behalf of American Academy of Arts & Sciences, 2003. p36.

²¹⁷*The History of Human Rights*, (2008, University of California Press), pp3-4 ²¹(Heinze and Freedman, 2010: 492).(ibid)



states responsibility for the human rights of individuals. Many human rights are owed by States to all people within their territories. Basically, under human rights, states have specific obligations to respect, protect, and fulfill the rights contained in the different human rights treaties. Notably Marsh and Melville base their study and the basis of human rights on the findings of journalists and compelling them to give the real truth of the human rights violation stories and missed the fact that some sources from which the journalists get information conceal the true information wholly or partially. The researcher therefore looked into this and recommended an enactment of laws that bar falsification or concealment of necessary information on the violation of Human Rights and a punishment prescribed for that.

While investigating the contribution and achievements of the media in the promotion of human rights in Uganda, at the national level; ***Richard Falk, Human Rights Horizons-The Pursuit of Justice in Globalization world, 2000***, he stated that the media, in contemporary world, is the most important source of information about everything including human rights. This is because, for most people television, radio and newspapers are their only source of information.²¹⁸ As a result, media possess a power to select issues and events in the world we got to know about, they decide what constitute news, they filter and frame issues, they contextualize the problem, they set the political agenda, and they create both the consciousness and on matters that include human rights. Thus they perform this in two ways.²¹⁹

- The media are generators and source of information: under such rubrics reporters gather, process and present most of the information we receive about everything including human rights. In addition to just processing information, the media are political and moral agents, deciding to highlight a particular story, taking clear editorial positions and calling for something to be done.
- Media are the carriers of information generated by human rights organizations (NGOs, National Human Right Commissions, Ombudsman, treaty

²¹⁸ Melisande Middleton, Social Responsibility in the Media, Center for International Media Ethics CIME (2009, Oxford University PCMLP), p 2

²¹⁹ , p, 36, available at [http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5ECH5Y/\\$file/ichrp-media2002.pdf?openelement](http://www.reliefweb.int/rw/lib.nsf/db900sid/LGEL-5ECH5Y/$file/ichrp-media2002.pdf?openelement) (Last visited on March 03/2020)

bodies etc): they are the most powerful gatekeepers between these organizations and the wider public. Whether mounting a campaign on a particular issue or publishing a report about a particular country or appealing for fund, organizations channel their information through the selective filter of the media. However despite the media playing such big role, the authors forgot to put on string the problems faced by the media while performing its role fundamental to the promotion and protection of human rights which the researcher highlights and suggest possible solutions for example, Radio lira in Uganda failed to let Hon. Kyagulanyi air out his political views on radio because it felt intimidated by the ruling party.²²⁰The media therefore should be willing to take risks in order to ensure human rights are protected and promoted.

Elizabeth Heger Boyle and Andrea Hoeschen, 'Theorizing the Form of Media Coverage over Time,'²²¹ according to them media has proved the power it holds in building up public opinion on different subject matters. The pen is mightier than the sword' goes an old proverb which has been proved since the advent of writing and development of media. By this view especially in the 21st century, media has demonstrated its irresistible power by making and breaking almost everything.

Like globalization, which the increasing interdependence of states, markets, communications and ideas is across borders, media is one of the main features of the contemporary world. In the contrast for the creation of globalization, media takes the primary credit.²²² Under the realm of globalization, people around the world are able to get any information as inexpensive and effortless possible. Thus this increases the power of media in building ideas and opinions for the majority of the world population. However in as much as Elizabeth and Andrea writes very well on how information flows very well globally through the media, he misses out its role in the promotion and protection of Human Rights a gap the researcher tried to fill. In a bid therefore gave an example of The Human Rights Centre Uganda in strengthening the operational and policy base of Media with the view of enhancing effectiveness; and enhancing mutuality of understanding between

²²⁰ National Resistance Movement., New vision, reported on September 10th 2020

²²¹ The Sociological Quarterly, Vol. 42, No. 4, (2001, Blackwell Publishing), p522

²²² Globalization, State, Mass Media and Human Rights, available at <http://www.piranet.com/mediacentre/globalization-state-mass-media-and-human-rights/> (Last visited on March/2020)



Media and her relevant publics - as well as projecting her image as the leading media network in Uganda. Research and Information Exchange Program: Under this program area, Media aims to facilitate collective advocacy and action of human rights defenders and pro-democracy activists in influencing and shaping the human rights agenda in Uganda.

Also Human Rights Network Uganda use media for promoting human rights, it was revealed that the organization works with local and international partners of media and other government entities. The media also deals with the Parliament, the Ministry of Justice and the Uganda Law Reform Commission whom they support with legal interpretation of human rights situations, adopted several communiqués like the Paris Principles, Francis Deng’s principles on human rights promotion for international standards in recognizing, promoting the rights of Indigenous Populations in the country as well as integrating the traditional knowledge and practices of indigenous peoples into policies and programs to mitigate the impact of climate change in Uganda.

In addition while Assessing the legal, policy and institutional framework of the media in order to find out the gaps; traditionally the Constitution of Uganda contains a number of important provisions in Chapter Four, which is headed “*Protection and Promotion of Fundamental and Other Human Rights and Freedoms,*” which directly protect the media, including publishers, broadcasters, journalists, editors and producers. The most important provision that protects the media is article 29(1) (a), part of the article headed “*Protection of freedom of conscience, expression, movement, religion, assembly and association*”, which states: Every person shall have the right to –freedom of speech and expression which shall include freedom of the press and other media.

Article 29(1) (a) specifies that the right to freedom of speech and expression includes „freedom of the press and other media“. This is very important for two reasons: It makes it clear that this right can apply to corporate entities such as media houses, newspapers or broadcasters, as well as to individuals; It makes it clear that the right extends to both the “press” with its connotation of the news media – and „other media“, which could include fashion, sports, gardening or business publications or broadcasting services, thereby protecting all media.

James W. Nickel also noted that, although the media could be seen to be entitled to the right to freedom of expression, in reality, this right is not totally free.²²³ They are noted some factors which pose as threats to press freedom including censorship and political instability. In the case of censorship by government, authoritarian regimes characteristically tighten their control in monitoring media contents. Contents which question their policies are often removed.

Thus Media outfits may either be owned or subsidized by the government whereby the government reads or views the contents before they are published. In this view some cases, they are involved in the appointment of the editorial board of media organizations. For instance, in China, the communist party owns the media which serve as its mouthpiece. Only positive stories are free to be published. As a result of the tight control of the media, some journalists lost their jobs. In self-censorship in Uganda, media outfits on their own decide to publish or broadcast their news stories depending on how the contents might impact on their survival as organizations. These unethical practices are capable of discrediting information on human rights, or violations reported by the media. It is important to note that some of the worst forms of human rights violations are uncovered when investigative journalists work under false or hidden identities because such violations would almost be impossible to uncover should journalists reveal their real identities. Therefore, the question of false identities might not be automatically said to undermine public trust in the media.

Traditionally investigating the challenges of the media as an institution to engage actively in the promotion of human rights in Uganda; Journalists are often criticized to confuse issues on human rights because of inadequate understanding of the material they are covering. They have a superficial grasp of the institutional apparatus of human rights.

Simeon Djankov,²²⁴ in addition, as evidenced that what they write or present, many journalists would be hard pressed to explain the specific human rights let alone the difference between the diverse mechanisms that exist to monitor adherence to human right treaties or even distinguish between humanitarian and human right

²²³ *Making Sense of Human Rights*, (2nd ed., Blackwell Publishing, 2007) p 17

²²⁴ *Who Owns the Media?*, *Journal of Law and Economics*, Vol. 46, No. 2 (2003, The University of Chicago Press), pp.



law. Regrettably, especially in countries where the culture of democracy and human rights is young, only few journalists are able to identify with confidence even half a dozen of the basic rights supported by UDHR and other international and regional human rights instruments. According to him lack of awareness about human rights by journalists, is one of the major challenges for the effort to promote human rights.

However *Charles Beitz*²²⁵ he stated that Media is also held responsible not only for underreporting human rights issue but also for lack of an actual impact on human rights. In protecting and promoting human rights, the question is not only whether the public has the information but also to figure out what is done with this information. Media professionals claim that, it is not up to them to make sure what is done with the information circulated by them and argue that their only role is to obtain, verify and make news known. But the other problem of the media is lack of retroactive report especially when covering human rights violation. This is particularly true of covering conduct during wars, because it is always technically difficult and often impossible, to establish facts at the time and therefore report whether human rights violations were committed, whose rights were violated, or what could have been done differently.

Still, the media deserves credit for its achievement when they often fail to get the story right away. This can be positive not only for its advantage to understand the past or to secure justice (Justice delayed is better than justice denied) but also can be valuable in clarifying contemporary situations. With all the challenges discussed herein, it is worth recognizing that independent-minded media have played a central role in the promotion of human rights. Many have put their lives and freedoms at risk in order to promote dignity to all human beings and transparent and accountable governance. Many journalists, have been arrested, prosecuted or condemned to heavy fines or prison terms as a result of their effort to contribute to the promotion of human rights.

Just as a gap, there are certain rights or freedoms that protect the media, other rights or freedoms can protect individuals and institutions *from* the media. It is important for journalists to understand which provisions in the Constitution can be used against the media. Article 24 is headed “*respect for human dignity and*

²²⁵ International Federation of Journalists, *The role of Media in Promotion of Human Rights and Democratic Development in Africa*, (1999, Brussels), p17.

protection from inhuman treatment”, but in fact article 24 contains no wording in respect of human dignity as it deals entirely with prohibiting torture and cruel, inhuman or degrading treatment or punishment. Nevertheless, the right to have one’s dignity respected is clear from the title of the right even if the language of the right does not specifically mention this.

Therefore the right to dignity requires caution on the part of the media because it is a fundamental aspect upon which the right to reputation is based, and this in turn is foundational to the legal right to claim damages for defamation. Defamation suits, whether civil or criminal, are a significant worry for journalists personally and for the media houses that employ them. Journalists therefore need to be aware of the right to dignity, and need to ensure that a person’s right to his or her reputation is not unlawfully undermined in the course of reporting a story. The right of privacy is an interesting right because the way that it is worded in the Ugandan Constitution appears to envisage only state interference with personal privacy.

Nevertheless, we are of the view that the right requires caution on the part of the media when reporting the news or investigating the conduct of individuals. While the right to privacy can give way to the public interest, there is a zone of privacy around a person’s private and family life which is relevant to the public only in fairly exceptional circumstances.

In conclusion I have highlighted the right of the media which they need to promote human rights, although the media play crucial roles in the society, especially in the promotion of human rights, they sometimes face challenges. With a consistent approach to ethical guidelines, the media can stop being violators of human rights and promote human rights regarding to the legal and regulatory framework



THE EFFECTIVENESS OF THE MEDIA IN UGANDA IN PROTECTING HUMAN RIGHTS

Media's efficacy in realizing human rights is achieved through certain tools; these include;

Advocacy, Research and Information Exchange Program: Under this program area, the Media aims to facilitate collective advocacy and action of human rights defenders and pro-democracy activists in influencing and shaping the human rights agenda in Uganda.

Capacity Building and Network Development Program: Under this program area, the Media aims to grow and strengthen a fellowship of human rights defenders in Uganda that are well grounded in the norms and best practices in human rights protection and promotion, rule of law and good governance and ensure integration in the regional and international human rights movement.

Monitoring, Documentation and Reporting under Regional and International Mechanisms: Under this program area, the Media aims to equip civil society organizations in Uganda with skills on how to hold the state accountable to international instruments Uganda has ratified.

Institutional Strengthening and Development: This area of focus involves: strengthening the operational and policy base of HURINET with the view of enhancing effectiveness; and enhancing mutuality of understanding between HURINET and her relevant publics - as well as projecting her image as the leading human rights network in Uganda.

Capacity building.

Through its training and capacity development program, the Media Uganda contributes to the promotion of the rights of Human Rights Defenders and the general public. Media Uganda strives to empower Human Rights Defenders with skills and knowledge on different aspects of human rights promotion which include; personal and digital security training, Human Rights Based Approach to implementing laws, fundraising and resources mobilization, international,

regional and national protection mechanisms/ human rights instruments, research, monitoring and documentation among others through capacity building training workshop programs and community sensitization forums.

The trainings are organized in partnership with focal point persons in different districts who identify capacity needs and also mobilize participants that need capacity building. The selected beneficiaries are mostly from human rights organizations, JLOS, members of the District and Sub County Non-Governmental Organization Monitoring Committees, religious institutions and cultural institutions. The capacity building programs have greatly improved the standards and understanding of human rights and the legal framework and mechanism at the national, regional and international levels.

These trainings also provide Human Rights Defenders with an opportunity to share on air their best experiences, challenges and identify home grown solutions thus improving coordination and strong networks among themselves.

Advocacy and lobbying by the organization.

Media in Uganda recognizes the importance of advocacy in the work of human defenders. Over the years, the organization has grown through a focus on its mandate of contributing to an environment for the protection of human rights defenders in Uganda. At the core of media Uganda's advocacy initiatives is the need to ensure adherence to airing human rights standards in relation to Human Rights Defenders and their work in Uganda; attain favorable policies and legislation for the protection of human rights defenders in Uganda; create visibility amongst the stakeholders and relevant audiences about the concept of human rights and the work and rights of human rights defenders; contribute to the attainment of sustainable development goals especially goals 5 and 16 through encouraging participation by all relevant stakeholders and expand and strengthen the work of human rights defenders through fundraising to support outreach and advocacy efforts and initiatives.

Media in Uganda adopts a partnership leaning approach at the grassroots, national and international level and this is mainly because the scope of work of human rights and fundamental freedoms cannot be done by a single person,

organization or institution due to many factors involved and the diversity of the concept of human rights.

Media Uganda’s advocacy and networking efforts to support Human Rights Defenders shall therefore be geographically limitless as synergies shall be derived across the regions including the Central; Western (Ankole and Rwenzori); Northern (Acholi, Lango, Karamoja, Sebei) and; Eastern (Bugisu, Teso) to create sustainable impact in creating the envisioned just societies.

Networks and platforms on air are created through media engagement and participation by Human Rights Defenders and strategic stakeholders, regional dialogue meetings to discuss pertinent issues affecting Human Rights Defenders and their work and annual Human Rights Defenders forums. These provide the media and Human Rights Defenders and stakeholders with an opportunity to cooperate with and educate each other, report on their experiences, share relevant information, show solidarity as they come together to advocate for positive change. It is through such cooperation and coordination amongst the Human Rights Defenders that a critical mass is developed to effectively advocate for the promotion, protection and realization of human rights and fundamental freedoms, not only of the Human Rights Defenders but also the people they work for.

The challenges facing media in its effort to promote human rights.

There is resistance from state security organizations such as the army, Special Investigations Unit in Kireka, Police Flying Squad, Chieftaincy of Military Intelligence and many others who deliberately refuse access to their facilities yet they detain many suspects on state orders and also they are deemed to be using secret facilities to detain people to which they do allow and disclose to the staff of the organization in most cases. In addition to that, there is hoarding of information by state actors like the police, Uganda Human Rights Commission for fear they might lose their jobs and also for the secrecy of the state operations, there are threats of closure of media platforms by government for what the state can say is excess and improper reporting and the media has on many occasions failed to access the entire country due to logistical limitations and low staff numbers. These hamper her work and therefore incomplete reports are often given.

Internet surveys reveal that the staff and administration of the organization are sometimes targeted by security agents when they question the authenticity of efforts by the state organs like the Ministry of IT for example in ensuring that the destitute and media services, when they criticize the state organs for recruiting the young people in the armed forces instead of giving them education and the rampaging of security agencies in arresting young children in connection with capital offences for example in March 2017, the police arrested 15 family members in connection with the murder of Andrew Felix Kaweesi including 1 and half year old child, and others ranging between 2 to 15 years and their mothers which was criticized and aired on media platforms. Furthermore, it is hard to get comprehensive information on children human rights situations and how to improve it, and there is lack of corporation from state actors like ministries like that of Gender and Community Development, IT and others.

According to Susan Nalubowa²²⁶ (2020)

Women and girls human rights are not well promoted or even defended in Uganda. The government and private human rights organizations are working with leap attention to the rights of women and girls. The media has not been helped in their bid to promote the livelihood and human rights dignity of women because many people have not supported their activities in both the urban and rural areas and their coverage on rural areas is still so limited:

Women and girls in Uganda are more vulnerable and face additional risks such as sexual harassment, domestic violence, conviction of moral crimes and threats against their children and reputation, all because of their gender. Such evils are not adequately covered because media because it does not have wide coverage in Uganda.

Gender-based discrimination persists in the workplace, housing, education, disaster relief, health care, and countless other areas. Access to justice continues to be hindered by a range of obstacles. Religion, tradition, and culture continue to be used as a shield for violating human rights like the women's rights.

²²⁶ The effect of media in protecting human rights.



The army and police are state organs whose officers are immune to public scrutiny and as such they can hardly heed the call by media to account for the human rights abuses they carry out. The Ugandan president Tibuhaburwa Yoweri Museveni while on air defended the army and police for beating up the members of Parliament during the hot Article 105 (b)²²⁷ amendment by asking what they would do if the concerned military and police officers refused or he refused them from appearing before the legal authorities. This shows a bad image to such a country whose constitution contains a whole separate chapter about human rights.

Despite the existing legal frameworks which are supposed to promote and protect the rights of journalists, they have experienced many challenges in Uganda and other parts of the world, such as closure of media houses such as the Daily Monitor and Red Pepper assaults for carrying out their work, legislations passed restricting their freedoms. The New vision on the situation of human rights defenders has reported that journalists and media workers have been targeted because of their reports on human rights violations or because they have been witness to human rights violations. Many journalists have exposed violations in armed conflicts, post-conflict situations and situations of unrest in connection with a coup d'état or contested elections. In many countries, legal frameworks are used to restrict journalists' and media workers' activities. These restrictions have the potential to promote impunity, intimidation, stigmatization, violence and self-censorship. In Uganda this has been manifested by police and district internal security officials among others silencing the media or calling journalists and warning them about consequences of reporting on a particular story.

According to the New Vision on the promotion of the right to freedom of opinion and expression, journalists' work has been compromised in a number of countries under legislation relating to national security and under the criminal code; this has also affected social media and other communications tools, which has affected the activities of defenders. This legislation criminalize the publication of articles or photos that could harm national security, public order, public health or public interest, incite violence, constitute sedition or have negative consequences for the financial climate of the country all overly broad and restrictive. Not only do such provisions limit the ability of journalists to express their opinion about human

²²⁷ The 1995 constitution

rights issues, they also make it difficult for them to know what is acceptable under the law and hence lead to self-censorship.

Defamation charges against journalists have been brought to the attention of the Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression and on the situation of human rights defenders, because they have published articles, blog entries or tweets or expressed opinions in public. It is important to bear in mind that defamation legislation is to protect an individual's reputation from false and malicious attacks, but the problem occurs when the powers that be use the legislation to halt criticisms or allegations. Journalists have been ordered to pay fines that are largely disproportionate to the offense committed.

Uganda is a signatory to several international human rights covenants, and under Article 19 of the Universal Declaration of Human Rights, it is stated 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 information and ideas through any media and regardless of frontiers. Uganda fails to obey such obligations and continues to frustrate Human rights Network with their human rights abuses in Uganda. Under *Article 6* of the *UN Declaration on Human Rights Defenders*, everyone has the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms. The right to freedom of expression and the media is also contained in *Article 29(1) (a)* of the Constitution of the Republic of Uganda, 1995. This is not adhered to by the government forces.

Media and promotion of human rights.

It is revealed that there is information in print that is leaflets, magazines, banners, brochures, and avail information in digital that is on social media like face book, twitter, imo and many others which has helped and will continue to provide access to information for all who need it today and in the future.

It should be noted that media platforms like NBS are non-judicial, independent institutions created by private development partners and obtain the mandate to promote human rights. The media has been at the fore front of promoting domestic

human rights services and purposes. They substantiate the human rights commissions, hybrid institutions which combine several mandates, including that of equality body, and human rights institutes and centers.

The nature of human rights abuses in Uganda being addressed by media.

There are several human rights abuses registered and addressed by media for example Ugandan security forces beating and detaining protesters unlawfully, Ugandan police fired bullets and tear gas to disperse a crowd of protesters. Furthermore, there was recorded violations of rights to freedoms of association, expression, and assembly persist, as security forces beat and at times, torture and arbitrarily detained protesters, journalists and opposition members. It has been revealed that thirty-three people, including six parliamentarians, arrested during by-election campaigns in Arua, northwestern Uganda, faced treason charges and alleged torture by security forces, killing of more than 100 civilians in Kasese, western Uganda, police fired live bullets and tear gas to disperse the demonstration which the police deemed “illegal.” Protestors argued the tax violated Ugandans rights to free expression and information, police arrested six people as they attempted to petition police leadership at Naguru Police Headquarters in Kampala as part of a protest over numerous kidnappings and unresolved murders of women and children, five unidentified men wearing military uniforms seized Charles Etukuri, an investigative journalist with New Vision, outside the newspaper’s Kampala offices days after he published an article linking Internal Security organization agents to the death of a Finnish businessman.

Furthermore, security personnel arrested journalists Herbert Zziwa and Ronald Muwanga as they covered the Arua by-election and the military’s fatal shooting of YasinKawuma, parliamentarian Robert Kyagulanyi’s (aka Bobi Wine) driver. Security forces tied and beat Zziwa and Muwanga before holding them overnight in Gulu, charging them with malicious damage to property and incitement of violence. Soldiers beat and detained journalists covering protests, including photojournalist James Akena, confiscating and damaging his equipment. In September, police detained at least eight journalists and confiscated their equipment as they sought to report on Kyagulanyi’s return from the United States for medical treatment following his alleged torture by soldiers. Despite the

military's stated commitment to investigate soldiers for beating journalists, no one had been held accountable at time of writing.

On April 29, 2019, the Uganda Communications Commission ordered internet service providers to shut down all unauthorized news sites following a directive requiring online data communication service providers, including publishers, news platforms, and radio and television operators to obtain authorization. Ugandan police and military arrested and beat six opposition members of parliament, including Francis Zaake and Kyagulanyi, and 28 other people in advance of the August 15 by-elections in Arua. Prosecutors charged all 34 with treason for allegedly throwing stones at a presidential convoy on August 13. The media reported that men in military uniform took Zaake, who was unconscious, to a hospital in Kampala and abandoned him. Kyagulanyi alleged Special Forces Command soldiers tortured him while was detained for 10 days by the military. He was also charged before a military court for illegal possession of firearms and ammunition, but the charges were later dropped. Authorities promised to investigate Kyagulanyi's allegations of torture. Police and military shot and killed at least six people in Kampala, Mityana, Katwe and Gomba, during protests against security forces' abusive conduct in the period around the Arua by-election, and many other cases are some of the documented instances of human rights abuses in Uganda which the organization brought to public scrutiny.

The role of media in addressing human rights abuses in Uganda

Media exposes gross and moderate human rights abuses including battering of women, children and men, being held in custody incommunicado against the law and such other related abuses, furthermore, the organization publishes bulletins in which they expose human rights abusers like the police, army and other security agencies, individuals and gangs and the organization exposes and documents evidence both video and audio and also pictorial on human rights abuses in Uganda. When these are brought to the attention of government usually some culprits are punished. From the study, media help to promote the enjoyment of human rights through advocating for the right legislation to promote human rights observance, carrying out lobbying and advocacy for human rights promotion in Uganda and beyond, in government and the private sector, among the Civil



Society and Non-Governmental organizations like Compassion International and a number of others.

According to the management and staff of media platforms create awareness about the need to promote the observance of human rights through the print media by writing messages on human rights situations in Uganda, use the online platforms to mobilize and let the world know the various abuses and conformities in place, and there is sensitization on the need to respect, promote and safeguard human rights. This includes holding meetings, symposia, seminars and community meetings to let people and stakeholders know the human rights situations and how to make it better.

It is greatly visible by media reports that there are increased killings in the country in which security personnel have been implicated for example the June 2019 murder of Sgt. Ouma at Nile Bridge by a fellow soldier , advocate against the activities of security forces for example the beating up of people opposed to government, are against the evictions from land, are against sexual abuses, are against the abuse of journalists freedom, are against state interference in media freedom by Uganda communications commission, are against the banning of musicians from holding concerts, are against torture and extrajudicial killings by police and the army.

The media is deeply concerned about the general escalation of killings in the country which have been prevalent in the last three months. The media condemns them in the strongest terms possible. The media has noted and aired the reports about the gruesome killings occurring in Greater Masaka area, Metropolitan areas of Kampala, Bukomansimbi, Kalungu and Masaka Districts and Kayunga District. The security forces had not reprimanded the perpetrators of these acts. It is disheartening to note that the killings by unknown assailants have this year intensified and taken on a more dangerous and bold form in parts of the country, and between April and June, 23 innocent Ugandans had been killed. Consequently, they have caused a lot of anxiety among the citizens who are increasingly feeling insecure.

There are several ways showing the effectiveness of media in protecting human rights which are; Advocacy, Research and Information Exchange Program: Under this program area, media aims to facilitate collective advocacy and action of

human rights defenders and pro-democracy activists in influencing and shaping the human rights agenda in Uganda.

Capacity Building and Network Development Program: Under this program area, media aims to grow and strengthen a fellowship of human rights defenders in Uganda that are well grounded in the norms and best practices in human rights protection and promotion, rule of law and good governance and ensure integration in the regional and international human rights movement.

Monitoring, Documentation and Reporting under Regional and International Mechanisms: Under this program area, media aims to equip civil society organizations in Uganda with skills on how to hold the state accountable to international instruments Uganda has ratified. **Institutional Strengthening and Development:** This area of focus involves: strengthening the operational and policy base of media with the view of enhancing effectiveness; and enhancing mutuality of understanding between media and her relevant publics - as well as projecting her image as the leading human rights network in Uganda.

The challenges facing media's effort to promote human rights

The media faces resistance from state security organizations such as the army, Special Investigations Unit in Kireka, Police Flying Squad, Chieftaincy of Military Intelligence and many others who deliberately refuse access to their facilities yet they detain many suspects on state orders and also they are deemed to be using secret facilities to detain people to which they do allow and disclose to the staff of the organization in most cases. In addition to that, there is hoarding of information by state actors like the police, and other state actors for fear they might lose their jobs and also for the secrecy of the state operations, there are threats of closure by government for what the state can say is excess and improper reporting and the platforms has on many occasions failed to access the entire country due to logistical limitations and low staff numbers. These hamper her work and therefore incomplete reports are often given.

Impunity of the army. Media's staff and administration are sometimes targeted by security agents when they question the authenticity of efforts by the state organs like the police or the armed forces instead of giving them the rampaging of security



agencies in arresting young children in connection with capital offences for example in March 2017, the police arrested 15 family members in connection with the murder of Andrew Felix Kaweesi including 1 and half year old child, and others ranging between 2 to 15 years and their mothers which was criticized. There are many instances where people are whisked away by army men using the infamous “drones” and thereafter tortured in custody without them being presented in court. A current scenario is that of a detained Ugandan satirical novelist; Rukirabashaija who wrote a book about corruption and greed referring to a certain country unspecified but has also been found of posting critical articles against government²²⁸. “He appeared to be vomiting, he was urinating blood, there were torture marks on his legs and feet, he was in deep pain,” Kiiza (his lawyer) told Reuters news agency.²²⁹

Kiiza added that Rukirabashaija had not been allowed visits by his lawyers or relatives since his arrest. On Tuesday, a court issued an order for the police and other security agencies to produce Rukirabashaija in court. Kiiza said he understood the novelist was being detained at a facility run by Special Forces Command, an elite military unit formerly commanded by Museveni’s son that handles special assignments including guarding the president. Romana Cacchioli, Executive Director of PEN International, said in the statement that; “*Criticism of those in power is not a crime. It is horrifying that Kakwenza Rukirabashaija is facing state harassment, yet again because of his critical views about his country’s first family.*” In a statement issued by Uganda law society,

Another scenario was the continued arrest and detention of Advocate Nicholas Opio by security and state agencies. A statement by Uganda Law Society (ULS) states in part that; “*the ULS is a concerned with the recent prolonged and unlawful detention of Mr. Kakwenza Rukirabashaija on charges of offensive communication for over 10 days now in an ungazetted detention facility... that his lawyers have obtained an order for his unconditional release ... however the police and security agencies have still refused to release him as ordered by court despite several*

²²⁸ <https://www.aljazeera.com/news/2022/1/5/detained-ugandan-satirical-novelist-tortured-in-custody-lawyer> accessed on 8th January 2022

²²⁹ <https://www.aljazeera.com/news/2022/1/5/detained-ugandan-satirical-novelist-tortured-in-custody-lawyer> accessed on 8th January 2022

attempts from his advocates and family. We have also received reports that he has been subjected to torture and inhuman treatment at the hands of security forces.”

The ULS is deeply concerned with the continued illegal arrest and detention of Advocates by the law enforcement agencies. The latest of these is the arrest of Advocate Nicholas Opiyo, the Executive Director of Chapter Four Uganda, who was picked up on December 22, 2020 from Kamwokya at Lamaro Restaurant by alleged law enforcement officers dressed in plain clothes. It is revealed that the details of his whereabouts are currently unknown without any information on preferred charges against him and neither has he been brought to court. Adv. Nicholas Opiyo’s right to have access to an advocate of his choice has to be respected. His right to know the charges preferred against him should also be respected in the same spirit. His right to police bond should also be respected as well as the 48 -hour rule should be respected as allowed by law, and the ULS highly condemns this act. (*Find the full statement appended*)

All these are examples of a deviation from rule of law and constitutionalism by officers charged with protecting citizens as well as enforcing the law. **Article 23(2) & (3)** of the 1995 constitution of Uganda requires that a person detained shall be kept in a place authorized by law and also be informed of the reasons for detention and of his right to a lawyer of his or her choice.

Article 23(4)(b) of the constitution also requires that a person detained if not earlier released be brought to court as soon as possible but in any case not later than forty eight hours from the time of his arrest.

Article 23(5)(a), (b) & (c) of the constitution further require that where a person is detained, his next of kin shall be informed as soon as practicable of the detention of the detention, the next of kin, lawyer and personal doctor shall also be allowed reasonable access to that person among others. A close look at the situations at hand would show indeed that the people charged with protecting justice are the same prohibiting it.

Such scenarios also exhibit a bad human rights situation in Uganda affecting those who are vibrant and vigilant about their own rights and those of others. In such situations, media has been at the forefront of bringing the actions of such perpetrators (the state) into question and this has often times put pressure on the

state to yield immediate results. However, it is important to note that media houses are not evenly saturated within Uganda and this has left so many cases uncovered. The known cases of abuse are usually concerning the most known personalities who are not the majority of the whole population. This eventually reflects the worse situation taking place in the other areas beyond media coverage.

Also, women and girls human rights are not well promoted or even defended in Uganda. The government and private human rights organizations are working with leap attention to the rights of women and girls. The media has not been helped in their bid to promote the livelihood and human rights dignity of women because many people have not supported their activities in both the urban and rural areas and their coverage on rural areas is still so limited.

It is absurd that the organization cannot reprimand the army and police because these organs are seemingly immune to public scrutiny and as such they can hardly heed the call by media to account for the human rights abuses they carry out. The Ugandan president *Yoweri Museveni* while defending the army and police for beating up the members of Parliament during the hot Article 105 (b) amendment by asking what they would do if the concerned military and police officers refused or he refused them from appearing before the legal authorities. This shows even a head of state concurs with human rights abusers. Despite the existing legal frameworks which are supposed to promote and protect the rights of journalists, they have experienced many challenges in Uganda and other parts of the world, such as closure of media houses such as the Daily Monitor and Red Pepper assaults for carrying out their work, legislations passed restricting their freedoms.

In conclusion, it is imperative to consider that the contribution of media is so boundless in enabling realization of the three-point state obligation of all states i.e. to respect, fulfill and protect human rights of citizens. As visible above, media promotes access to systematic and reliable information about human rights through availing information in print that is leaflets, magazines, banners, brochures, and availing information in digital that is on social media like face book, twitter, imo and many others which has helped and will continue to provide access to information for all who need it today and in the future. Hence, media has been at the fore front of promoting domestic human rights services and purposes. They substantiate the human rights commissions, hybrid institutions which

combine several mandates, including that of equality body, and human rights institutes and centers.



Chapter Four



DEFAMATION

Introduction.

Defamation simply means the action of damaging the good reputation of someone; A defamatory statement is one which attacks or injures the reputation of another through false publication or communication to a third party and thereby exposing him to hatred, contempt, or ridicule, or which tends to lower him in the esteem of right-thinking members of society¹.

An example of defamation would be if a customer accused the restaurant owner of food poisoning even though it was not actually the restaurant's food that caused them to be ill.

According to the *Black's Law Dictionary*,²³⁰ **defamation** means; malicious and groundless harm to the reputation or good name of another by the making of false statement to a third party. *Gatley* in his book **Gatley on Libel**²³¹ states that; *"a defamatory statement is one which tends to lower a person in the estimation of right thinking members of society or to cause him to be shunned or avoided or to expose him to hatred, contempt or ridicule or to convey an imputation on which is disparaging or injurious to him in his office, profession, calling, trade or business."²³²*

In *AK Oils & Fats (U) Ltd v. Bidco Uganda Ltd*.²³³ it was stated that in defamation suits, for court to determine whether the words complained of are capable of a defamatory meaning, one must first look at the words themselves. Then one must first look at the words themselves. Then one has to consider the circumstances under which they were published. In all this the plaintiff does not shoulder the burden of proving falsity or malice in order to establish a cause of action. If the words are defamatory or capable of being so construed, the law presumes that they are false. The burden shifts on the defendant to show that they are true.

²³⁰ Bryan A Garner 11th Edition, 2021

²³¹ Para 31, 8th edition

²³² See also **Ondongkara vs Astles [1970] EA 374** (Phadke Ag. J)

²³³ HCCS 0715 of 2005

The law of defamation in Uganda has been judged to be a tool of the state for limiting press and freedom of expression in Uganda. In the current state of facts, both pen and keyboard users should take caution in the way they make use of their tools respectively else they risk falling under merciless hands. Defamation law in Uganda has its origin from English law. Formerly, members of the press and journalism/media profession were the most affected by this law but with the advent of social media today, any member of the public uneducated, trained or not can fall accused and convicted for defamation.

The classic definition of defamation has been given by Lord Atkin in *Sim v Stretch*.ⁱⁱ In that case, the claimant had a housemaid for a limited period of time, who re-entered the service of the defendant. Upon the maid's arrival, the defendant sent the following telegram to the claimant: "E. has resumed her service with us today. Please send her possessions and the money you borrowed, also her wages to [...]". The major issue stemmed for the fact that the claimant sued for libel, arguing that the telegram included defamatory allegations – namely, that they implied financial difficulties on the claimant's side (e.g. that he was forced to borrow, failed to pay the maid's wages, etc.). The defendant denied that these words could be capable of constituting defamation in themselves or by innuendo.

Held.

Lord Atkin established a test in his judgment to decide whether words 'in their ordinary signification' were capable of defamatory meaning. Stating that the classic approach whereby the claimant is exposed to hatred, ridicule or contempt might be too narrow, he proposed the following test: "*would the words tends to lower the plaintiff in the estimation of right-thinking members of society generally?*". *If the words are found to be capable of constituting defamation, then it is for the jury to decide whether they were defamatory in the circumstances of each case.* In the present case, the defendant's words were found not to be reasonably capable of a defamatory meaning – so the claimant's action was dismissed.

In *Shah v. Uganda Argus*²³⁴ Youds J held that "...any words or imputation which may tend to create n the minds of reasonable persons which must be considered rather than making a lose and precise analysis of the words used.

*Tony weir*²³⁵ opines that" defamation is arguably the most difficult of all torts, take for instance defamation is the only tort in which:

²³⁴ [1971] E.A 362

²³⁵ 1992 pg. 250



- *Liability is extinguished by the death of either party.*
- *Trial by jury is available at the instance of either party.*
- *Legal and is not available to either party, it must solely be at his own expense"*

Historically, the law of defamation in Uganda can be traced as far as the 1940's when the struggle for self-governance in Uganda was rife. Some of the articulate newspapers like Mugobansonga, Munyonyozi, The Uganda star ended up being banned and their vociferous editors like Luyima of Gambuze and its publisher J.N Tabula who were instrumental in projecting the demands during the workers strikes in 1945 and during the agrarian agitation in 1949 were imprisoned.ⁱⁱⁱ

Subsequently, The law of defamation has been successfully used by politician and public figures in civil litigations against publications and publishers who have tried to portray evil like corruption which are committed by such figures in most cases such defamation suits have been successful and the heavy awards of damages have left many publications bankrupt and thus gone off the streets. Much as the allegations may seem genuine the difficulty met in as far as defending such suits have left many press men in great awe of such proceedings since it is most probable that cobnuts will rule against them. This has therefore curtailed the freedom of press in Uganda. Journalism basically as profession demands a freethinking society which has the capacity and the will not to be told by another person what their limits to a freethinking society are. A journalist therefore is at his best when he is capable of writing without fear or induced favor. The law of defamation tends to curtail the freethinking press and thus deters the progress of this noble institution but as of today, even all free thinking members of society are affected. The factual scenarios indicating media rights abuse are well explained in other chapters of this book.

Background.

The law of defamation is a replica of law which were derived from the onset by the colonialists as a mechanism of curbing freedom of the press. The press has been all along used by masses as a means of furthering their rights through pen criticism of the state and its related machinery. Justice Odor states that,

Our laws affecting the freedom of expression and of the press have their origin in England of the middle ages.... At that time political authority derived its legitimacy from religious authority, where truth was determined by Devine revelation. Controversies were therefore to be resolved by God through his infallible human

*agents in the government and churches. Descend from this authority meant not only to be wrong but to be damned.*²³⁶

The essence of defamation is publication which excites others against the plaintiff to form adverse opinions or exposes him to hatred, contempt or ridicule or injure him in his trade, business, profession, calling or office or to cause him to be shunned or avoided in society.

The fusion of political authority and the spiritual authority exacerbated the intolerance of criticism on the state. The two primary methods to effect suppression of any criticism where the doctrine of seditious, libel and the licensing regulation of the press.

Libel.

Publication of statements critical of the sovereign or his agents was considered seditious, libel, Justin Oder contends,

*"The theory of the action as developed in the court of star chamber, and applied by subsequent common law courts, was that the king, as the originator of justice, was above popular criticism, publications of opinions that were censorious of the government constituted, therefore, a criminal assault, truth was not a defence, for the greater the truth the greater the libel against government"*²³⁷

(a) Restraint of publications.

In addition to punishment following publication of an article, English authors until 1694 had to contend with an elaborative system of licensing, it followed that all publication had to be licensed. The struggle for freedom of the press was primarily directed against the power of the licensor. The altitude of infallibility of the state and its agents seem to be entrenched in many African governments to day since the inception of English laws in our society. A historical social perspective will be analysed here under to show the trend of events since the colonial era.

²³⁶ Odor (1992) pg. 2

²³⁷ [Oder 1992 page 3 }



The state of Press in The Colonial times

The beginning of the 1950s saw the emergence of Newspapers which were very critical of the colonial regime. According to the report compiled by Zie Gari yo.

*"The Uganda post and Express which started publishing in 1951 and 1953 respectively were among the Newspapers of the 1950s which took a vehemently critical stance against both the colonial regime and the Buganda government"*²³⁸

Eventually J.W Kiwanuka publisher of both Newspaper was arrested and charged with violating customs by publishing defamatory matter against the katikiro[Uganda post January 23'd 1953]simply because he had bitterly criticised the Buganda Katikiro,Paulo Kavuma. He was then fined I000sh.Afew months later, he was charged with publishing seditious materials intended to" bring confusion and hatred among the people against the government"[see Gambuze may 1 st 1953}.

The article in question which appeared in Uganda post was critical of harsh sentences against Kenyatta and others who were charged of starting "mau mau' organisation which was illegal. kiwanuka was sentenced to 15 months imprisonment, but this was later commuted to a fine of I 000sh on appeal. The colonial government used all means at hand to muzzle the press. Defamation was just a fraction of this campaign, other related laws like slander and libel were used and were later coupled with emergence laws of all sorts and press censorship. Such laws included The press censorship and correction ordinance [No.13 of 1948] and sections 48 and 53 of the penal code.

Not only were journalists imprisoned but printing machinery were confiscated by the state, Kiwanuka was later to be imprisoned and the printing machinery confiscated and sold by public auction when published an article criticizing the Omukama of bunyoro sir, Tito Winyi.

By the end of 1956 Gambuze had leased publication after it was banned under emergency regulations during the period of the Kabaka's deportation. It could appear that by this time every publication received the brunt end of the law of defamation . The conservative Munno was to test the wrath of the Buganda Government when Joseph Kisabwe its Editor was charged in a buganda magistrate court with defamation against

²³⁸ [Zie gariyo1992 page71]

Abu Mayanja, the minister of education in the Kabaka's Government. The issue of July 9th 1960 had alleged that Abu Mayanja had at a Muslim "mauled" urged all Muslims to, "endeavour to change all Catholics they should produce and multiply but should do this among catholic girls because they are well behaved [Munno July 9th 9 1960]

Even Munnansi could not avoid tasting the bitter pill of the law, when in 1959 with in only one months of its publication it unfortunately carried a photography of a haltered woman profusely bleeding after being beaten by the police.

One of its proprietors, Sempa and editor, J.Nambale, were changed on June 12th 1959 with promoting feeling of ill will and hostility between the Uganda police and the inhabitants of Kampala [Munno of may 1959 and June 13, 1959.]. While the courts were taking their toll, the legislation was not a step either, through the News paper publication ordinance No.33 of 1960 The Newspaper bond was increased from 5000sh-10000sh which most small News paper could not afford . This was a systematic move intended to curb small publication which had favours of the government.

It comes as no surprise therefore that by the time of independence only few papers like Uganda Eyogera and Munno were still actively publishing and circulating. Uganda Empya had ceased publication in 1961 when it was sold to the nation group of Newspapers and changed its name to "Taifa Uganda Empya".

Post-Colonial Times

At the advent of Uganda independence in 1962, the press had distinguished itself as one of the tools used by nationalists to gain independence. However despite the role journalists played in the struggle for independence, the political teachers after independence felt that journalistic freedom which had helped to create nationalism could not be trusted to create nationhood. It should not therefore come as a surprise that post independent state inherited and embraced the colonial framework in totally and found it imperative to use it to subjugate their people. This however did not prevent the independence constitution like many other constitutions in the world, to incorporate a Bill of rights in which elaborate protection of fundamental human rights and freedom of the individual were spelt out, Article 26 of the 1962 constitution provided that,

Except with his own consent no person shall be hindered in the enjoyment of his freedom of expression, that's to say ji-edom to hold opinion, to receive ideas and



information without interference. However this wet pronouncement was watered down by clause 2 of the same article which spells out that this right of expression shall be subjected to the laws enacted in the interest of defence, public .safety. public order, public morality, public health

Since enactment therefore gave the required green light to the state to use laws like that of defamation or enactment such as The News paper publication ordinance to subjugate the press in perpetual stiff control.

In 1966, after the overthrow of the Kabaka's government by the army, a state of emergency was declared and chaos ensued. The seemingly freedom of the press became non existent. The 1962 constitution was abolished and replaced by the 1966 constitution adopted wholesale the provision of the Bill of rights in the 1962 constitution. By 1971 only the people (the UPC mouth piece), Uganda Argus, Munno and a few other Newspapers with marginal circulation were in publication. These however had remained with one role to play that is, showering praises on Obote and his hench men.

It ought to be noted here that constant harassment of the press with acts like press censorship, imprisonment of journalists without count actions or charges, impounding of printing presses and the general intimidation of the journalists had by this time the combined effect of a general refrain from attacking the state by the press, with due time therefore cases of defamation became less and lesser, not because the state had become pure but because no one could dare raise a finger to the state any longer. It is also worth noting that though the law of defamation is not and' has never been restricted to acts concerning the public officially or the state agents, in Uganda the law had developed in such a way that only the state took good use of it and acquired its pound of flesh from it.

There are very few reported cases where private individuals have made use of this law from its inception. The law of defamation therefore developed as a state tool of subjugation of the press. Many Newspapers were closed due to the high costs incurred in form of damages which had to pay after looking cases filed against them.

The Law And The Press Under Amin's Regime

The coup de tat of 1971 did not change the situation to any better. The Amins regime from the start was full of contradictions, during its early days the regime occupied itself by telling the public about the constitutional rights of the press of course these were just rhetoric statements to win legitimacy from citizens[Burton

f, 1979 page 98-100].The regime started taking its bite when in 1972 under the Newspapers and publication decree, Newspapers like the people and Munno were banned.

By 1971 only Voice of Uganda formally known as Uganda Argus existed as the official press regulating the sayings of Amins, ministers and other Government representatives, which official papers were packed with lies and distortion leaving the public totally uninformed or mis informed. In this regard Sam Serwanga says;

Journalists decided to sit back and wait for press releases Ji-om public offices or do routine assignment like [Serwanga1990 page 5).

Under Amin's regime, the press operated on a warning, not to stray from the straight and the narrow by 1979criticism of Government had become treason and the press a hot spot. Journalism was turned into a game of life and death. "In Amins regime reports Africa now magazine , "The price of fearless investigative reporting was a tap to the Nile in a book ofacar" [New vision march 7th 1994]. Many journalists were murdered either by the army, the state research bureau or hounded of the country by the year for their dear lives. Journalists like Jolly Joe Kiwanuka, Fr clement Kigundu and James Bwogi lost their lives. Others like John Ejalu, first Editor of the people, were tortured. The journalist in Uganda are practically extinct because of harassment.[J.left 1978 page225].During this period there was no need for the state to resort to defamation and defamation cases of this period are really scanty.

The Period Between 1980 And 1985.

After the liberation war of 1979 it was hoped that eventually the new Obote regime would guarantee freedom of the press but this was never to be. The 1980s saw the closure of the "Weekly topic", "Sabasaba", "the Champion", Economy and Mulengera. Journalism continued suffering sudden arrests a among them was John Baptist Kyeyune and Andrew Mulindwa who spent 9 days in Makindye Military barracks in 1984. Perhaps we ought to evaluate the period 1986 to to day in hope of a change from the previous regimes. And we also ought to come to face with the ogre called defamation what it is and why it is what it is.

Elements to prove in defamation

The claimant in any proceedings involving slander and libel must prove the following elements.

- (1) *That the statement was defamatory,*
- (2) *that it referred to him, and*
- (3) *That it was published, i.e. communicated, to a third party.*

The onus will then shift to the defendant to prove any of the following three defenses:

- (1) Truth (or justification),
- (2) Fair comment on a matter of public interest, or
- (3) That it was made on a privileged occasion.

Other scholars have posited these below to be the major defenses to defamation;

- (4) *Unintentional defamation, and*
- (5) *Consent.*

However, regard has to be given to the existing differences between slander and libel as such are explained below;

Libel.

Libel is a defamatory statement in permanent form such as in writing, images, films, radio and television stations broadcasts, public performances of plays, etc...

For defamation to be actionable there must be publication of the defamatory words.²³⁹ Publication in this context means the communication of the defamatory statement to a third person. Publication to a single person is enough to establish the right of action, and the extent of publication becomes only relevant when establishing the quantum of damages likely to be awarded, publication of a libel may take the form of public distribution as in the case of a Newspaper or book offered for sale, or of a private letter. At the same time, reading a defamatory letter

²³⁹ spry 1976 page 15].

to an illiterate person amounts to the publication of the libel as does the display of defamatory notice in a shop window.²⁴⁰

In *Joachim Buwembo & Ors v. A.G*^{iv} the applicants During the criminal proceedings, the petitioned the Constitutional Court of Uganda to address the constitutionality of section 179, arguing that the criminalization of libel is inconsistent with Article 29(1)(a) of the Constitution, which recognizes freedom of expression, including a free press, as a fundamental right. They also argued that the impugned criminal provision could not be considered as a lawful means of restricting free speech under Article 43 of the Constitution because the criminalization of a defamatory writing doesn't protect any known freedom of any person other than the reputation of the complainant, nor does it concern public interest because defamation is a tort and it affects the complainant individually – an action in defamation dies with the person defamed.

The facts of the case are that Joachim Buwembo, Bernard Tabaire, Emmanuel Davies Gyezaho, and Mukasa Robert (Applicants) were professional journalists with the Daily Monitor Newspaper, Uganda's leading independent newspaper. In August 2007, they contributed to the publication of two articles about a scandal surrounding Inspector General Faith Mwendha. Following her complaint to the police, the Applicants were arrested and charged with the offence of unlawful publication of defamatory matter under sections 179 and 22 of the Penal Code Act. Section 179 provides:

Any person who, by print, writing, painting, effigy or by any means otherwise than solely by gesture, spoken words or other sound, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person commits a misdemeanor termed libel."

Court in its decision considered the constitutionality of **section 179** of the Penal code. It began its analysis by examining whether or not the provision fell within the permissible restrictions on derogatory rights under Article 43 of the

²⁴⁰ Ajit Singh v. Harman Singh [1967]E A547.



Constitution, which provides that “[i]n the enjoyment of the rights and freedoms . . . , no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.” Drawing on Uganda’s case law, the Court affirmed that the right to freedom of expression can be limited to protect other competing fundamental rights including public interest, State security, and sovereignty. The Court went on to say that the test to assess reasonableness of such limitations is “an objective one” and its application must be considered “within the context of the subject matter or circumstances of each case.”

The Court then proceeded to address whether any public interest is served by the underlying objective of criminal defamation laws, namely the protection of one’s reputation. As Article 43 of the Constitution does not define “*public interest*,” the Court took judicial notice of the definition by Black’s Law Dictionary. It defines as “something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected.” It was also the Court’s view that reputation itself has two embedded rights: “the right of an individual to have his reputation protected by law, and secondly, the public interest embedded in the individual’s reputation by virtue of the fact that the individual is a member of the public and renders service to the public.” In addition, the Court held that although the Constitution does not make an explicit reference to reputation, its importance is implied by necessity under Article 45 of the Constitution, pursuant to which, “*The rights, duties, declarations and guarantees relating to the fundamental and other human rights and freedoms specifically mentioned in this Chapter shall not be regarded as excluding others not specifically mentioned.*”

Having concluded that the reputation of persons is constitutionally protected under Articles 43 and 45, the Court addressed whether Section 179 showed “any kind of arbitrary restriction to the freedom of expression.” In doing so, the Court considered the following factors set out by the Supreme Court of Zimbabwe in ***Mark Gova v. Minister of Home Affairs, S.C. 36/2000: Civil Appeal No. 156/99***: The legislative objective which the limitation is designed to promote must be sufficiently important to warrant overriding the fundamental right;

- *The measures designed to meet the objectives must be rationally connected to it and not arbitrary, unfair or based on irrational considerations; and*
- *The means used to impair the right or freedom must be no more than necessary to accomplish the objective.*

The justices first emphasized “*the importance of the reputation of a person to the public*” by referring to several Canadian judicial decisions that highlight the integral link between one’s reputation and his or her participation in Canadian society. As to whether criminal imposition is a justifiable means of protecting the public reputation of an individual, the Court rejected the applicants’ argument that the civil remedies of monetary damages and injunctions were adequate and punitive criminal sanctions were unnecessary. The justices were of the view that “while the victims of such wrongs may well deserve to be compensated, perpetrators who willfully and knowingly publish lies calculated to damage the public reputation of a member of a democratic society ought to be punished.”

Furthermore, the Court deemed libel as an egregious act, similar to acts of assault, sexual assault, fraud, even murder and manslaughter, adding that the existence of criminal sanctions for such offenses, which are also considered tortious, “ensures that those who commit acts society has deemed egregious are properly punished.” Based on the foregoing reasons, the Court unanimously upheld section 179 as constitutional. According to the justices, to do otherwise, would mean that the right of freedom of expression was unlimited which would contravene Article 43 of the Constitution. The Court, therefore, dismissed the petition in its entirety and ordered the continuation of the criminal proceedings.

As also visible in the case above, complaints and opinions continue to exist among members of the public arguing that the law on libel should be declared unconstitutional. However, these have since been rejected by court. In 2009, Uganda’s constitutional court upheld the country’s criminal libel law, arguing that it was in the public interest; an application challenging that law at the East African Court of Justice, a regional judicial body, was dismissed in November 2020, according to copies of the two judgments reviewed by CPJ.

Technological advancements call for new laws to be made or sometimes special amendments of the existing law to reflect the change in the society. Accordingly, with the advent of social media technology, there was a contention on whether posting information via social media amounted to publication within the meaning of **section 179 of the Penal Code Act** and whether by use of social media, an offense can be committed under the aforesaid section. This position was settled in *Uganda v. Nyakahuma*.²⁴¹ Nyakahuma was charged with criminal libel contrary

²⁴¹ HCT –OO-CR MC 1 of (2013) UGHCCRD



to **section 179** of the penal code Act. Nyakahuma Kalyegira Timothy was charged with criminal libel contrary to section 179 of the Penal Code Act. The particulars of the offence are:

“Nyakahuma Kalyegira Timothy on the 12th and 16th days of July 2010, in the Kampala District with intent to defame the person of the President of the Republic of Uganda, unlawfully published in the Uganda Records online paper that His Excellency President Yoweri Museveni is responsible for the bomb blast that occurred at Kyadondo Rugby ground”

Section 179 provides:-

“Any person who, by print, writing, painting, effigy or by any means otherwise than solely by gesture, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, commits the misdemeanor termed libel”

The question reserved was:

“Whether publishing on line constitute a commission of any offence under section 179 of the Penal Code Act”.

Counsel argued that section 179 of the Penal Code Act does not refer to publication vide cyber space. He contended that cyber space publication is not within the definition of libel in the Penal Code Act. He argued that it is not possible for the State Prosecutor to tender a cyber space publication in court. With regard to “...any means otherwise than solely by gestures spoken words or other sound” he argued that such other means must be physical. He further argued that though a website can be extracted, the publisher cannot be charged under section 179 PCA as he will not be the person who had extracted the printout. He also argued that website circulation is not public but limited to only those who know where to find it. He argued that an offence must be equivocally defined. He cited Knuller (Publishing, Printing and Promotion) Ltd. vs DPP (1972)2 ALL ER 898 where it was held to the effect that there should be certainty in the criminal law, Parliament or Legislature is the only proper authority to alter the law and to create or abolish an offence.

Technological developments may render legislation obsolete if the legislature does not catch up with them. This is true with the applicability of current statutory provisions to situations involving ICTs. The learned State Attorney argued that the statutory provisions in *Section 179* of the *Penal Code Act* by use of the phrase

“by any other otherwise.....unlawfully publishes.....” encompasses posting matter on the website.

She contended that information posted on the website was by writing using a computer.

Section 181 of the Penal Code Act defines publication thus:-

“(1) A person publishes a libel if he or she causes the print, writing, painting, effigy or other means by which the matter is conveyed to be so dealt with, either by exhibits, reading, recitation, description, delivery or otherwise, that the defamatory meaning thereby becomes known or is likely to become known to either the person defamed or any other person”

Justice Lameck N. Mukasa held that a publication online can constitute a commission of an offence

Slander.

Slander is a defamatory statement in a transient form; a statement that is not written. The basic difference between libel and slander is that libel is published defamation while slander is fleeting mostly verbal. In courts of law, these are both considered defamation i.e. the communication of a false statement that harms the reputation of an individual, business or group. It is a false statement usually made orally which defames another person. An example of such statements that impute criminal liability include claiming that a person is gay, lesbian or bisexual when it is untrue. In an attempt to harm his or her reputation. With slander, the offending material is published in some fleeting form- spoken words or sounds, sign language or features.

In the case of slander, a person publishes a slander when he speaks words defamatory of another in the presence of a third person. When it comes to proof of damages in cases of defamation, it is worth noting that libel is always actionable without proof of damage²⁴² but for slander in most cases will be only actionable if damage is Alleged as already noted.

²⁴² Otunu v Trustees of all saints church Kitgumu H. C. C. S No 185 of [1968]



A gain this difference in the law seems to be quite unfair since in most cases the plaintiff will not need to show proof that an article published really defamed him, but the mere fact such article was published will be sufficient to establish his case.

Since the purpose of the law of defamation would be to prevent people to ridicule and lower other's esteem in society, then it would be prudent for the plaintiff to show proof that the statement made against him really lowered him in the estimation of ordinary, just and reasonable men short of this it would be difficult to award him damages. However as it is in Uganda the law has been hijacked by public officials who, in most cases, have no reputation and dignity in society apart from the fact that they are politically connected and hold big offices one prominent scholar, professor Fredrick Jukko in an interview with the author] once obtained that, the public figures do not have any credibility in society and have no dignity and as such cannot really show how such stories lower them in the esteem of the right-thinking members of society.

If one was to put them to that task, they could recover nothing from this law. Public figures have such a disgrace in Uganda that it could now be hard for someone not to accept anything bad written about these political buddies. With corruption at its peak and moral decadence and abuse of office by public figure without much advice from their masters, public officials have virtually little reputation left of them by the right thinking members of society. By clearly disallowing proof of damages caused to the plaintiff before the court could award damages in libel the law encourages many public officials to sue and acquire damages which otherwise, many are not worth getting plaintiff who has to prove that the allegations he calls defamatory are actually false and as such lowered his esteem in the right thinking members of society

In contrast to slander which requires that specific damage be proved, libel is actionable per se. However, there are instances where damage need not be proved in slander. These are the four instances;

- *Words alleging that the claimant has committed an imprisonable offence;*
- *words implying that the claimant is suffering from a contagious disease*
- *Words implying that a woman has committed adultery or otherwise behaved in an 'unchaste' fashion, or*
- *Words implying that the claimant is unfit to carry on his trade, profession or calling.*

It is important to note that whereas slander is major a tortious offence, libel may as well be prosecuted as a criminal offense.

In *Ssembatya Kimbowa v. Editor, the Observer & 2 Ors*²⁴³ court held that the right to reputation is acknowledged as an inherent personal right of every person. A man's reputation is his property and perhaps more valuable than any other property. Indeed, if we reflect on the degree of suffering occasioned by loss of character and compare it with that occasioned by loss of property, the amount of injury by defamation far exceeds that of loss of property. Court found that defendant had not proved on a balance of probabilities that the publications are not defamatory of the plaintiff, holding that the publication was defamatory to the plaintiff.

Essentials of Defamation

(1) Words must be defamatory

The statement must be defamatory. According to **Lord Atkin**, opines that the statement must tend to lower the claimant in the estimation of right-thinking members of society generally, and in particular cause him to be regarded with feelings of hatred, contempt, ridicule, fear and disesteem²⁴⁴

A merely Vulgar abuse is not defamatory. Mansfield CJ in *Thorley v Kerry (1812) 4 Taunt 355 at 365* stated that "*For mere general abuse spoken no action lies*". Similar so was Pollock CB and Wilde B in *Parkins v Scott (1862) 1 H&C 153 at 158, 159*. Words which are prima facie defamatory are not actionable if it is clear that they were uttered merely as general vituperation and were so understood by those who heard them.²⁴⁵

On the face of a statement, it may not be defamatory but yet contain an innuendo, which is in essence defamatory. Such a statement may be actionable. Court in *Lewis v Daily Telegraph [1964] AC 234* emphasised that The hidden meaning must be one that could be understood from the words themselves by people who knew the claimant and must be specifically pleaded by the claimant. Some countries also have defamation laws that protect religions; these are usually known as blasphemy laws.

²⁴³ [2020] UGHCCD 12

²⁴⁴ (*Sim v Stretch [1936] 2 All ER 1237*).

²⁴⁵ *Winfield & Jolowicz (P. 406)*



(b) The statement must refer to the claimant whether by making specific reference to them, or either directly or indirectly.

Collective action in defamation. It is lawful for a member of a group of people to bring an action in defamation if such a group or class of people was defamed collectively. Take for instance a defamatory statement against all lawyers. The individual action will stand upon proof that the complainant is member of the defamed class. On this matter, *Willes J in Eastwood v Holmes (1858) 1 F&F 347 at 349* noted that; . "If a man wrote that all lawyers were thieves, no particular lawyer could sue him unless there was something to point to the particular individual"

If the defendant made a reference to a specific group of people, e.g. the tenants of a particular building, all will generally be able to sue (*Browne v DC Thomson (1912) SC 359*). This issue was considered by the House of Lords in *Knupffer v London Express Newspaper Ltd [1944] AC 116*.

It is important to note that Consent of the claimant to the publication of a statement, by showing other people defamatory material which the defendant meant for the claimant only, can create a situation in which technically there has been no publication. In *Hinderer v Cole (1977)* a defamatory letter sent by the defendant to the claimant was shown by the claimant himself to third parties).

At common law it was irrelevant to show that the defendant intended to refer to the specific claimant. Section 4 of the Defamation Act 1952 provided a special statutory defense in cases of 'unintentional defamation', by allowing the defamer to make an 'offer of amends' by way of a suitable correction and apology and may include an agreement to pay compensation and costs. The defense is now contained in sections 2-4 of the Defamation Act 1996, which was an attempt to modernize the law.

This the person accepting the offer may not bring or continue defamation proceedings. If the offer to make amends fails, the fact that the offer was made is a defense and may also be relied on in mitigation of damages.

A publication made 'maliciously' (spitefully, or with ill-will or recklessness as to whether it was true or false) will destroy the defense of unintentional defamation.

In **Texas Cattlemen v. Oprah Winfrey**, Oprah Winfrey was at the receiving end of a famous slander suit. Winfrey publicly disparaged beef in the context of the mad cow scare. A cattle rancher in Texas claimed that this disparagement caused

financial harm to his business and sued for \$12 million. The plaintiff needed to prove that Winfrey had knowingly and deliberately spread the false information with malice. Similarly to the Sullivan case below, the defendant prevailed in the name of free speech.

(c) Publication

In all defamation matters, the impugned statement must be published, i.e. communicated, to a person other than the claimant. For anyone who succeeds in a case on defamation, court will when measuring quantum of damages, consider that what matters is the injury done to the plaintiff's reputation and character taking into account his wounded feelings and any insulting or malicious conduct on the part of the defendant. In absence of evidence of any of those factors an award of nominal damages only would be made for injury done to the plaintiff's good name.

For example, dictating a defamatory letter to a typist is probably slander (*Salmond and Heuston on the Law of Torts, 1996, p154*), but when the letter is published to a third party it is libel. However, in *Bryanston Finance v De Vries [1975] QB 703* it was held that where a letter was written to protect the interests of the business there was a common interest between the employer and employee, and so a letter dictated to a secretary in the normal course of business was protected by qualified privilege.

Communication between spouses does not arise to defamation. As under the constitution, a spouse is not a compellable witness against their partner. Similarly, a statement made to one's own spouse is not considered "published" will not be 'published' for the purposes of defamation (*Wennhak v Morgan (1888) 20 QBD 635 at 639*). Communication between husband and wife is protected as any other rule "might lead to disastrous results to social life".

Distributors are often exonerated of liability. In *Godfrey v Demon Internet Ltd [1999] 4 All ER 342*, an internet service provider was held not to be the publisher, of defamatory statements posted on a newsgroup. However, the party would not rely on the on the defense of being distributors because the claimant had notified the defendants that the posting was defamatory and requested that they remove it, but they had refused to do so.

Defences



(a) Fair Comment concerning the Public Interest

This defense is mostly used by journalists on statements of opinion concerning matters of public concern. The test to be applied herein was stated by Lord Esher, in *Merivale v Carson (1887)* 20 QBD 275, thus;

"Would any fair man, however prejudiced he may be, however exaggerated or obstinate his views, have said that which this criticism has said of the work which is criticized?"

Conversely, Lord Porter, in *Turner v MGM Pictures*²⁴⁶ substituted 'honest' for 'fair' in order to avoid the suggestion that the comment must be reasonable. This was also applied *Lord Nicholls in Reynolds v Times Newspapers*.²⁴⁷ The defiance only applies to comments made on matters of public interest, eg comments on works of literature, music, art, plays, radio and television; and also the activities of public figures.

A publication made 'maliciously' (spitefully, or with ill-will or recklessness as to whether it was true or false) may have an effect of destroying the defense of fair comment.

It is also true that where the imputations are partly based on fact and partly expressions of opinion, the defense of fair comment will not fail merely because the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.²⁴⁸

This is another defence for the defendant, normally the defendant can succeed on a plea of fair comment if he can satisfy the court that the words complained of are a matter of public interest . The comment to be justified as fair, must appear as comment and must not be so mixed up with the facts that the reader cannot distinguish between what is report and what is ,, ' comment. *Nekyo Tanganyika Standard L.T.D H.C.C No.393 of 1964*]. From the on set it should be observed that the fore going renders this defence a very hard defence distinguishing between what are facts ,only reported as such and what are mere comments is a very hard

²⁴⁶ [1950] 1 All ER 449 at 461

²⁴⁷ [1999] 4 All ER 609

²⁴⁸ (s6 of the Defamation Act 1952).

task or test to imputed on the reader. As if this is not enough the courts will always try to look at the mental attitude of the defendant.

In Figueroa's case Dickson J. contrasting fair comment and justification said,

"The mental attitude of the commentator is material to the issue affair comment but immaterial to the issue of justification"²⁴⁹

This is a very hard task and since the judges are not supposed to be super human beings giving the task of investigating the material states of the defendant at the time of publication of a defamatory matter would be encouraging loopholes in the law and creating bias which inevitably they always have against such defendants This defense to journalism is always a dead end.

(b) Truth of the statement (justification)

People being sued for libel or slander have several defense options. The most common defense option is that they were simply stating or publishing an opinion. This defense is also termed as "justification." While this does not always stand up in court, it is a strong defense. Likewise, if the offensive statement is true, there is no defamation involved.

Only statements which are found untrue are actionable in defamation. This means that if the statement made about the claimant is found accurate, there can be no action for defamation. It is the defendant's duty to prove that the statement made is true but not for the plaintiff to prove the falsity of the same.

In an instance where the defendant makes many accusations but only one action is brought by the claimant in respect of them, this defense of justification cannot not fail simply because the truth of every charge is not proved if the words not proved to be true do not materially injure the claimant's reputation, having regard to the truth of the remaining charges.

The defence of justification is a complete defence and one established the defendant is exonerated from the charge. According to *Gatley* though it is not part of the plaintiffs case in an action of defamation to prove that the defamatory words

²⁴⁹ *Figuerendo v. Editor, Sundav nation*(I 968) EA 501



are false, as the law presumes in his favour. It is however, a complete defence to an action of libel or slander that the defamatory imputation is true²⁵⁰

However the most difficult task in this defence is proof, it is said that,

“To establish a plea of justification, the defendant must prove that the defamatory imputation is true, it is not enough, for him to prove that he believed that the imputation was true even though it was published as a belief only”²⁵¹

The Rehabilitation of Offenders Act 1974 provides that certain criminal convictions, depending upon their seriousness, are to become 'spent' after certain periods of time have elapsed, and treated as if they had never happened. Section 8 of the same Act provides that in defamation actions which are based on allegations that the claimant has committed offences which would otherwise be 'spent', justification can be used as a defense except where the publication was made maliciously.

In *New York Times v. Sullivan*, a public figure, Montgomery Public Safety commissioner, L. B. Sullivan, claimed to be defamed by an advertisement criticizing the Montgomery police. The Supreme Court ruled against Sullivan. The Supreme Court ruled that prohibiting the criticism of public officials in relation to his duties would have a “chilling effect” on freedom of speech. This case set the precedent of needing to prove malice in defamation.

In justification there is strict proof of the statement made. The defendant must justify the precise imputation complained of, for example if the words impute that the plaintiff stole a watch on a particular day, it is enough to prove that the plaintiff stole a watch on some other day or as sply puts it.

“proof that a person was convicted of an offence is not enough to justify; a statement that he committed that offence.”²⁵²

From the foregoing it should be observed that this defense is a very hard defense to put up especially when it comes to journalism. Whereas it may be true that some one claiming to be defamed actually did or did not do a certain act, he challenges in court. It could be hard for the defendant to prove that actually he did or did not

²⁵⁰ Gatley 1974 page 152

²⁵¹ Gatley 1974 page 152.

²⁵² sply 1976 page25.).

such an act as a matter of fact. As Mr. William pike contend that, the law restrict our publication since we cant prove all stories that we would intend to write²⁵³

Mr. Wafula Oguttu on the other hand contends that;

"Journalism always receive information especially hot information on condition of anonymity and as such the sources of such information ought and do actually ask for protection. It could be therefore hard for such source to be produced in court and really prove that what was published was true²⁵⁴. Therefore though such a defense exists it is the defendant's because it is actually clogged".

(c) Privilege

There are two kinds of privilege, absolute and qualified. The former is a complete defence and no proceedings can be found on a statement which was absolute privileged. Unfortunately this does not cover press men since the principle occasion of absolute privilege are parliamentary and judicial parliamentary. Privilege is a creation of statute and covers all words spoken before or written in a report to parliament or to a parliamentary committee or included in any petition bill, resolution, motion or otherwise by a member of parliament where as judicial privilege has its origin in the common law and extends to all words uttered in judicial or quasi-judicial proceeding²⁵⁵.

On the other hand qualified privilege is a partial defense because a defendant who can show that this statement enjoyed qualified privilege will still be liable if it is shown that the publication of the statement was activated by malice qualified privilege is derived from the common law. It arose as a matter of public convenience and has no precise definition²⁵⁶ So that new occasion of privilege may appear. Generally, it exists in relation to statement made in discharge of some duty, public or private, and to communication made between persons sharing some common interest. It is worth noting that in all instances this defense is not used by journalists since it does not accommodate them. Though it has been held that newspapers have a duty to keep the public informed of matters of public concern

²⁵³ interview 23 .4.97.

²⁵⁴ wafula Ogutf1 interview J 55.97

²⁵⁵ spry[J976 page 31

²⁵⁶ Spry pg. 33



or interest, and particularly so where the publication is made at the request of the Government acting through a responsible officer.²⁵⁷

It is rare that this defence is usually readily available to the journalists on a charge of - defamation since it would require such a journalist just to report word by word what is spoken by such an official without adding any word or phrase, and in many instances such public official have been known of denying their own statements. So all in all it is quite difficult for journalists who have been faced with such charges to successfully defend themselves since the defenses available are not in their favour, which has literally led many journalist to fear charges of defamation in Uganda

It is trite to note that in certain circumstances, the law regards freedom of speech as essential, and provides a defense of absolute privilege which can never be defeated, no matter how false or malicious the statements may be. Below are examples of the absolutely privileged communications;

- *Statements made in either House of Parliament. However, by s13 of the Defamation Act 1996, this privilege can be waived.*
- *Reports and proceedings which Parliament orders to be published (s1 of the Parliamentary Papers Act 1840). Extracts from parliamentary papers are covered by qualified privilege (s3).*
- *Reports which are Fair, accurate and contemporaneous, made by public judicial proceedings before any court in the UK (s3 of the Law of Libel Amendment Act 1888). The same privilege was extended to radio and television broadcasts of judicial proceedings in similar circumstances by s9(2) of the Defamation Act 1952.*
- *Communications made between and advocate and their clients*
- according to *Chatterton v Secretary of State for India*,²⁵⁸ Statements made by officers of state to one another in the course of their official duty
- *Statements made in the course of judicial proceedings or quasi-judicial proceedings.*

²⁵⁷ Shah v. Uganda Argus(I 972] EA 10]

²⁵⁸

Summary of Relevant Ugandan case law.

1. IN CHARLES ONYANGO OBBO AND ANDREW MWENDA V ATTORNEY GENERAL,²⁵⁹ this case is considered an encyclopedia to the evaluation of cases on rights of speech and expression, media and other press and acceptable constitutional limitations here and other democratic societies. The case concerned prosecution of the journalists for publication of false news for an article in Monitor newspaper, extracted from a foreign paper called The Indian newsletter and published under the Headline “ kabila paid Uganda in gold, say report.

2. IN JOACHIM BUWEMBO AND 3 OTHERS V ATTORNEY GENERAL,²⁶⁰ court in protecting the reputation of the then IGG Faith Mwonda owing to the defamatory statements made against her noted that “it was in the interest of the public that the reputation of individual members of the public be protected. Freedom of expression/media was protected to enhance public knowledge and development, according to the court, and statements which defamed members of the public did not enhance public knowledge and development.” The court held that defamatory libel was thus far from the core values of freedom of expression, press and other media and the press would be doing a disservice to the public by publishing such.

3. IN ANDREW MWENDA AND ANOR V ATTORNEY GENERAL,²⁶¹ Andrew Mujuni Mwenda a journalist, under Constitutional petition NO.I2/2005 went to Court seeking declarations or nullification of the offences of sedition and promoting sectarianism preferred against him in the Chief Magistrate's Court contending that they were unconstitutional. The 2nd petitioner the Eastern Africa

²⁵⁹ Constitutional petition no 15 of 1997(2000)UGCC4(21 JULY 2000)

²⁶⁰ Constitutional reference No.1/2008

²⁶¹ Consolidated Constitutional petitions No.12 of 2005 and No.3 of 2006



Media Institution (U) Ltd on its own and in public interest petitioned this Court seeking declarations or nullification of the same offences. Constitutional Court found Sections 39 and 40 of the Penal Code in respect to sedition and seditious intention offences inconsistent with provisions or tile Articles 29(I)(a) and 43 (2) (c) of the constitution and declared them null and void.

4. FRANCIS TUMWEKWASIZE AND 2 ORS V ATTWORNEY GENERAL,²⁶² Court observed that free press usually means the right to publish. a right to confidentiality of sources and a right to access information. Justice Yorokamu observed that 'It sounds to me superfluous that a journalist proceeding to cover a newsworthy incident would first require permission to access the venue, in the absence of any evidence that the denial or accessibility was in the interest of public peace and order. If the conditions at the Stadium were unsanitary. that was the more reason why they deserved exposure for remedial purposes.' The net or denying them access amounted to a breach of' their freedom as journalists to inform the public as to the sanitary condition or the Stadium at the time. This decision of court points to the position that journalists must be protected rather than harassed.

5. UNION OF INDIA AND OTHERS V JAGJIVAN RAM, In this case it was observed that in a democracy, freedom of expression is not to be taken for granted. Governance is by open discussion or ideas by citizens. Be it wise or unwise, foolish or dangerous statements must be tolerated in a democracy. This shows that the courts have been protective of the media rights and freedoms because they recognize its role in having a participatory democracy.

6. IN HANDYSIDE V UNITED KINGDOM,²⁶³ Court noted that freedom of expression (wherein freedom of media is enshrined) constitutes one of the essential

²⁶² HCMC No.36 of 2009.

²⁶³ [1976] ECHR 5 (7 DECEMBER 1976)

foundations of such a society, one of the basic conditions for its progress and for the development of every man. Subject to (legitimate restrictions) it is applicable not only to "information" or "ideas" that are favorably received or regarded as inoffensive or as a matter of indifference but also to those that offered shock or disturb the State or any sector or the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society."

7. IN CASTELLS V SPAIN,²⁶⁴ freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of their political leaders. In particular, it gives politicians the opportunity to reflect and comment on the preoccupations of public opinion, it thus enables everyone to participate in the free political debate which is at the very core of the concept of democratic society.

8. EDMONTON JOURNAL V ALBERTA (ATTORNEY GENERAL),²⁶⁵ court noted that freedom of expression (media inclusive) is of fundamental importance to a democratic society and should only be restricted in the clearest of circumstances. It is also essential to a democracy and crucial to the rule of law, that the courts are seen to function openly. The press must thus be free to comment and report upon court proceedings to ensure that the courts are in fact seen by all to operate openly in the penetrating light of public scrutiny.

9. IN ROMESH THAPPAR V STATE OF MADRAS,²⁶⁶ where the Supreme Court held that freedom of speech and expression includes freedom of propagation of ideas and that freedom is ensured by the freedom of circulation.

²⁶⁴ Jugement of 23 April 1992, Series A no.236

²⁶⁵ [1989] 2 S.C.R.1326

²⁶⁶ [1950]AIR 124



10. IN KNUPFFER V LONDON EXPRESS NEWSPAPERS LIMITED, the house of lords noted that it is an essential element of defamation that the words complained of should be published “of the plaintiff. “If the words are not so published, the plaintiff is not defamed and cannot have any right to ask that the defendant should be held responsible to him in respect of them.

11. A.K OILS AND FATS (U) LTD V BIDCO UGANDA,²⁶⁷ any person who sues for defamation must therefore prove to court that the statements in question had the following attributes, that the statement was false, If the statement is in fact true, no defamation action may be advanced, no matter how defamatory the statement is.

Conclusion

The law of defamation cannot be examined in isolation from other related laws since its enactment was apparently geared towards checking the freedom of press. More often therefore defamation has been used well in conjunction with other related laws to suppress the press or publish any material just because they have fallen prey to a multifarious and multiplicity of laws which have been enacted to just oppress the press. The law of defamation cannot be examined in isolation from other related laws since its enactment was apparently geared towards checking the freedom of press more often therefore defamation has been used well in conjunction with other related laws to suppress the press.

The enactment of the law has been a shoddy affair and still remains a mystery on the scene where human rights are universally recognised. This law is actually void of any positive contribution to the society and it needs either to be re-examined and revised or to be scrapped at a very early opportune moment before many people fall prey to its jaws. In civilised societies freedom of speech ought to be recognised and unhampered and as such protected by the state. By silencing its critics through such crude Jaws the state here acts like an ogre who feeds on its own kids which is not only unethical but deplorable. As if civil defamation would not suffice, the state has also resorted to criminal libel and as such making it a

²⁶⁷ (HCT-00-CV-CS-0715-2005)

criminal offence for a person who writes or publishes defamatory material, section 174 of the penal code provides for criminal act it is clearly enunciated that, *"Any person who by print writing etc unlawfully published any defamatory matter concerning another person with intent to defame that person is guilty of libel"*

Defamatory matter is defined in section 175 as any matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule or to damage any person in his profession or trade by injury of his reputation. The rationale of criminalizing what would otherwise suffice as a civil matter is questionable, it was actually not a move which was done in good faith .. it is no word therefore, that even a president will have the guts of labelling journalists criminals because to him any publisher of any material which is not of his taste is a criminal. The law of defamation has been greatly used by the state than any other institution or group of individuals in Uganda and the victims have been inevitably journalists. No single institution has suffered the terrible clause of this law than the press and if nothing is done the press will always have to dance to the tunes of the state for survived. This will however, have adverse impact on the freedom of the press in Uganda. Journalists have learnt to live with fear of being picked and imprisoned just to be released when the state wishes and not to be charged where lady luck smiles on them. This has unfortunately become an accepted norm in Uganda.

The concept of that the law of defamation is a necessary law to check and limit the otherwise Unruly and often rowdy press is unfounded and should not be seriously considered. For any one who has taken time to study the law of defamation with apposed and strict examination or analysis of the law should as a matter of fact have come to the conclusion that this law is ambiguous that this law is ambiguous and ill defined.

In the first instance the law puts up a presumption that the defendant is guilty until proved otherwise. This arises from the fact that defamation is imputed until some one defends him or herself and proves otherwise. At the same time the plaintiff need not to show how that actually he suffered damages.

This is actually a departure from the established constitutional rule and presumption that every one should be presumed innocent until proved otherwise. This in itself show that this law is archaic and needs a general over haul if its to suit favourably in the democratic nations. As if the injury is not done sufficiently from the stand, it is evident that the defence available for the defendant are illusory and as such un realistic. It is often hard for the defendant to fight his way out once



he not just made in such a way that its purpose is that of persecution and not Prosecution. One of the most appalling attributes of the law of defamation are the astronomical damages awarded to the successful litigants in proceedings which has led many into oblivion. Teddy seezi Cheeye in Uganda is just one example of such disgraced people.

Though many publications are still on the streets, the tremors of defamation are still rife in many publishers mind and as such are so cautious of stories they publish to the extent that many good stories are left on the shelves simply because they dare not publish them however genuinely well established and well founded they may be on the other hand this has given many journalists an extra mile of investigating nearly all stories that are to be published before their ultimate publication. Investigative journalism is not an easy task it calls for resources and may involve unearthing many deplorable events in the ears of many, as such it is often Ricky.

A person who may be exposed by such a story may employ all available tools to make sure that such a story is never published. If the law was bent in such a way that damages given to successful litigants are not over whelming astronomical, may be many people or journalists to punish all stories which they feel are genuinely well founded. The foregoing is in no way a licence for journalists to publish any story they come across since it is un ethical for one always to publish rumours, and should not be taken to mean that some journalists do not engage in cheap politicking and fabrication of stories, however on the other hand the law should be fair to both litigants. It does not call for killing the kid itself for the sake of punishment similarly the la\v should discipline the unruly few journalists for the sake of straightening up their morals but not purposely to make sure that they go to extinction.

Chapter Five



Remedies

Monetary compensation

The claimant will invariably claim financial recompense for loss suffered as a result of the defendant's wrongdoing. This can take the form of a claim for damages or, in cases involving the infringement of intellectual property, an account of profit.

Damages

Damages are awarded to compensate a successful claimant for loss or injury caused by the defendant's wrongdoing. Generally, the measure of damages is the sum required to put the claimant in the position it would have been in if the wrongdoing had not occurred. The claimant may recover damages which are:

- (a) a foreseeable consequence of the defendant's wrongdoing;
- (b) caused by the defendant's wrongdoing; and
- (c) not otherwise excluded by statute or common law.

In *Oketha v. A.G*²⁶⁸ the plaintiff sought the following reliefs; general damages, exemplary damages, special damages, interests and costs of the suit. The case stated that special damages must not only be specifically pleaded but also strictly proved as was in *Masaka Municipal Council v. Semwogerere*.²⁶⁹

General damages without proof of actual loss or damage are usually awarded as nominal damages or usually referred to as damages "at large" i.e. court taking all the relevant circumstances into account, will reach an intuitive assessment of the loss which it considers the plaintiff has sustained. The award of general damages

²⁶⁸ Civil suit 69 of 2004 [2017] UGHCCD 135

²⁶⁹ (1998 – 2000) HCB 23



is the discretion of court in respect of what the law presumes to be the natural and probable consequence of the defendants act or omission per **James Fredrick Nsubuga v. A.G**²⁷⁰. (see also *Erukana kuwe v. Isaac Patrick matovu*²⁷¹) in **kiwanula Godfrey T/a Tasumi Auto spares & class mart v. Arua district local government**,²⁷² court defined general damages as the direct natural consequences of the wrongful act complained of and include damages for pain, suffering, inconvenience, and anticipated future loss.

Aggravated damages

Aggravated damages are awarded as a form of compensation. They are intended to reflect the disapproval of the court for the manner in which a wrong has been committed. They recognise the fact that the motives and conduct of the defendant in relation to wrongdoing may serve to aggravate the injury done to the claimant. Their aim is primarily compensatory. The claimant must specifically plead them²⁷³ in its claim form and statement of case.²⁷⁴

Exemplary damages

Exemplary damages are sometimes referred to as punitive damages. These represent a sum of money of a penal nature in addition to the compensatory damages given for pecuniary loss and mental suffering. They are deterrent in nature and aimed at curbing the repeat of the offending act.

Exemplary damages are awarded to the claimant in order to *punish* the defendant and to *deter* further infringement. They are usually awarded in addition to compensatory damages. They can only be awarded in a limited number of situations which were enumerated by Lord Devlin in **Rookes v Barnard**²⁷⁵ as follows:²⁷⁶

- *oppressive, arbitrary or unconstitutional action by servants of the Government;*
- *cases where the defendant's conduct is calculated by him to make a profit which may well exceed the compensation payable to the claimant or, in other words,*

²⁷⁰ Civil suit no. 13 of 1993

²⁷¹ CS No. 177 of 2003

²⁷² HCCS NO. 186 OF 2006

²⁷³ *Khodaparast v Shad* [2000] 1 All ER 545 and CPR 16.4.

²⁷⁴ CPR Pt 16.4.

²⁷⁵ *Rookes v Barnard* [1964] AC 1129, pp 1226–27.

²⁷⁶ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

where ‘it is necessary to teach a wrongdoer that tort does not pay’; (also see in **Patel v. Nope Essa & manor**)²⁷⁷ or

- cases where exemplary damages are authorised by statute.

The second of these circumstances is the most relevant for the media. Lord Devlin went on to explain that, in order to recover exemplary damages in relation to his second category (conduct calculated to make a profit which may exceed the amount of compensation payable), the following should be borne in mind:

- *the claimant must be the victim of the defendant’s conduct;*
- *exemplary damages should be awarded with restraint;*
- *the means of the parties are relevant to the decision to award exemplary damages and to the amount of exemplary damages awarded;*
- *also relevant is anything which aggravates or mitigates the defendant’s conduct;*
- *in cases tried by a jury (principally, defamation cases), the jury should be directed that if, but only if, the sum that they have in mind as compensation (including aggravated damages) is inadequate to punish the defendant, to mark the jury’s disapproval of such conduct and to deter him from repeating it, then it can award a larger sum as exemplary damages.*²⁷⁸

In **WSO Davies v. Mohanlal Karamshi Shah**²⁷⁹ it was held that exemplary damages are given entirely without reference to any proved actual loss suffered by the plaintiff.

In the case of **Cassell v Broome**,⁵ the House of Lords emphasised that the mere fact that the wrongdoing was committed by the defendant during the course of business was not in itself sufficient to bring a case within Lord Devlin’s second category. A claimant had to show that:

- the defendant knew that what he proposed to do was against the law or had a reckless disregard whether it was legal or illegal; and²⁸⁰
- a decision to carry on doing it was made, because the prospects of material advantage as a result of the conduct outweighed the prospects of material loss. In other words, *a cynical disregard for the claimant’s rights*. The claimant does not have to establish that the defendant tried to calculate in the arithmetical

²⁷⁷ 1965 1 EA 484

²⁷⁸ Exemplary damages and defamation cases are considered in Chapter 3. 5

Cassell v Broome [1972] 1 AC 1027.

²⁷⁹ (1957) 1 E.A. 352

²⁸⁰ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.



sense whether his profits would outweigh any likely damages. It is sufficient to show that he appreciated that ‘the chances of economic advantage outweighed the chances of economic penalty’.

The economic advantage is not limited to moneymaking. It can also include the gain of any other type of property.²⁸¹ A claimant who seeks exemplary damages should plead them in its claim form and statement of case.²⁸²

In *Uganda commercial bank v. Kigozi*²⁸³ court was alive to the fact that in assessment of the quantum of damages, it should be mainly guided by the value of the subject matter, the economic inconvenience that the plaintiff may have been put through and the nature and extent of the injury suffered. **Restitution** was recommended *kibimba rice ltd. v. Umar salim*²⁸⁴ that a plaintiff who suffers damage due to the wrongful act of the defendant must be put in the position he or she could have been if they had not suffered the wrong.²⁸⁵

Damages as compensation for hurt and distress

Sometimes, the real harm caused by a defendant’s wrongdoing does not present itself in money terms. This particularly so in cases involving violations of privacy,²⁸⁶ where the hurt and distress caused by the violation is generally the essence of a claim.

It is a moot point whether a claimant can recover damages for distress and injury to feelings caused by the defendant’s wrongdoing. Although defamation law provides a precedent for such awards, the courts have traditionally been reluctant to award compensation for distress in other types of case. Compensation for distress is sometimes recoverable as aggravated damages²⁸⁷ (especially likely where the defendant’s behavior has been particularly reprehensible), but not usually as a head of damages in its own right.²⁸⁸

²⁸¹ *Rookes v Barnard* [1964] AC 1129.

²⁸² CPR Pt 16.4.

²⁸³ 2002 1 E.A 305

²⁸⁴ S.C. CIVIL APPEAL NO, 17 OF 1992

²⁸⁵ *Sallie Spilsbury – Media Law* (2000) Cavendish Publishers LTD.

²⁸⁶ Generally brought under the guise of a different cause of action because, as explained in Chapter 8, English law does not currently recognise a right of privacy as such.

²⁸⁷ Support for this view can be found in the malicious falsehood cases of *Joyce v Senagupta (obiter)* and *Khodaporast v Shad* [2000] 1 All ER 545.

²⁸⁸ *Sallie Spilsbury – Media Law* (2000) Cavendish Publishers LTD.

Damages in intellectual property cases

In a case of intellectual property right infringement (copyright/design infringement, patent infringement, passing off, trade mark infringement or breach of confidence), the starting point for an assessment of compensatory damages will usually be the license fee or royalties, which would have been agreed between the parties if the claimant had licensed the defendant's infringing use of its intellectual property.

In Uganda, A **Trademark** is defined by *section 1(1) of the Trademarks Act*²⁸⁹ to mean “a sign or mark or combination id signs or marks capable of being represented graphically and capable of distinguishing goods or services of one undertaking from those of another undertaking.”

Section 36(1) of the Trademarks Act gives a holder of a registered trademark, the exclusive right to the use of the trade mark.

Where the claimant would never have licensed the right in the first place, this will be something of an artificial exercise; it is difficult for the court to assess the reasonable royalty rate in respect of a right which would never have been licensed. Nevertheless, the court will generally seek to do so.²⁹⁰

In addition to the notional licence fee, the claimant may claim for lost profits on sales he would otherwise have made if there had been no infringement and lost profits on his own sales to the extent that he was forced to reduce his own price as a result of the infringement.²⁹¹

In patent infringement cases, the Court of Appeal has held that ‘secondary loss’ may also be compensated for, provided that the claimant can establish the loss as being a foreseeable consequence of and caused by the wrongdoing.²⁹² Secondary loss might include matters such as loss of sales of articles, which are not the subject of the infringement action, but which were sold by the claimant alongside the article in respect of which its rights have been infringed. It is likely that secondary loss would also be recoverable where other types of intellectual property rights have been infringed, although the courts have not confirmed that this would be the case.²⁹³

²⁸⁹ Laws of Uganda

²⁹⁰ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

²⁹¹ *Gerber v Lectra* [1995] RPC 383, approved by the Court of Appeal [1997] RPC 443. This was a patent infringement case, but the same principles would seem to apply to other intellectual property rights.

²⁹² *Ibid.*

²⁹³ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.



In relation to passing off actions, damages seek to compensate the claimant for the damage to its goodwill as a result of the defendant's misrepresentation.²⁹⁴ This can include compensation for lost sales, devaluation of business reputation, lost opportunities to expand and, controversially, for dilution of goodwill.²⁹⁵

Damages are *not* recoverable against a defendant who is an innocent infringer of copyright.²⁹⁶

Additional damages

In the American jurisdiction, The Copyright Designs and Patents Act 1988 provides for awards of additional damages in copyright infringement cases.²⁹⁷ Additional damages are *only* available in claims for copyright infringement.¹⁶ As a precondition to receiving additional damages, the claimant must claim them in its claim form and statement of case.

The decision whether to award additional damages and, if so, the amount to award are at the discretion of the court, taking into account all the circumstances of the case. Relevant factors include the flagrancy of the infringement and any profit which accrued to the defendant as a result of its infringing activities. Additional damages are *not* available where the claimant elects for an account of profits. They are also not available against innocent copyright infringers.²⁹⁸ The House of Lords in America have declined to give a view whether additional damages are compensatory in nature or punitive.²⁹⁹ It therefore remains unclear whether they are intended to be alternatives to aggravated or exemplary damages or both.³⁰⁰

Example of an additional damages award

In *Springsteen v Flute*,³⁰¹ a case involving infringing CDs, Ferris J awarded additional damages against the defendant. In doing so, he had regard to the fact that the defendant appeared to have calculated the amount of profit which his

²⁹⁴ The elements of the passing off action are considered in Chapter 14.

²⁹⁵ See Carty, H, 'Heads of damages in passing off' [1996] EIPR 487 for more detail.

²⁹⁶ CDPA 1988, s 97(1).

²⁹⁷ *Ibid*, s 97(2). 16

Ibid.

²⁹⁸ *Redrow Homes v Betts* [1998] FSR 345.

²⁹⁹ *Ibid*.

³⁰⁰ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³⁰¹ *Springsteen v Flute* (1998) unreported. 20

My Kinda Town v Soll [1982] FSR 147.

infringing activities would generate and to have taken few precautions against being found in breach of copyright. These factors come close to factors which would be relevant to an award of exemplary damages. The judge provisionally awarded additional damages of £1 per infringing CD manufactured by the defendant and £5 for CDs manufactured and sold (there being at least 54,000 CDs in total).

Additional damages might be awarded to reflect any hurt or distress caused to the claimant by the defendant's activities, although the author is not aware of a case where additional damages have been awarded on this basis.³⁰²

Account of profit

In litigation involving infringement of intellectual property, the claimant can elect for an account of profit as an alternative to damages. The defendant is required to account to the claimant for the profit which it has made as a result of its infringing activities. It cannot claim an account and damages for the same wrongdoing. The purpose of the remedy was outlined by Slade J in *My Kinda Town v Soll*²⁰ as:

To prevent an unjust enrichment of the defendant by compelling him to surrender those profits or those parts of the profits actually made by him which were made improperly.

The objective of the account is not to punish the defendant, but to ensure that he does not unjustly enrich himself at the expense of the claimant. The account is an equitable remedy and therefore discretionary. The court could refuse to order an account even where the claimant expresses a preference for the remedy.³⁰³

The claimant will not normally elect whether it wants damages or an account until after liability has been determined at trial. It is important that a claimant makes it clear in its claim form and statement of case that it will seek damages or at its election an account of profit in order to keep its options open until liability has been determined.

There is surprisingly little case law on accounts of profits. The remedy is generally regarded as technical and complex. Following determination of liability, most parties agree the amount of damages or profits, which must be paid to the claimant rather than incur the further cost of an inquiry into damages or an account of profit.

³⁰² Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³⁰³ *Unic SA v Lyndean Products* (1964) 81 RPC 37, where the judge indicated that damages would be a more appropriate remedy. He gave no reason for his decision, which was *obiter*, the claimant subsequently deciding to elect damages in any event.



The basic mechanism behind the account can be clearly stated, at least in relation to the manufacture and sale of infringing goods. It involves subtracting the amount which the defendant expended in making the infringing goods from the price he received on sale of the goods. The difference between the two amounts, so the reasoning goes, is the profit to be paid over to the claimant.³⁰⁴ A case in which this approach was used concerned a breach of confidence. The defendant had misused the claimant's confidential information to develop and market a new design of bra. It was not disputed that the infringing bras derived solely from the breach of the intellectual property right and, therefore, it was ordered that all of the defendant's profit calculated in accordance with the above principles should be paid over to the claimant.³⁰⁵

Unfortunately, most cases are not so clear cut. Often, one cannot say that the whole of the defendant's profits were generated solely as a result of the infringement. The profit must be apportioned so that only the part of the profit which was actually generated by the infringement is paid over.³⁰⁶

Some cases of infringement do not involve the manufacture of infringing articles. For example, take a newspaper which publishes a photograph in breach of copyright. If an account of profit is the chosen remedy, the account will involve calculating the proportion of the defendant's profit which is attributable to the infringing use of the photograph.³⁰⁷

In a recent case involving patent infringement, Laddie J set out a number of guiding principles in relation to the taking of an account of profit:³⁰⁸

- the question to be answered on an account is 'what profits were in fact made by the defendant by the wrongful activity?'. The profits were not reduced if all or most of them might instead have been made in a noninfringing way if, in fact, they were generated by the wrongful activity;
- the claimant must take the defendant as he found him. He cannot complain that the defendant should have generated greater profits by taking an alternative course. The court is finding out what profits were made in fact by the defendant, not what profits he could have made;
- the maximum payment was the total profit made by the defendant. There is therefore an ascertainable upper limit on the amount which the defendant can pay to a claimant on an account;

³⁰⁴ *Peter Pan v Corsets Silhouette* [1963] 3 All ER 402.

³⁰⁵ *Sallie Spilsbury – Media Law* (2000) Cavendish Publishers LTD.

³⁰⁶ *ibid*

³⁰⁷ *Sallie Spilsbury – Media Law* (2000) Cavendish Publishers LTD.

³⁰⁸ *Celanese International Corpn v BP Chemicals* [1999] RPC 203.

- if different claimants sought accounts in respect of different infringing activities carried out by a defendant within a single business, the totality of the profits ordered to be paid could not exceed the total profits made by the defendants in that business. There is only one ‘profits pot’;
- the defendant is allowed to deduct from revenues all allowable costs. The claimant is entitled not to the stream of income received by the defendant, but his profits net of all proper deductions. These may include tax payable by the defendant on the profits and the costs of advertising and marketing the product;³⁰⁹
- where the defendant carried on multiple businesses or sold different products and only one infringed, he only had to account for the profits made by the infringement. The claimant cannot recover profits not earned by the infringement;³¹⁰
- where only part of a product or process infringed, profits attributable to the non-infringing parts were not caused by or attributable to the infringement *even if the infringement was the occasion for the generation of those profits*. The profits must be apportioned between the different parts of the product;³¹¹
- a logical basis for the apportionment must be found. The ‘whole picture’ must be considered, that is, the defendant’s business and the market as a whole. The court must not back a hunch. Nor must it pull a figure out of the air which bears no resemblance to the relevant facts. The question of apportionment is a matter of fact in any particular case. Form must not triumph over substance. Where there is insufficient information available to the court to make a fair adjudication, it will be necessary to adjourn the account to allow more information to be produced;
- a useful guide to apportionment was likely to be provided by ordinary accounting principles where profits of a project were attributed to different parts of the project in the same proportion as the costs and expenses were attributed to them. This method involves dividing the whole product or project ‘cake’ into slices which are determined by the slice’s costs and expenses. It is only the profit icing on the infringing slice (the relative size of which is measured by reference to its relative costs and expenses) for which the defendant has to account;
- where credible evidence existed that the infringement had made a particularly significant contribution to the profits, the profits attributable to the infringement

³⁰⁹ *Potton v Yorkclose* [1990] FSR 11.

³¹⁰ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³¹¹ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.



could be weighted to take account of its added merit, which might not be apparent on the simple apportionment referred to above;³¹²

- once the court had decided what a fair apportionment was, it must not round up the figure to a substantial extent. The account is not a camouflaged method of making the defendant pay punitive compensation;
- there are *dicta* in case law to the effect that, generally, the profits ought not to be apportioned by reference to evidence of or speculation about the motives of real or hypothetical purchasers or the relative attractions to such purchasers of different aspects of the work;³¹³
- the court can only hope to achieve a reasonable approximation – there is no such thing as a perfectly right figure on an account.³¹⁴

An example of a case where an account was taken in passing off proceedings is the *My Kinda Town* case.³¹⁵ The defendant did not have to pay over all the profits generated by the use of the offending name which was the subject of the action, but only those resulting from confusion on the part of the public.³¹⁶

Matters to consider.

The chilling effect

Large awards of damages, or the threat of such awards, can generate a climate where the media are reluctant to run the risk of wrongdoing. This effect is often referred to as ‘the chilling effect’. The chilling effect can have an inhibiting effect on the media’s willingness to risk legal action. As a result, they may be deterred from publishing matters of public concern because of the threat of legal action against them. Yet, take for instance in Europe, the European Court of Human Rights has repeatedly highlighted the media’s function of reporting matters of public concern as being necessary in a democratic society.³¹⁷ If the media are deterred from performing this function, large awards of damages may be incompatible with the European Convention of Human Rights.

The courts in Uganda ought to ensure that regard is given to the right to freedom of expression whenever they are considering the grant of any relief which might

³¹² Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³¹³ An *obiter* comment of Millet J in *Potton v Yorkclose*, a case involving copyright in architect’s drawings, in which he stressed that he did not intend to bind other courts in expressing this view. The decision was cited with approval by Laddie J in the *Celanese* case.

³¹⁴ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³¹⁵ *My Kinda Town v Soll* [1982] FSR 147.

³¹⁶ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³¹⁷ Eg, *Observer v UK* (1991) 14 EHRR 843.

affect the exercise of that right. ‘the court must have particular regard to the importance of the Constitutional right to freedom of expression and, in relation to a journalistic, artistic or literary material, it must also have regard to the extent to which the material is or is about to become available to the public, whether it is or would be in the public interest for the material to be published and any relevant privacy code.’³¹⁸

It will be interesting to see whether s 12 will deter courts from making large damages awards. Historically, the English judges have had a tendency to give precedence to more immediate factors in their decision making, such as the defendant’s conduct in any particular case or the need to protect the claimant’s specific rights, rather than considering the wider chilling effect which an award may have. For that reason, the impact of s 12 is unlikely to have the effect of reducing damages awards against media defendants across the board,³¹⁹ but it may deter awards of aggravated and exemplary damages in borderline cases where it is not clear that such awards are justified.

Proportionality

In the award of damages, it is important for court to give what is fair and adequate. The European Court of Human Rights has considered the fairness of an award of damages against the media in *Tolstoy v UK*,³²⁰ a case involving an award of damages in a defamation case. The European Court found that an award of £1,500,000 could not be reconciled with the Convention because it was out of proportion to the legitimate aim pursued by the damages award, namely, the protection of the claimant’s reputation. Damages awards ought therefore to be limited to what is proportionate to protect the rights or interests of the claimant. If an award goes further, it is unlikely to be necessary in a democratic society and may therefore be incompatible with the Convention.³²¹

(b) Delivery up

This means to give something to someone officially and formally. Delivery up is the sanction whereby the defendant is ordered to deliver up and forfeit all infringing

³¹⁸ Sallie Spilsbury - Media Law (2000) Cavendish Publishing limited

³¹⁹ Although the section might lead to a general reduction in defamation awards.

³²⁰ *Tolstoy v UK* (1995) 20 EHRR 442.

³²¹ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.



material or to destroy the infringing material on oath. An order for delivery up is generally made in intellectual property cases.

(c) Injunctions

An injunction is a court order. It can be *prohibitory*, which means that it will restrain the defendant from carrying out the act(s) complained of, or *mandatory*, which means that it will require the defendant to take a positive step, usually to put right its wrongdoing.

Injunctions are equitable remedies. This means that there is never an automatic right to an injunction. The grant is *always* at the discretion of the court, even if the claimant is successful at trial.

The following matters will generally defeat an application for injunctive relief.

The claimant does not have 'clean hands'

The claimant's conduct in relation to the dispute must not have been so improper that it does not deserve to be helped by the grant of an injunction. In **Kamugisha v. Gyagenda (Civil suit 687 2002) [2013] UGHCCD 123**, the learned judge *Monica K Mugenyi* stated that, *he would claim in equity must come with clean hands*. Similarly so was in **Katarikawe v. Katwiremu**.

The claimant must be prepared to do what is right and fair in relation to the defendant (he who seeks equity must do equity)

The claimant must be willing to perform its own obligations towards the defendant. This is yet another important maxim of equity. In **Uganda v. Hassan Basajjabalaba**, court held that "a person seeking an equitable remedy must him or herself act fairly." It was found that the Defendant failed to act fairly when he forged a court order so as to get back his land titles hence an equitable remedy couldn't be granted to him.

The claimant must not have acquiesced in the defendant's wrongdoing

The claimant must not actively or passively have encouraged the defendant to believe that he has no objection to the defendant's wrongdoing in a way which has led the defendant to act to his detriment in reliance on that encouragement.

The terms of the injunction

In recent times, the court has stressed that injunctions must be directed only to the wrong or threatened wrong at issue and they should only be granted where necessary. In *Coflexip SA v Stolt Comex Seaway Ltd*,³²² the court laid down the following guidelines for the grant of injunctive relief:

- the grant of an injunction is in the discretion of the court, which must tailor it to match the wrong which had been committed and/or is threatened;
- the injunction should protect the claimant from a continuation of the perceived threat of infringement, but it must also be fair to the defendant;
- if no future threat of wrongdoing exists, injunctive relief should be refused;
- a defendant who is the subject of an injunction must know what he can and cannot do. Where the injunction asked for by the claimant is obscure in extent, the court should either not grant it at all or, where possible, it should express it in terms which meet the precise needs of the claimant;³²³
- in intellectual property cases, the claimant normally alleges that the defendant had committed a specific type of infringement, for example, in a copyright case, the allegation may be that the defendant has infringed copyright by reproducing a copyright work without permission. In almost all cases, the defendant's wrongdoing occupies only a small part of the monopoly secured by the intellectual property right. It is generally only the current wrongdoing activities which the defendant might threaten to continue. An injunction in general terms, restraining the defendant from infringing the copyright generally, goes further than is necessary – it covers more than the defendant has threatened, more than it might even think or be capable of doing and more than the court had considered when granting the injunction;³²⁴
- where a narrow injunction is granted, it is appropriate for the injunction to include an express liberty to apply to the court if new wrongdoing of a similar nature occurs. The possible new infringements could then be determined in the same proceedings, without the claimant having to commence infringement proceedings afresh.³²⁵

The above principles were laid down in relation to intellectual property cases, but they apply in spirit to other type of cases, for example, injunctions preventing

³²² *Coflexip SA v Stolt Comex Seaway Ltd* [1999] FSR 473, approved by the Court of Appeal in *Microsoft Corp'n v Plato Technology* (1999) unreported. 32 *Tolstoy v UK* (1995) 20 EHRR 442.

³²³ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³²⁴ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³²⁵ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.



repetition of libels or malicious falsehoods. The approach is in line with the case law of the European Court of Human Rights,³² which has held that an injunction which restrained a repetition of a libel was reconcilable with the European Convention of Human Rights where it was confined to the allegations made by the claimant. Had the injunction gone further, it might have not been reconcilable.³²⁶

Final and interim injunctions

Injunctions can be final or interim. A final injunction is generally awarded to a successful claimant after the trial of an action when judgment has been granted. Such an injunction will remain in force, unless and until it is lifted or varied by the court.³²⁷ A final or permanent injunction has been described in *Akena v& Ors v. Opwonya*³²⁸ thus; *it is settled law that a permanent injunction is a remedy for preventing wrongs and preserving rights so that by single exercise of suitable power an injury is both restrained and repaired for the purpose of dispensing complete justice between the parties.* Permanent or final injunctions are granted as a remedy against an infringement or violation which has been proven at trial.

Interim injunctions

An interim injunction is a temporary order which is granted prior to trial and is intended to last until the trial at the latest.

Interim injunctions may be granted to prevent an apprehended wrong occurring. Injunctions of this type are known as *quia timet* injunctions. The claimant must show that the wrong is highly probable to occur imminently before a *quia timet* injunction will be granted.³²⁹ In *Kyagulanyi Ssentamu v. The commissioner General Uganda Revenue Authority*³³⁰ court considered the instances where it is proper to grant a temporary injunction.

The advantage of interim relief is that it can be obtained *quickly*. The whole *raison d'être* of legal proceedings may disappear if the claimant has to wait until trial to get relief. Thence, no interim relief may be granted if the final relief in the same terms cannot be granted. It can be granted where the defendant is about to make some injury to the property or person of the plaintiff or threatens the plaintiff's interests. In civil matters, these may be granted at any stage of the suit.

Example

³²⁶ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³²⁷ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³²⁸ [2018] UGHCCD 70

³²⁹ *Redland Bricks v Morris* [1970] AC 652.

³³⁰ Misc. Appn. `150 of 2021 UGHCCD 16

An employee leaves her job, taking confidential lists of customers with her. There would be a breach of confidence if she disclosed the information to a third party, such as a journalist. If the old employer brings proceedings against her for breach of confidence, it would get an award of damages (or an account of profits) maybe 12 months later, once the trial has taken place. But in the period leading to trial, she could make use of the customer lists causing damage to the old employer. Damages or an account might compensate for this damage, but how accurately? Could she afford to pay such damages? The claimant's key objective is likely to be preventing use of the customer lists. The interim injunction offers a way for it to do that³³¹.

An interim injunction is therefore designed to protect the claimant's alleged rights during the delay before trial. The fact that interim injunctions are obtained before trial means that the court is usually not in a position to form an accurate view of the merits of the dispute. At an interim stage of the proceedings, the court will not have all of the relevant information available to it. Witnesses will not have given their evidence; matters calling for complex legal argument will not have been fully addressed. The lawyers may not even have been fully instructed! Instead of deciding the case on the merits, the court will look to hold what is called 'the balance of convenience' when deciding whether an interim injunction is appropriate. It will ask itself who will suffer most if an interim injunction is granted or if it is not granted. In doing so, the court often applies the test first formulated in *American Cyanamid v Ethicon*,³³² which is considered below.

Interim injunctions can be obtained very quickly and in cases of sufficient urgency without notice to the other side. Injunctions obtained without notice are often referred to as *ex parte* injunctions. The defendant to an *ex parte* injunction will have no opportunity to put its case at the initial hearing of the application. The first that the defendant will know about the grant of such an injunction will be at the time when the injunction is served on the defendant. The defendant will have an opportunity to come before the court with the claimant in order to argue that the *ex parte* injunction should be varied or discharged.³³³

Interim injunctions and the cross-undertaking in damages

Because the hearing for an interim injunction is not determinative of the merits of a dispute, it is possible that an interim injunction may be discharged at trial where the court is in a better position to decide the issue. The courts have developed the

³³¹ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³³² *American Cyanamid v Ethicon* (1975) AC 396, HL.

³³³ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.



device of the cross-undertaking in damages in order to ensure that the defendant receives compensation for loss which it suffers as a result of an interim injunction being in place where the injunction is subsequently discharged. At the time of the grant of the interim injunction, the applicant for the injunction must give an undertaking to the court to compensate the defendant for any such loss. It will also have to demonstrate to the court that it has the means to pay such compensation. In some cases, the court will require security to be given under the cross-undertaking, for example, a bank guarantee or a payment into court. The obligation to compensate is an undertaking given to the court and, if not satisfied, could amount to a contempt of court which may be punishable by fines or imprisonment.³³⁴

Liability under the cross-undertaking can be large. For example, where an interim injunction results in a publication having to be pulped and reprinted without the offending material, the cross-undertaking will cover the costs of the wasted copies of the publication and the cost of the reprints. An applicant who obtains an interim injunction in such circumstances faces a very heavy liability if the interim injunction is subsequently discharged at trial.³³⁵

The American Cyanamid test

Because the court is not usually in a position to decide the case on its merits at the hearing of the interim injunction, alternative criteria are applied to determine whether an interim injunction should be awarded. These were formulated by the House of Lords in *American Cyanamid v Ethicon*.³³⁶

In the *American Cyanamid* case, the claimants were seeking an interim injunction to prevent the defendant from infringing their patent. The House of Lords laid down the following procedure, which must generally be followed by the court when considering an application for an interim injunction:

- (a) the claimant must establish that there is a serious question to be tried. In other words, it must show that its claim is not frivolous or vexatious;
- (b) assuming that it can do so, the claimant must show that the balance of convenience favours the granting of an interim injunction. In assessing this the following sequence of questions should be considered:³³⁷

³³⁴ *ibid*

³³⁵ *ibid*

³³⁶ *American Cyanamid v Ethicon* (1975) AC 396, HL.

³³⁷ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

- will damages adequately compensate the claimant for its loss up to trial and, if so, can the defendant pay them? If yes, the interim injunction should *not* be granted;³³⁸
- if the answer is no, will damages payable under the claimant's cross undertaking adequately compensate the defendant for its loss up to trial and can the claimant pay the damages? If yes, there is a strong case for the interim injunction;³³⁹
- if there is doubt as to the adequacy of the damages above, the question turns on the balance of convenience generally. Would it cause greater hardship to make or to refuse the injunction?;³⁴⁰
- where the issue is evenly balanced the court can take into account two further factors:
 - the desirability of preserving the status quo (generally the situation as it stands immediately before the issue of the claim form or where there is delay from issue of the claim form and making the application the time when the application for an injunction is made);³⁴¹
 - the relative strengths of each party's case.³⁴²

Damages are unlikely to be an adequate remedy where the harm is irreparable, outside the scope of pecuniary compensation or would be difficult to assess, for example, damage to goodwill.

On the facts of *American Cyanamid*, the interim injunction was granted, because it was a *serious issue* whether the defendants were infringing the claimant's patent and because the balance of convenience favored the grant of the interim injunction. This was particularly because the claimant's monopoly of the market would be effectively destroyed forever if the interim injunction was refused – a loss that could not be adequately compensated in monetary terms.

Rationale behind the American Cyanamid decision

The *American Cyanamid* decision established that an application for an interim injunction should not serve as a mini trial, in which the court tries to form a view on the merits of the claim. The claimant has to show only that there is a serious question to be tried. The strength of the parties' cases is only relevant as a last

³³⁸ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³³⁹ *ibid*

³⁴⁰ *ibid*

³⁴¹ *Garden Cottage Foods v Milk Marketing Board* [1984] AC 130.

³⁴² *Ibid*



resort on the balance of convenience. In his judgment in the case, Lord Diplock observed that:

*It is no part of the court's function at this stage of the litigation to try to resolve conflicts of evidence on affidavits as to facts on which the claim of either party may ultimately depend nor to decide difficult questions of law which call for detailed argument and mature consideration. These are matters to be dealt with at trial.*³⁴³

Exceptions to American Cyanamid

The courts have recognized a number of exceptions to the *American Cyanamid* approach. The main exceptions, from the media's point of view, have been the following.

Where the application for a final injunction will not reach trial

Where the grant or refusal of an interim injunction will dispose of the case it will not be appropriate to apply *American Cyanamid*. This is because, where an injunction is granted on *American Cyanamid* principles, it would effectively be an end to the matter without the defendant being able to challenge the claimant's substantive case and dispute the matter at trial. The court is therefore likely to require the claimant to show more than just a serious issue to be tried. In essence, the claimant would have to show that on the merits it is likely to succeed at trial.

*Example – Athletes Foot Marketing Inc v Cobra Sports*³⁴⁴

This was a passing off case. The interim injunction would have required the defendant to change the name of its mail order operation. It would be unrealistic to expect it to do so and to continue the case to trial having expended time, money and effort in promoting and trading under the new name. In practice, if ordered to change the name at an interim stage, that was likely to be the end of the litigation. *American Cyanamid* was not therefore the appropriate approach.³⁴⁵

*Where it is apparent from the material before the court at the hearing of the interim injunction that a party's case is stronger than the other that should not be ignored on the balance of convenience*³⁴⁶

Whilst the court should not attempt to resolve difficult questions of law and fact at the interim hearing, any clear view the court may reach as to the relative strength

³⁴³ (1975) AC 396, HL, p 407.

³⁴⁴ *Athletes Foot Marketing Inc v Cobra Sports* (1980) RPC 343.

³⁴⁵ Sallie Spilsbury – Media Law (2000) Cavendish Publishers LTD.

³⁴⁶ *Series 5 Software v Clarke* [1996] 1 All ER 853.

of the parties' case will be relevant to the balancing stage of the *American Cyanamid* approach.

The law on granting of temporary injunctions in Uganda was well settled in the classic case of *E.L.T Kiyimba Kaggwa Versus Haji Abdu Nasser Katende*³⁴⁷ where Odoki J (as he then was) laid down the rules for granting a temporary Injunction; thus:-

The granting of a temporary injunction is an exercise of judicial discretion and the purpose of granting it is to preserve the matters in the status quo until the question to be investigated in the main suit is finally disposed of.

The conditions for the grant of the interlocutory injunction are;

- Firstly that, the applicant must show a prima facie case with a probability of success.
- Secondly, such injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages.
- Thirdly if the Court is in doubt, it would decide an application on the balance of convenience.

These principles are also cited in the recent decision of the Court of Appeal of Uganda Nasser Kiingi and Another Versus Attorney General and two others. Constitutional Application No. 29 of 2012. In that case the Court of Appeal set down what had to be proved for Court to grant a temporary Injunction.

Interim injunctions and third parties

An injunction restraining the publication of confidential and private information will bind third parties who were not parties to the injunction if they know of the injunction.³⁴⁸ The objective of such an injunction is the protection of the subject matter of the action pending trial. A third party who contravenes the injunction and so destroys or causes serious damage to the subject matter is in contempt of court if he intended to impede or prejudice the course of justice. This intention is likely to be presumed where the third party had knowledge of the injunction at the time that he breached its terms. If third parties wish to vary the terms of the injunction, they may apply to the court to do so. Similarly, they may apply to the courts to

³⁴⁷ [1985] HCB 43

³⁴⁸ *AG v Newspaper Publishing plc* [1987] 3 All ER 276.



seek guidance about whether what they intend to do will be in breach of the injunction or undertakings.

This principle was established during the course of the *Spycatcher* litigation (considered in more detail below). The Crown had obtained interim injunctions against *The Guardian* and *The Observer*, restraining the publication of confidential information. Subsequent to that injunction being granted, *The Independent*, which was not a party to the interim injunction, published a description of the confidential information. The Attorney General moved for contempt against *The Independent* for breach of the provisions of the interim injunction granted against *The Guardian* and *The Observer*. The application was based on the fact that *The Independent's* publication was bound to frustrate the purpose of the interim injunctions and to render them worthless. Notwithstanding that *The Independent* was not a party enjoined by the interim injunction on its face, the Court of Appeal held that the article was a contempt of court. In effect, the interim injunction was then extended to all media outlets within the jurisdiction of the English court.

Freedom of expression and the rule against prior restraint

Interim injunctions are an example of what is known as *prior restraint*. Prior restraint is a form of censorship. It operates to prevent publication. For this reason, interim injunctions against the media are often referred to as gagging orders.

Where the defendant is a member of the media, the grant of an interim injunction may be used to stifle the discussion of matters which are of legitimate public concern. This raises the question of whether interim injunctions should ever be awarded in matters involving freedom of expression and if they should, whether the guidelines laid down in *American Cyanamid* are the appropriate criteria to apply. This is particularly relevant because, as we have seen, an injunction against one media entity will be binding on other media entities.

There is a principle against prior restraint in English law. It was first formally set out in *Blackstone's Commentaries*, published in 1830. It provides that the media should not be restrained in advance from publishing whatever it thinks right to publish. But it publishes at its own risk. As Lord Denning observed, in *Schering v Falkman*:³⁴⁹

Afterwards – after the publication – if the press has done anything unlawful – it can be dealt with by the courts. If it should offend – by interfering with the course of justice – it can be punished in proceedings for contempt of court. If it should damage the reputation of innocent people by telling

³⁴⁹ *Schering Chemicals v Falkman* [1982] QB 1; [1981] 2 WLR 848; [1981] 2 All ER 321, CA.

untruths or making unfair comment, it may be made liable in damages. But always afterwards. Never beforehand. Never by previous restraint.

In conclusion, where there is a wrong, there must be a remedy. even equity does not suffer a wrong to go without a remedy. Victims of abuse to their rights of freedom of expression and speech can always approach courts for a remedy and seek court orders as discussed above. However, it is always imperative to note that the right to freedom of expression has a limitation in the Ugandan constitution³⁵⁰.

³⁵⁰ Article 43 of the 1995 constitution of the republic of uganda



Chapter Six



SOCIAL MEDIA AND THE LAW IN UGANDA

The effect of internet closure on the rights of speech, expression and right to education.

“what is important and should be protected is the fact that “everything worth saying shall be said”³⁵¹”

Abstract.

In an ever-increasingly global age, the world has become dependent on the internet for communication purposes and transacting, the internet has become a conduit through which people realize their rights. The internet provides enhanced connectivity of persons and offers a platform for free expression. The internet has further become a conduit through which individuals can realize the right to Education. However a number of governments all over the world that feel threatened by the difficulty of regulating the internet have resorted to shutting down entire communication systems leaving their citizens stranded and frustrated. It is unquestionable that Governments have been overtaken by technological developments which have been particularly rapid in the 21st Century. Therefore, in situations where legislation fails to regulate modern communication structures, this leads to undesirable situations where governments to rely on outdated legislation and shutdown orders to control the internet. So many questions become

³⁵¹ Meiklejohn 1948: 25.

apparent amidst such a discussion and one of them is *whether internet shutdowns are legal*. This is to be answered keeping in mind that article 29 of the 1995 constitution provides the *right to freedom of speech and expression* and for purposes of this covid-19 era, the right to education.

It is worth forever remembering that by March 2020, the world was hit by a global pandemic which caused great shutdown and changes on all sectors of world economies in addition to serious rapid depopulation through death of thousands of people in almost every country of the world. In retaliation, preventive measures such as washing hands, wearing face masks, curfew, lockdown and social distancing were adopted in what is termed “standard operating procedures” (SOPs). In keeping social distance, large crowds had to be avoided and so banned by government and this was achieved through closing among others sectors, schools. As a result of this, online learning was preferred. Online learning is legally backed by a right to education under **article 30 of the 1995 constitution**.

Online learning is where students use internet provisions by using for instance mobile applications such as zoom conferencing. Researching using google is yet another form through which online education is effected. The challenge is that as internet freedom stretches all over the world, the repercussions are visible in some countries attempting to legislate limitations to such internet freedom which unintentionally or not, have a negative effect of restricting internet freedom. In the worst of cases being experienced in Uganda, we’ve seen and heard of arbitrary arrest and detention of not only journalists but also any members of the public because of their commenting and posting on social media with such energy to have them perceived as anti-government. Case scenarios of these are example of Rukirabashajja who often posted statements critical to the ruling government. Already such scenarios raise a question of what are my rights and their extent.

I have also noted with concern on how in order for rights to be limited such limit should be proportional, provided for in the law and should seek to serve a legitimate aim. More so, this analyzes the Ugandan constitutional provisions on the right to Education and how they reverberate with international principles on the right to Education. An examination of the scope of government’s powers in respect of the *Interception of Communications Act* in order to determine if there is in place a legal framework that authorizes the shutting down of the Internet is



conducted. In line with this is a consideration of the possible justifications for shutting down communications which include the need for the preservation of the national security. Encompassed too, are perspectives from the jurisdiction of Pakistan in order to obtain insight into the justifiability of internet shutdowns in a modern democratic society. It is arrived at a conclusion that internet shutdowns have no place in Ugandan law as there is no legislation that so provides for such a phenomenon. Furthermore, the justifiability of shutting down communications for whole communities is a drastic and draconian move. Recommendations are thereby proffered to the government on how best it can maintain national security without depriving entire populations of their ability to communicate freely.

Introduction

Rapid technological advancements have led to dependence on the internet for communications globally. Africa and Uganda as a nation have not been the exception with the internet being a basic need for communications. The rise in Internet shutdowns comes as an increasing number of Africans are communicating via the Internet.³⁵² Internet shutdowns are defined as intentional disconnections of digital communications by government authorities.³⁵³ Such shutdowns take the form of frequently shutting down the Internet and mobile phone services as well sabotaging the work Internet Service Providers (ISPs). Uganda just like many other countries like Egypt, India, and Zimbabwe has not deviated from the increasingly rampant norm of shutting down communications in order to suffocate protests most especially during the election time however this has been achieved at the expense of the right to Education.

Yochai Benkler (2006)³⁵⁴ has remarked thus; “A series of changes in the technologies, economic organization, and social practices of production in this environment has created new opportunities for how we make and exchange information, knowledge, and culture. These changes have increased the role of nonmarket and nonproprietary production, both by individuals alone and by cooperative efforts in a wide range of loosely or tightly woven collaborations.

³⁵² T Mukeredzi, ‘Uproar Over Internet Shutdowns: Governments Cite Incitements to Violence, Exam cheating and Hate Speech, 2017 Vol 10, “Africology: The Journal of Pan African Studies

³⁵³ B. Wagner, “Understanding Internet Shutdowns: A Case from Pakistan,” (2018) International Journal of Communication 12.

³⁵⁴ Yochai Benkler -The Wealth of Networks

Together, they hint at the emergence of a new information environment, one in which individuals are free to take amore active role than was possible in the industrial information economy of the twentieth century. This new freedom holds great practical promise: as a dimension of individual freedom; as a platform for better democratic participation; as a medium to foster a more critical and self-reflective culture; and, in an increasingly information-dependent global economy, as a mechanism to achieve improvements in human development everywhere.”

It is no doubt that the Internet, social media, and search engines have drastically revolutionized the way we live. Many facets of economic and social activity are now affected by the Internet. The technology that began as a simple network connecting a handful of universities in the 1960s has grown massively to become a fundamental and integral part of our social and economic lives.³⁵⁵ According to the latest statistics regarding Internet usage, at the present moment there approximately 3.5 billion people with internet connectivity, which constitutes about forty per cent of the world population, in contrast to just 1 per cent in 1995.³⁵⁶ Such statistics reflect that many people are becoming connected and such persons depend on mobile and internet services for connectivity.³⁵⁷

Telecommunications have become a vital and indispensable aspect of the people’s lives.³⁵⁸ Internet shutdowns or call the E-curfews that are instigated by the government have become upsetting inevitably defeating the purpose government shuts down communications in that they end up endangering the right to Education which the government in most cases is seeking to protect.³⁵⁹The impact of internet shutdowns on human rights on the right to Education cannot be played down.

On Wednesday 13 January 2021, the eve of Uganda’s general elections, Uganda’s communications commission ordered all telecoms operators and internet

³⁵⁵ Rajat, *etal*, Anatomy of INTERNET BLACKOUT: Measuring the Economic Impact of Internet shutdowns, April 2018, 14

³⁵⁶ B. Wagner, “Understanding Internet Shutdowns: A Case from Pakistan,” (2018) International Journal of Communication 12

³⁵⁷ *Ibid*

³⁵⁸ *Ibid*

³⁵⁹ L. Purdon & A Ashraf & B Wagner, “Security v Access: The Impact of Mobile Network Shutdown, Case : Telenor, Pakistan,” Internet Policy Observatory Center for Global Communication Studies.



service providers in the country to suspend all internet gateways until further notice. it is imperative to note that 42% of Ugandans are internet users and 2.5 million Ugandans are active on social media and of these, 97% access social media via mobile tool devices.³⁶⁰The legality of this action by the government to shut down the internet is still a burning question that requires research into. During the internet shutdown period, multiple human rights violations occurred. Despite the restoration of normal service of the internet, it is fundamental to explore the question of the internet disruptions due to the possibility of recurrence.

The disruption of telecommunications services during this period has already been the part of court proceedings in the matter between *East African Law society v Attorney General & EAC Secretary General*, alleging that the restrictions and shutdowns are unlawful and they violate the East African Community Treaty, international human rights law and the domestic laws. Furthermore, such restrictions limit, among others, the peoples' rights to internet access, freedom of access to information, freedom of speech and expression, freedom of the press, the right to freely participate in the affairs of one's government, right to education, freedom of association, freedom of assembly, the right to self-determination and economic rights.³⁶¹ However the case is yet to get the merits of the legality or justifiability of internet shutdowns in Uganda. This part seeks to clarify the accurate legal position.

Access to the internet in the modern day is intrinsic to the fulfillment and realization of fundamental rights and freedoms as such the right to education. By shutting down the internet the government of Uganda through its regulatory body Uganda Communication Commission is inevitably curtailing human rights. The negative impact of internet shutdowns is felt across multiple sectors with the economy being the hardest hit. It is essential to analyze the legality of internet shutdowns in order to avoid possibilities of rights being infringed in broad daylight by the state apparatus.

Internet Shutdowns constitute a limitation on the right to Education. The legality of internet shutdowns has been brought to question considering it is trite that such limitation should be well defined and set out in existing legislations in accordance with principles of rule of law. Unfortunately, in practice governments

³⁶⁰ APC, Uganda 2021 General Elections, The internet shutdown and its ripple effects, 2021

³⁶¹ East African Law Society v Attorney General & EAC Secretary General

have been overtaken by developments in the technological sector which has resulted in arbitrary limitation of rights through the use of archaic legislation. If this problem is not resolved, not only is a bad precedent set but there is danger of recurrence and a thus continuous violation of the right to education will be manifested. It is fundamental that the legality of internet shutdowns be explored in order to allow for the certainty of the law and promote fundamental rights and freedoms.

In implementing internet shutdowns, governments inevitably trample fundamental human rights and freedoms. The right to education is one such core right that is violated during communication blackouts. No human right except right to life itself is more fundamental than the right to education; a person's freedom of learning is part of her or his freedom of thought which i.e. even more basic than freedom of speech. If we take from someone the right to decide what he or she will to be curious about, we destroys that persons freedom of thought, we say- in effect you must think not about what interest you or concerns you but about what interests and concerns us.

As well as being a right itself, the right to education is also an enabling right; education creates the voice through which other rights can be claimed and protected. The right to education occupies an important place in human rights and is indispensable for the exercise of all human rights and for development. No other right can be exercised by an individual not until they have received a certain minimum level of education.³⁶² There are various conventions and agreements signed by many countries all over the world with an aim of protecting and preserving the right to education.

Major Provisions at International Level on the Right to Education

Many international human rights instruments make provisions for the protection of the right to education. As a human right, the right to education belongs to all human beings regardless of nationality or citizenship. Therefore, everybody in society is equally entitled to education without discrimination. It is interesting to note that the European Convention for the Protection of Human

³⁶² UNESCO, The Right to Education, 2011



Rights in its Additional Protocol 1 under article 2 simply states that no person shall be denied the right to education.³⁶³ The right as it is presented is not a positive right, which means the state does not have any positive obligation to provide or subsidize a particular type of education unlike the American Convention on Human Rights which makes a more elaborate provision for the right to education in its Additional Protocol. Article 13 of the protocol places an obligation on the state parties to recognize the right to education as a positive right.

Education is guaranteed as a human right in numerous human rights treaties, chiefly the Convention against Discrimination in Education,³⁶⁴ the International Covenant on Economic, Social and Cultural Rights (1966, ICESCR),³⁶⁵ the Convention on the Elimination of All Forms of Discrimination Against Women 1979, (CEDAW), and the Convention on the Rights of the Child, 1989 (CRC)

The preamble to ICESCR states that the human rights contained therein: ‘derive from the inherent dignity of the human person.’ The Committee on the Rights of the Child, which oversees the implementation of the CRC, states that the purpose of education is to: ‘promote, support and protect the core value of the Convention: the human dignity innate in every child and his or her equal and inalienable rights.’³⁶⁶ Because of this focus on dignity, the right to education necessarily emphasizes the importance of the individual, as all human rights do.

Universal Declaration of Human Rights (UDHR)

Human rights first gained international recognition in 1948 when the UDHR guaranteed the inalienable and inviolable civil and political rights as well as social, economic and cultural rights to which people everywhere are entitled.³⁶⁷ The UDHR however has no legal binding force but has undeniable moral force

³⁶³ Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No 11 Paris 20, III, 1952, European Treaty Series, No 009

³⁶⁴ UNESCO Convention against Discrimination in Education, 1960 429 UNTS 93 (CADE)

³⁶⁵ International Convention on social Economic, Social and Cultural rights 1966

³⁶⁶ UN Committee on the Rights of a Child, 2001, General Comment 1, article 29(1): The aims of Education, para 1

³⁶⁷ The Universal Declaration of Human Rights, 1948

which provides practical rules of conduct to guide the action of state parties.³⁶⁸ Included in the range of rights provided by the UDHR is the right to education.

Article 26(1) of the UDHR provides that everyone has the right to education, that education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit. According to the declaration, everyone is entitled to the right to education and this implies that the government has responsibility according to its available resources to ensure that everyone has access to education.

The purpose of education is provided for under Article 26(2) and it is to promote the complete development of the person that will provide him or her opportunity to demand other rights. Thus the right to education is fundamental in empowering the individual to claim and enjoy not only social and economic rights but also civil and political rights. Further the preamble reaffirms the commitment of state parties in respecting, promoting and protecting the fundamental rights.

The UDHR, although not legally-binding in the sense of being a treaty, carries great political and normative weight. Its normative value is reflected in the fact that it has inspired hundreds of international, regional, and national human rights laws and instruments. As of 2018, the right to education is guaranteed in at least 48 international and regional instruments.

International Convention on Economic Social and Cultural Rights (ICESCR)

The International Convention on Economic Social and cultural Rights together with the UDHR and the International Convention on Civil and Political Rights (ICCPR) and its optional Protocols form part of the International Bill of Rights, which constitutes the United Nations major framework for Human Rights.

Article 13 (f) the International Convention on Economic Social and cultural rights is the single most comprehensive provision on the right to education in

³⁶⁸ OHCHR. Universal Human Rights Instruments, 2016



international human rights law. It states that all parties to the covenant recognize the right of everyone to education, that they agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They also further agree that education shall enable all persons to participate effectively in a free society.³⁶⁹

Like the UDHR, the ICESCR declares that Primary education shall be free and compulsory to all.³⁷⁰ in General Comment no 13, it is provide that education shall be accessible, acceptable and adaptable for all. Education as an empowerment right is the primary vehicle by which economically and socially marginalized people can boost themselves out of poverty and get the means to participate fully in their communities. The ICESCR is a treaty and therefore has legally binding effect on member countries that have ratified it.

Furthermore, Article 2 (2) of ICESCR guarantees nondiscrimination with respect to the human rights contained with the treaty. This means that Article 13 read with Article 2 (2) places obligations on States parties to guarantee the right to education free from discrimination.

The Convention on the Rights of the Child (1989, CRC).

this is one of the most widely ratified treaties of all time (every state has ratified it except the United States). It applies to children, which the CRC defines as everyone under the age of 18. Article 28 of the CRC recognizes education as a legal right for every child on the basis of equal opportunity. The content of Article 28 largely corresponds to the content of Article 13 of ICESCR with respects to obligations related to levels of education, free compulsory primary education for all,³⁷¹ progressive free secondary education, including vocational and technical education, that should in any case be available and accessible to all. It further stresses accessibility to higher education on the basis of capacity and available and accessible educational and vocational information and guidance.³⁷²

³⁶⁹ Article 13 of the International Convention on Economic, Social and Cultural Rights

³⁷⁰ Article 13(2) of the International Convention on Economic, Social and Cultural Rights

³⁷¹ Article 28 of the CRC

³⁷² Article 28(1)(d) of the CRC

The Convention on the Elimination of All Forms of Discrimination against Women (1979, CEDAW) ³⁷³

It interprets and applies the right to education in a way that considers the specific needs and circumstances of women and girls. Article 10 of CEDAW is the most comprehensive provision on women's and girls' right to education in international law. It sets forth the normative content in relation to the elimination of discrimination against women and the ensuring of equal rights with men in the field of education

Article 24 of the **Convention on the Rights of Persons with Disabilities, 2006** recognizes the right of people with disabilities to education, without discrimination and on the basis of equal opportunity, the state having the obligation to ensure an inclusive education system at all levels, and lifelong learning.³⁷⁴

The International Covenant on Civil and Political Rights (1966, ICCPR).

although it does not have a comprehensive right to education clause, guarantees educational freedom under Article 18(4) and has an autonomous non-discrimination clause³⁷⁵ which applies to any field regulated and protected by public authorities. The Human Rights Committee has explained that when legislation is adopted by a State party, it must comply with the requirement of Article 26 that its content should not be discriminatory.

Provisions at Regional Level on the Right to Education

The African human rights framework emanates mainly from the African Union (AU), formerly the Organization of African Unity. The African Charter on Human and Peoples' Rights (1981, Banjul Charter) contains a brief right to

³⁷³ CEDAW

³⁷⁴ Article 24 of the Convention on the Rights of people with Disabilities

³⁷⁵ Article 26 of ICCPR



education³⁷⁶, together with an overarching prohibition on discrimination under Article 2. Article 25 provides for human rights education.

The **African Charter on the Rights and Welfare of the Child (1990)**. sets out a much broader and more comprehensive right to education than that provided for in the African Charter on Human and Peoples' Rights. Article 11 states that every child shall have the right to an education and prescribes measures that States must undertake as part of their efforts to achieve the full realization of this right.³⁷⁷

Further, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2003) aims to eliminate discrimination against women and to ensure the protection of the rights of women as stipulated in international declarations and conventions. Article 12 provides for their right to education and training on the basis of the principles of non-discrimination and equal opportunity.³⁷⁸

In addition the **African Youth Charter (2006)** is the first legal framework in Africa to support national policies, programs and action in favour of youth development. It refers to the rights, freedoms and duties of young people in Africa, including the right to education. Article 13 recognizes the right of every young person to education of good quality. It refers to multiple forms of education including non-formal and informal.³⁷⁹

The Convention for the Protection and Assistance of Internally Displaced Persons in Africa (2009, Kampala Convention) guarantees, under Article 9(2)(b), that internally displaced persons be provided with adequate humanitarian assistance including education.³⁸⁰

Constitutional Protection of the Right to Education

The Ugandan constitution is the supreme law of the country and it is enforced to everybody, and even the state. Article XIV provides that the State shall

³⁷⁶ Article 17 of the Banjul Charter

³⁷⁷ Article 11 of African Charter on the Rights and welfare of the Child

³⁷⁸ Article 12 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa

³⁷⁹ African Youth Charter 2006

³⁸⁰ The Convention for the Protection and assistance of Internally Displaced Persons in Africa

endeavor to fulfill the fundamental rights of all Ugandans to social justice and economic development and shall, in particular, ensure that: (a) all developmental efforts are directed at ensuring the maximum social and cultural well-being of the people; and (b) all Ugandans enjoy rights and opportunities and access to education, health services, clean and safe water, work, decent shelter, adequate clothing, food security and pension and retirement benefits.³⁸¹

Furthermore, Article XVIII provides for educational objectives and it provides that the State shall promote free and compulsory basic education.³⁸² And that the State shall take appropriate measures to afford every citizen equal opportunity to attain the highest educational standard possible.

Again, the Constitution under Article 30 provides for right to education and all persons have a right to education.³⁸³ Still, Education (pre-primary, primary and post-primary) Act, 2008 is the legislative basis governing education provision in Uganda. It states that “basic education shall be provided and enjoyed as a right by all persons. The University and Other Tertiary Institutions Act, 2001, govern tertiary education.

Justification for Internet Shutdowns

States on occasion face existential threats to their wellbeing that could in instances be classified as threats to the national security of the state and Uganda is no exception. When the internet was shut down in Uganda in January 2021 the government’s argument was that social media platforms were being utilized to incite violence and destabilize the Constitutional order of the country. It was the Governments assertion that the internet was being used to mobilize citizens into an organized violent protest that was resulting in the destruction of both private and state property. While the state is clearly allowed to limit rights in the interests of national security, it is not empowered to just limit rights where there is no established legal basis. The state’s conduct is confined to the four corners of its legal framework (constitution).

³⁸¹ Article XVI of the 1995 constitution of Uganda

³⁸² Article XVIII of the 1995 Constitution of Uganda

³⁸³ Article 30 of the 1995 Constitution of Uganda



While international law recognizes that there are threats which a nation may face which are critical such as national security wherein the integrity of the nation is threatened which justify the departure from the norm. The ICCPR, however, makes it conditional upon there being a public emergency that has been publicly declared.³⁸⁴ Article 4 of the ICCPR states that *“In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.”*

The Human Rights Committee has further explained this to mean that there should be a situation that threatens the life of the state and the state must have declared a state of public emergency.³⁸⁵ In the absence of these prerequisites, the state cannot escape its obligations under the ICCPR. Accordingly, Uganda as a nation cannot justify internet shutdowns under the guise there was a situation that threatened the life of the nation without there have been declared a state of emergency.³⁸⁶ Therefore, this principle consolidates the rule of legality for all restrictions on fundamental human rights.

Accordingly, while restrictions on human rights are permissible on the grounds of national security and preservation of public order, the restrictions must be narrow, proportionate, and not a defeat to the ability to exercise one’s rights altogether. National security is a paramount aspect of the preservation of the state. The state, however, should at all times operate within the confines of the law. It is against this benchmark that the conduct of the Ugandan government is measured. While in 2016 when the first recorded shutdown was implemented there was no violence or any threats of it the justifiability of the internet shutdown at the time becomes questionable.

The 2021 internet shutdown is examined against this yardstick that while events that occurred might have constituted a threat to national security the key

³⁸⁴ Article 4 of the ICCPR

³⁸⁵ R Burchill, “When does an emergency threaten the life of the Nation? Derogations from Human Rights obligations and the war on International Terrorism” (2005)

³⁸⁶ General Comment 34 CCPR/C/GC/34

question is still relevant of whether internet shutdowns in Uganda are prescribed by law, are justifiable in a democratic society and whether they were implemented with the protection of a legitimate national interest in mind.

Impact of Internet Shutdown on Education

The internet is a conduit for the exercise of other rights and not just the right to education. The Internet is a gateway for education, freedom of expression, assembly and association, health and access to information for closely four billion people living in every nation on the planet.³⁸⁷ The Internet has also become a channel for delivering crucial public services from states to their citizens.³⁸⁸ Conversely, the online world is increasingly being censored and access to information restricted through throttling or blocking.³⁸⁹ This has the effect of hampering the realization of many human rights that have become contingent on the availability of the internet's infrastructure.

With the proliferation of internet access across the globe, many states have scrambled for ways to gain control over the digital space. The shutdown of Internet services in Arab countries in addition to other African nations as well as online filtering across the globe has demonstrated how states are attempting to obtain influence over the new virtual landscapes and to expand territorial law into the previously non-territorial network.³⁹⁰ State actor actions have largely been reactionary with governments' legislation being outdated and ill-equipped to deal with the rapidly evolving technological landscape. Governments have accordingly made use of archaic legal instruments with vast unjustified repercussions on fundamental rights and freedoms notably the right to education.

³⁸⁷ ARTICLE 19, Public Interest, Private Infrastructure; An analysis of the barriers and drivers for adopting human rights standards in the Internet Infrastructure industry, 2018

³⁸⁸ A Hintz, "Challenging the Digital Gatekeepers: International Policy Initiatives for Free Expression." *Journal of Information Policy* 2 (2012)

³⁸⁹ ARTICLE 19, Public Interest, Private Infrastructure; An analysis of the barriers and drivers for adopting human rights standards in the Internet Infrastructure industry, 2018

³⁹⁰ A Hintz, "Challenging the Digital Gatekeepers: International Policy Initiatives for Free Expression." *Journal of Information Policy* 2 (2012)



Curtailment and disruptions of the internet frequently target and/or restrict freedoms of association and peaceful assembly.³⁹¹ Internet shutdown incidents are often vindicated by fear of unverified rumors and the capacity of online debate to incite violent protest in socially and politically delicate moments.³⁹² Internet shutdowns lack refinement with no targeting system and can be labelled a weapon of mass destruction as their impact is felt by the entire cross-section of the population regardless of political affiliation including the government itself.³⁹³

Internet shutdowns are a blunt instrument for interrupting the spread of information online.³⁹⁴ By disrupting communication services governments inevitably deny entire populations communication access tools during the time when population so requires it. Connectivity is necessary for citizens to dispel rumours, check in with family members, or avoid dangerous areas.

The entire population is deprived of their voice with numerous violations occurring during periods of blackout. In actuality, internet shutdowns are the result of ineffective policymaking. Governments have failed to implement strategies to counter online manipulation which measures place disproportionate limitations on the right to education and access to information.³⁹⁵ The negative effect on education is immense and as such internet shutdowns only serve to do more damage than good.

That is what happened to Uganda Christian University (UCU) students who were ing remotely online in mid-January 2021. The Ugandan government claimed a need to shut down the internet for reasons related to the January. 14, 2021, general elections. According to the government spokesperson, Ofwono Opondo, the Internet shutdown was intended for national security reasons and to curb sensationalism and hate speech during and after the elections that included balloting for President.

³⁹¹ *Ibid*

³⁹² J Rydzak, *Disconnected: A Human Rights-Based Approach to Network Disruptions: For the Global network Initiative 9*

³⁹³ *Ibid*

³⁹⁴ A Shahbaz *The Rise of Digital Authoritarianism Freedom on The Net 2018 Freedom House* available at www.freedomhouse.org.

³⁹⁵ *Ibid*

As a result, the internet shutdown forced UCU to extend examinations deadlines and halt vital institutional activities as absence of connectivity fractured cyber communication between the University administration and students. Before the shutdown, online examinations were underway for students who had been ing remotely in the institution nationally acclaimed for her effective cyber-based learning system. The internet shutdown forced students living in rural areas to travel back to the main campus in Mukono to seek clarity amidst the internet crisis.

Furthermore, the examinations, which had to be emailed to each of the students, were delayed because email, social media and other online-communication had been cut off. Both students and members of staff were frustrated at the occurrence of the nearly one-week long disconnection of the internet. *“Some of us had coursework submission deadlines to beat but we could not because the internet was off,”* said Matthias Tumuhairwe, a third-year student of Bachelors of Science in Accounting and Finance, who failed to submit an online course work as required on January 15.

According to the office of the Deputy Vice Chancellor for Academic Affairs, some parents were also hindered from making last-minute tuition payments through UCU’s online banking platforms such as Flexi pay. UCU’s usually active Twitter handle and Facebook page, managed by the UCU Communication and Marketing Department, were unable to convey information. The Department staff members were unable to load text, photos or videos. *“Ever since the internet shutdown, we have not been able to keep in touch with our current and prospective stakeholders, including support of recruitment of students, now that it is done digitally,”* said Marketing and Communication spokesperson, Frank Obonyo. *“I don’t know how many potential applicants we have lost because we disappeared from cyber space.”*

Education and research

It should e noted that “the impact of internet censorship goes beyond the negative effect on the performance of virtual universities and e-learning initiatives, it also harms the educational and research programmes of traditional universities,” said Béchir Allouch, professor of technology at the Virtual University of Tunis and president of the Tunisian Association for E-Learning. Facilitating internet access to content and devices contributes not only to providing great opportunities for



higher education policy-makers to improve education quality for individual learners as well as developing national economic and social welfare but also in achieving education for all, the fulfillment of the Sustainable Development Agenda and setting up an information society that meets the needs of all,

More still, Internet censorship also affects academic freedom granted to academics in the practice of teaching, research and supervision, in accordance with the ethical rules and the parameters admitted by international academic circles. The freedom to use the internet, social networks and other means of distance communication by university staff and students in carrying out their educational and research duties must be guaranteed for any academic citizen.

Academic freedom

Deciding to suspend the internet connection or temporarily close access to a higher education institution or a university is an infringement of a fundamental right which academic freedom is, in part, an extension of. In Tunisia, several academic gains were made after the 2011 Jasmine Revolution, including the elimination of cyber censure which is fundamental for all academic citizens and not only those who are concerned with e-learning. Students undertaking virtual or online courses will be unable to access reading materials, interact with their lecturers and colleagues, and conduct research, among other activities, as compared with their counterparts in countries with reliable and free internet access. Some students are even forced to defer or drop courses because of internet shutdowns. Falling back on internet shutdowns or network disruptions during critical moments is like shooting oneself in the foot.

Internet and Social Media

Freedom of speech and information are first-generation essential rights that were envisaged and protected for the first time in the early times of the Enlightenment. Since then, they have been conceived by constitutional texts as sine qua non founding conditions for modern states.³⁹⁶ Article XI of the French Declaration of the Rights of Man and of the Citizen of 1789, for example, states that “*The free communication of ideas and opinions is one of the most precious of the rights of*

³⁹⁶ Monroe E. Price, Stefaan G. Verhulst and Libby Morgan -Routledge Handbook of Media Law

man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.”

The very famous wording of article XVI establishes very clearly that “*A society in which the observance of the law is not assured*” ... *has no constitution at all.*³⁹⁷

This first recognition of what is broadly known in constitutional law as freedom of expression includes two major trends that form the bedrock on which further constitutional provisions in this area are built: first, that freedom of expression is a fundamental essential right, directly linked to a citizen’s capacity to live and participate within a modern society; and second, that the exercise of these rights by citizens should be adequately guaranteed by the state.

Social media means websites that enable users to create and share content of to participate in social networking. Information across social media platform is most often dominated by social media influencers who in most cases are not trained media professionals or journalist, yet have a big following and reliance upon for giving news feed. A social media influencer is some one who has established credibility in a specific industry, has access to a huge audience and can persuade others to act based on their recommendations. An example of the leading social media influencers as of 2020 is Cristiano Ronaldo who broke a 200 million Instagram followers in January 2020. Examples of social media platforms include Facebook, Twitter, Instagram, among others.

Some individuals have expressed the opinion that regular users of the internet and social media were aiding their educational activities at their respective schools. Joy (not real name) in the semi structured interviews discussion revealed:

“The internet and social media have completely changed the way we play our role as lecturers in tertiary institutions. I use both [internet and social media] to research and prepare for my lesson. I am teaching one of the new subjects introduced by the new curriculum and there are no textbooks at my school. So I have to constantly research teaching material because all I have is the syllabus.”

Atwine (not real name) concurred:

³⁹⁷³⁹⁷ English translation from http://avalon.law.yale.edu/18th_century/rightsof.asp

Most of the textbooks at my school are old and outdated. They do not cover most of the topics which were put on the reading lists and course outlines. I have come to depend on the internet and social media to research and prepare notes for different course units. During a lecture if I have question I can always count on colleagues in my WhatsApp groups to rescue me with answers.

Brian (not real name) added:

In the 21st century there is no need to spend long hours in the library or reading textbooks [hard copies]. Information is just a click away when you are using the internet. I do all my research on the internet.

Students and lecturers in the different learning institutions in Uganda use the internet and social media for research purposes. It is worth noting that the introduction of a new curriculum and new courses in an environment with textbook shortages forced students and lecturers to rely on the internet and social media for their research. It is important to note that there is a tendency to introduce new subject areas without the requisite textbooks, equipment and expertise. Essentially, textbook constraints continue to affect education in Uganda and this was amplified during the internet shutdown.

In addition, it has been revealed that most people use the internet and social media for communication purposes in schools in Uganda. Ruth (not real name) revealed:

“Social media has changed communication in schools greatly. Staff notices and communications are now being shared via WhatsApp groups. Our school board no longer writes memos or pin notices on the notice board but sends everything via WhatsApp.” In a recent ³⁹⁸, a one Maureen

Maureen (not real name) stated: *“I use social media to communicate with my learners.*

Instead of my learners waiting to ask for help during office hours they can seek assistance on their assignments via a WhatsApp platform that I created for my

³⁹⁸ Kidder Yosiah - E-Curfews: Examining the impact of internet obstructions on the right to education in Uganda (LLB) NKumba University

class. I can also communicate with my colleagues in other universities and law firms on subject area issues.”

The above verbatim narrations by the participants reflect the centrality of social media in their communications among teachers. WhatsApp was used for communication between the school administration and lecturers, amongst lecturers, between lecturers and learners, between students and students. Therefore, it was noted that social media has virtually replaced most traditional forms of communication within the education system in Uganda such as letters, memos and notice boards.

An interaction with some students within the lockdown revealed that the main casualty of the internet shutdown was communication and that there was a disruption of various communication forms due to the internet shutdown. Communication between lecturers as well as communication with school administration at the same time was hampered during the internet shutdown. Thus, i argue that the internet shutdown had the unintended consequence of disrupting school administration. Additionally, communication between students was also disrupted and this inhibited the flow of information from one end to the other.

Moreover, being not so common a thing in Uganda (online ing), most lecturers failed to communicate and provide support to their learners during the duration of the shutdown. Resultantly, there was a wedge between the teachers and their learners due to the internet shutdown.

In conclusion therefore, this analysis is of great significance to the world today most especially with the onset of increasing globalization through enhanced interconnectedness. Authoritarian governments, especially in Africa, have resorted to shutting down the internet to stifle dissent and protests under the pretext of national security. Since 2016 internet shutdowns have been on the rise, with Uganda not being an exception to the norm. This analysis is therefore critical to research into the legality of internet shutdowns. The analysis into the legality of internet shutdowns is essential and important to all citizens of Uganda who are the victims of internet shutdowns. The absurdity arises that internet shutdowns are used as an opportunity by governments to stamp down dissent as was in the case of Uganda. It is therefore fundamental for the citizen to be aware of the correct legal position to avoid recurrence of similar incidences.

Evaluation of the Law and Policy on Internet Obstructions

It is common cause that the net effect of internet shutdowns is devastating to both the economy and to human rights. It is essential that the Government should review and assess its policy of resorting to internet shutdowns. The blanket effect of internet shutdowns is unacceptable and detrimental to the country's international image. It is essential for the government to examine whether shutting down the internet is the most effective response to threats of national security or any other threat.

The use of internet shutdowns usually amounts to use of a hammer where there is need of a scalpel. The Ugandan government should explore targeted responses to security threats rather than rendering the whole nation incommunicado. Accordingly, the government should engage telecommunications operators, civil society and the citizens in order to obtain an alternative to the shutting down of communications

Ensuring Continued Accessibility to Emergency Services

Loss of access to emergency services is an inevitable consequence of the loss of internet connectivity and telecommunications. There is a need to ensure that connectivity to emergency services remains available even during internet shutdowns. If the government is to enact specific legislation that authorizes internet shutdowns, there is need a need to ensure accessibility to critical services otherwise the resultant effect would cause an even more serious threat to human life than the one seeking to be quelled.

Enacting Legislation that provides for Internet Shutdowns

If the Ugandan government wants to continue making use of internet shutdowns, there should be an enactment of legislation that provides expressly and explicitly for the shutdown and suspension of the internet in a clear, concise and transparent manner. The government is duty-bound to ensure that there clear-cut legislation to ensure that citizens regulate their conduct. This is a fundamental rule of law principle. By enacting legislation, the government ensures that there is respect for the rule of law.

The legislation should be premised on Uganda's human rights obligations in order to ensure a balance between national security concerns and fundamental

rights and obligations such as the right to education and freedom to access information. Shutting down the internet is ordinarily under the purview of the executive and in order to ensure continued respect for the separation of powers doctrine and a balance of power executive order. It is paramount that any law that authorizes the shutting down of the internet should be subject to parliamentary review and judicial oversight.

Enhancing Oversight Mechanisms

There is a need for the development of an oversight mechanism or judicial review system that looks at the conduct of government and its security agencies that are responsible for instituting internet shutdown mechanisms. This is in order to enhance transparency and curb the abuse of state power. This ensures that there is accountability as internet shutdowns would become a matter of public record and information made available. When state action is shrouded in secrecy it is manifestly difficult to assess the legality of conduct as there would be no way to test whether such action is necessary or proportional.

Judicial oversight ensures internet shutdowns be reviewed before or after their occurrence to ensure compliance with the law and whether human rights concerns have been addressed. The oversight body can be empowered with a reporting mechanism to ensure that the public confidence in the government is not undermined. This again is consistent with the rule of law. The lack of an oversight mechanism would render the citizens vulnerable to state exploitation of their rights with no recourse.

Impact Of Social Media On Traditional Journalism.

Introduction

The advent of social media has a blessing towards the traditional forms of journalism in terms of speed, ease of access, system of user interface and interaction, ease of information dissemination and gathering. However, this comes with side implications on the probability of online crime in form of defamation, among others. the onset of social media brings a realization of the need to undergo



collective recapitulation on ethical, professional principles of journalism. To media houses, it has put a necessity of caution to ensure verification of unsubstantiated claims made using their social media platforms. It would be unethical on the part of traditional media institutions not to disclose to their audiences the incompleteness of information received via social media. The credibility of such media institutions, if established to disseminate falsehoods in the heat of scoops, would suffer.

The social media Effect

The concept of ‘social media’ can best be appreciated within the framework of what Spanish sociologist Manuel Castells called the ‘network society’ (1996). In his trilogy entitled *The Information Age*, Castells explains in detail how, because of the Internet and the World Wide Web, information had in the early 1990s become a raw material. He details how the emergence of information and communication technologies (ICTs) was impacting on every aspect of life. He argues that the key characteristic of the ‘information age’ was that time and space collapsed, whereby activities that used to take days or weeks took hours and transactions across oceans started happening almost instantaneously in cyberspace.

For journalism, the information age heralded the emergence of new media technologies, which de-centred the very act of communicating by widening the spaces for engagement with audiences and participation by them in mediated discourse (Hassan and Thomas, 2006). Such new media technologies have come to be generically referred to as ‘social media’ because of their ability to permit instantaneous human interactions and inter-connectivity across space and time (Stein, 2006; Kaplan and Haenlein, 2010; Breuer, 2011).

The other commonly used term for ‘social media’ is ‘social networking sites’, which, according to Kaplan and Haenlein (2010) are ‘applications that enable users to connect by creating personal information profiles, inviting friends and colleagues to have access to those profiles, and sending e-mails and instant messages between each other’ (p.63).

Sarah (2012).³⁹⁹ has created a distinction between ‘social media’ platforms, otherwise referred to as ‘Web 2.0’, as those that allow for interactive participation by users, as contrasted with ‘Web 1.0’ platforms that simply provide content to users without giving them the opportunity to interact with or modify the information online

She notes that the key characteristics of ‘social media’ technologies are the ability to be on publicly accessible online sites that entail a minimum amount of creative effort, and that are created outside of professional routines and practices (ibid.). Anena (2014:12-13) reviews literature and discerns other defining features of ‘social media’ as being flexibility, convergence, immediacy (real-time feedback), permanence and easy usability.

Scholars, notably Kaplan and Haenlein (2010: 62-64), classify social media into six different types, which are: collaborative projects (e.g. Wikipedia); blogs and microblogs (e.g. Twitter); content communities (e.g. YouTube); social networking sites (e.g. MySpace, Facebook, Flickr, LinkedIn, Tumblr); virtual game world (e.g. World of Warcraft); and virtual social worlds (e.g. Second Life).

The Government of Uganda’s Social Media Guide defines social media as being ‘a set of online technologies, sites and practices which are used to share opinions, experiences and perspectives’ (NITA-U, 2013:4).

Social media and journalism

The emergence of social media has made it possible for anyone with access to technologies, such as a smartphone and/or any mediated technology to gather, process and disseminate information to others (Langlois, 2011). In the electronic media world, anyone with such facilities can make their own broadcasts, thus doing the work of conventional journalists (Bubuli, 2014). In his work, Bubuli (2014:6) notes how social media sites rival traditional media such as newspapers and television as sources of news and information. On his part, Abdelhay (2012) argues that the role of traditional journalists has in recent years diminished because of the emergence of citizen journalism as afforded by new technologies.

³⁹⁹ (p.146).



It is true indeed that that social media today has made it possible for anyone to become a “quasi-journalist” visible through blogs, tweets, Instagram stories and post by social media influencers which seemingly are quicker to access by masses and they enable easy and quicker participation of the populace compared to the traditional means of news sharing. Mencher 2007⁴⁰⁰ argues that With or without social media, traditional or conventional journalism must remain the practice of gathering, processing and distributing news and information through various mass media channels and formats based on established and sacrosanct norms such as balance and fairness, truthfulness and accuracy, objectivity and impartiality, neutrality and detachment. The advent of social media blogs have a question of professionalism or ethical journalism, owing to the lack of training and organization amongst social media sources. The information displayed on tweets and Facebook for instance is not authenticated or easy to prove. Nevertheless, it is yet another human rights issue for government to attempt restricting such freedom since this is well established under **article 29** of the constitution , **Article 19 of the Universal Declaration of Human Rights** 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 information and ideas through any media and regardless of frontiers.’ Conversely, Article 29 of the Ugandan constitution re-echoes the same human right:

‘(1) Every person shall have the right to (a) freedom of speech and expression which shall include freedom of the press and other media.’ The right to disseminate information in these conventions is held by ‘everyone’ and not exclusively by journalists, which has exacerbated the phenomenon of ‘citizen journalists’.

(Meyers at al., 2012) opines that it is a practice that is grounded in the ability and passion of individuals to recount stories that have an impact on the wellbeing of society, which is their social responsibility role. It is only upon appreciating true values of ethical journalism that the freedom of media can be fully enjoyed without being at loggerheads with law enforcers.

⁴⁰⁰ Mencher (2007) & Rich, (2009)

At the extreme, social media has been cited in cyber-crime (stalking, hacking, cyberbullying and cyber-terrorism). Mundhai *et al.* (2009: 11) have cited the use of SMS (Short Messaging Service) as a platform to distribute ethnic hatred messages in Kenya during and after the violent 2007 general elections. Nonetheless, most journalism codes of ethics on social media echo what the Government of Uganda Social Media Guide stipulates: ‘Ensure that the materials to be posted on a Social Media site is not fraudulent, harassing, threatening, bullying, embarrassing, sexually explicit, profane, obscene, racist, intimidating, defamatory or otherwise inappropriate or unlawful’ (NITA-U, 2013: 10).

The lack of training in journalism or skilled individuals to process information for distribution online can be attributed to the high levels of illiteracy; the large divide between information-rich and the information poor becomes wider between richer individuals and countries that are able to access ever-faster Internet, thus enabling them to use ever creative social media.

Such differences in access to social media apply ‘not only between countries, but also between urban and rural areas, between those who have more disabilities and those who have fewer, and very often between men and women’ (*ibid.*). Such cyber-illiteracy across the board disadvantages the journalism enterprise.⁴⁰¹

The continued use and dominance of social media has caused government to react in forms of increased surveillance and censorship. This has led to the arrest of many Ugandans who while using their social media platforms, have posted content critical to government. An example of this is the case of a Ugandan satirical novelist; Rukirabashaija who wrote a book about corruption and greed referring to a certain country unspecified but has also been found of posting critical articles against government. Recently, when he posted a statement against government, he has since been arrested and detained in an unknown place. “He appeared to be vomiting, he was urinating blood, there were torture marks on his legs and feet, he was in deep pain,” Kiiza (his lawyer) told Reuters news agency. This shows that much as social media freedom is being enjoyed, the law enforcers are on the look out. However, it is important that government makes a declaration on the status of internet as an information platform; whether to legalize it or not and to publicly

⁴⁰¹ Dr. William Tayebwa – Assessing the impact of Social media on political communication and civic engagement in Uganda. (Edited by Mathias Kamp)



provide the limitations to such freedom if any. Absence of this would lead to continuing speed of insults and hate upon government and security agencies for the illegal detention of social media users.

Kiiza added that Rukirabashaija had not been allowed visits by his lawyers or relatives since his arrest. On Tuesday, a court issued an order for the police and other security agencies to produce Rukirabashaija in court. Kiiza said he understood the novelist was being detained at a facility run by Special Forces Command, an elite military unit formerly commanded by Museveni's son that handles special assignments including guarding the president. Romana Cacchioli, Executive Director of PEN International, said in the statement that; "Criticism of those in power is not a crime. It is horrifying that Kakwenza Rukirabashaija is facing state harassment, yet again because of his critical views about his country's first family.

Whereas laws such as the *Regulation of Interception of Communications Act (2010)* and the *Uganda Communications Act of 2000 (Cap 106)* are already in place, there is also in the offing a specific law to regulate social media usage per Anena, 2014⁴⁰² Such laws notwithstanding, there have been specific efforts by government functionaries to block social media. For instance, when a consortium of the political opposition known as 'Activists for Change (A4C)' launched a campaign of walking from their homes to their workplaces (walk-to-work) to shine a spotlight on poor governance as manifest in the rising cost of consumer goods in the country in early 2011, the armed forces were deployed to stop the exercise, thus leading to violent confrontations with the protesters.⁴⁰³ The actions of the armed forces were disseminated worldwide on social media, which prompted the Acting Executive Director of the Uganda Communications Commission (UCC), Quinto Ojok, to write to Internet Service Providers (ISPs) thus: 'You are therefore requested to block the use of Facebook and Twitter for 24 hours as of now: that is 14th April 2011 at 3.30pm to eliminate the connection and sharing of information that incites the public' (UCC/ OED/073/01). Such regulatory mechanisms slacken journalism's vivacity.⁴⁰⁴

⁴⁰² Page 40

⁴⁰³⁴⁰³ (BBC news, 2011).

⁴⁰⁴ Dr. William Tayebwa – Assessing the impact of Social media on political communication and civic engagement in Uganda. (Edited by Mathias Kamp)

Opportunities of social media to journalism

Despite the many challenges cited above, both inherent to the profession and accorded by the emergence of social media, Unwin (2012) points to the freedoms that new media technologies offer for people to communicate across spaces and times, a phenomenon he refers to as the ‘space-time liberty’ (p.3). Such freedoms are more limited using traditional mass media. He also points to developments in mobile telephony with Internet capabilities that make it possible for ordinary citizens to share information and news that was previously a preserve of journalists, what he refers to as the ‘access liberty’ (ibid.) Such freedom accorded by ‘interactive information technologies’ makes it possible for citizens to access their leaders easily to express their opinions and judgements across the social-political spectrum (Mudhai *et al.*, 2009: 9). For instance, Bubuli (2014) points out that social media have given people an opportunity to express views and opinions that are often ignored by mainstream media (p.1). Citing the example of Uganda, he points out how telecommunications service providers such as Mobile Telecommunications Network (MTN) and Africell provide free access to Facebook Zero (p.2). Journalists and their respective media houses in Uganda have not let the ‘access liberty’ accorded though the ‘space-time liberty’ pass them. They have Facebook, Twitter, WhatsApp and other social networking sites to source news content, but also connect with their audiences.

Just like traditional journalism channels, social media can be excellent avenues for dissemination of credible and useful information for decision-making as well as excellent for imparting knowledge and skills to the citizenry (Mudhai *et al.*, 2009: 10). The challenge remains to ensure that credible information is provided through social media as in traditional ones so that debate is not based on opinion rather than fact, or on prejudice rather than knowledge (ibid.). Media houses in Uganda and journalists must continue to play their roles of informing and educating their audiences using social media platforms.

The benefit of social media regulation.

Palfrey 2007: 70 notes that; “Sometimes the law bans citizens from performing a particular activity online, such as accessing or publishing certain material. Sometimes the state takes control into its own hands by erecting technological or



other barriers within the state's confines to stop the flow of bits from one recipient to another. Increasingly, though, the state is turning to private parties to carry out the online control. Often, those private parties are corporations chartered locally or individual citizens who live in that jurisdiction.”

It is cognizable from the above that government could have a good reason for being negative towards social media in general remembering that Just four years earlier, the same platforms were used by citizens in North Africa to rally and mobilise citizens, igniting and fuelling what came to be known as the “Arab spring.” At least four long serving leaders were overthrown in the ensuing aftermath. While so far social media in Uganda has been used mostly to spread irritation and confusion about what is going on within the ruling party and the government, the fear is that it could also be used to mobilise for large scale protest and demonstrations⁴⁰⁵.

The uncontrolled usage of internet has become a thorn in the neck of the Ugandan government especially with the use of anonymity by some internet users to speak crude facts and deep government secrets which are unsubstantiated. An example of this is Tom Voltaire Okwalinga's Facebook page, a masked yet enigmatic personality, famous for his politically charged and explosive revelations on the “behind the scenes” of political power. Recently, Ugandan security personnel have requested Facebook to reveal the true identity of the online activist – a request which Facebook declined⁴⁰⁶. In May 2015, an information and security analyst was arrested and charged with “offensive communication” according to the Computer Misuse Act of 2011⁴⁰⁷. According to Nicholas Opio who represented the alleged internet user, there was no adequate proof of identity of a one Voltaire Okwalinga no wonder even when the accused was imprisoned, the facebook remained functioning, a thing which left the investigation in question. To prevent these, perhaps a definite regulation may be necessary to give moderation of the process than seeking to punish suspects in the aftermath of harm. One such rule as already mentioned is the Computer Misuse Act mentioned above among whose

⁴⁰⁵ Mathias Kamp, Maike Messerschmidt and Ivan Rugambwa -The Impact of Social Media on the run-up to the 2016 Elections in Uganda pg. 21

⁴⁰⁶ <http://www.observer.ug/news-headlines/38278-who-s-tom-voltaire-okwalingatvo>

⁴⁰⁷ http://chapterfouruganda.com/sites/default/files/downloads/Computer-MisuseAct-2011_0.pdf, p. 17. 13 Ibid.: p. 3.

role is to “prevent unlawful access, abuse or misuse of information systems including computers”⁴⁰⁸.

Among its provisions is that it forbids the use of “offensive communication”, as recently was the case in *Stella Nyanzi*. In that case, **Dr. Stella Nyanzi V Uganda**⁴⁰⁹, Doctor Stella Nyanzi was charged with two counts. Count One was the offence of cyber harassment contrary to section 24(1)(2)(a) of the Computer Misuse Act 2011. During the lower court trial, the appellant pleaded not guilty to both charges. She appealed to the High court after being dissatisfied and grieved by the judgement and orders of the lower court. She contended that the trial judge erred in law and fact when she entertained the suit and yet the appellant court had no jurisdiction. She also sought a revision in the lower court to enable it determine its correctness, legality and propriety of the trial of the findings. However, the revision was dismissed. However she succeeded on appeal because the state failed to provide evidence that the gadgets she used at the time of committing the said acts were in Uganda.

“*Offensive communication*” refers to electronic communication that is willfully and repeatedly used to disturb the peace in the country or the right to privacy of any person. Other offences covered in this Act include cyber harassment and stalking, child pornography, and electronic fraud. With this legislation, Uganda has made rather progressive steps in areas like cyber bullying or stalking than many other countries.⁴¹⁰

Besides this Act, government is yet to enact a substantive law regulating social media usage. However, calls for the regulation of social media are getting louder and are inspired by very different sources. The three issues which keep popping up in the Ugandan media and which are presented as good reasons to censor and

⁴⁰⁸ <http://www.monitor.co.ug/News/National/7-girls-raped-via-Facebook-in-one-month/-/688334/2898628/-/70wt64z/-/index.html>, <http://www.monitor.co.ug/News/National/Government-close-media-outlets-pornography/-/688334/2627430/-/y08wl4/-/index.html>, <http://acme-ug.org/2015/07/13/hunting-down-social-media-abusers-in-uganda-as-elections-near/>

⁴⁰⁹ Uganda V Doctor Stella Nyanzi Criminal; Appeal NUMBER 79 OF 2009 Arising from Criminal Case AL –CR –CO-11115 of 2018

⁴¹⁰ Mathias Kamp, Maike Messerschmidt and Ivan Rugambwa -The Impact of Social Media on the run-up to the 2016 Elections in Uganda pg. 21



regulate social media are pornography, sexual abuse, and terrorism⁴¹¹. In reference to the former, Simon Lokodo, Minister for Ethics and Integrity, warned: “We are going to censor every production that you are going to show on your media facility. We shall go the Ethiopian way and stop all broadcasting houses from enjoying that freedom and supply all information through government media facilities”⁴¹². Not included in the debates is usually the fact that Uganda has already passed comprehensive legislation on all these issues, such as the Anti-Pornography Act 2014, the Anti-Terrorism Act of 2002 and the Anti-Terrorism (Amendment) Bill of 2015, above mentioned Computer Misuse Act, as well as several Acts covering sexual abuse and rape. This leaves the question open: What is a substantive law on social media use going to cover and regulate?

In June 2015, a cybercrime unit was established that is supposed to deal with all offences outlined in the Computer Misuse Act. What leaves observers wondering, however, is the timing of the creation of this unit, since already in 2013 the Computer Emergency Response Team was created with the same purpose. However, the newly created cybercrime unit is also going to handle less clearly defined crimes on social media which were described as “the misuse of cyberspace inciting hatred and sectarianism”⁴¹³.

Now, government is working on new restrictions to come up with a substantive law, to regulate the use of social media. The Uganda Police have already set up a specialized social media monitoring unit. At the above mentioned KAS Social Media Conference, the Acting Director for Broadcasting at the Uganda Communications Commission, Fred Otunnu, noted that some social media accounts like Facebook and YouTube allowed “undesirable content which is not good for our people” and that “regulation must be enforced”. However, he also emphasised that there was no intention “to provide for any regulatory framework

⁴¹¹ <http://www.monitor.co.ug/News/National/7-girls-raped-via-Facebookin-one-month/-/688334/2898628/-/70wt64z/-/index.html>, <http://www.monitor.co.ug/News/National/Government-close-media-outletspornography/-/688334/2627430/-/y08wl4/-/index.html>, <http://acme-ug.org/2015/07/13/hunting-down-social-media-abusers-in-uganda-as-elections-near/>

⁴¹² <http://www.monitor.co.ug/News/National/Government-close-media-outletspornography/-/688334/2627430/-/y08wl4/-/index.html>

⁴¹³ <http://acme-ug.org/2015/07/13/hunting-down-social-media-abusers-in-uganda-as-elections-near/>

that guards or curtails, but rather that facilitates the proper usage of social media platforms⁴¹⁴”.

All of these developments keep the Ugandan social media users on their toes as wide reaching censorship and regulations might soon be drafted and implemented. This would considerably limit the space social media has created – not only in the private sphere but also in terms of political communication and activism.

Mathias Kamp⁴¹⁵ opines that the regulation of social media is a delicate balancing act. On the one hand many Ugandans support the clamp down on ethnic hatred, defamation and diverse forms of cybercrime, as well as the protection of individual privacy which is often infringed upon on social media platforms. On the other hand, there are fears that freedom of expression might generally suffer as “collateral damage” and that regulatory frameworks could be used against political opponents.⁴¹⁶ Thus, the relevant stakeholders will need to find the right balance between the protection of national unity and stability, the individual right to privacy, and the freedom of expression and open access to the internet as a right for everyone.⁴¹⁷

Conclusion.

The impact of social media is a great addition upon the traditional systems of journalism but this opportunity to journalism comes with great repercussions on the quality of information spread. the situation calls for the public to either bear with the demerits is such an invention or to devise rules to govern the operation and use of social media to serve the public interest but with this, am scared it would have repercussions on the freedom of expression and speech which has on several occasions formed a subject of public disgruntlement. For us to cope appropriately, there is need to engage in training all participants (i.e. social media users, bloggers inclusive) in media dissemination so as to establish ethical journalism. As already

⁴¹⁴ Mathias Kamp, Maike Messerschmidt and Ivan Rugambwa -The Impact of Social Media on the run-up to the 2016 Elections in Uganda pg. 21

⁴¹⁵ Mathias Kamp, Maike Messerschmidt and Ivan Rugambwa -The Impact of Social Media on the run-up to the 2016 Elections in Uganda pg. 21

⁴¹⁶ ibid

⁴¹⁷ ibid

considered⁴¹⁸, Successful media houses in Uganda ought not only to continue a process of retooling their journalists in the art of deploying more social media platforms, but should also engage in a process of teaching media literacy to their audiences to enable them to sieve online content.

Am of a conclusion that the ramifications of the internet shutdowns in Uganda were not limited to the intended targets. Despite the internet shutdowns in Uganda being intended to contain civil unrest and protests, it had ripple effects on education most notably during the time when the country was under the attack of Covid-19 and thus the government was encouraging virtual learning as one of the ways to curtail the spread of the virus. Therefore, it can be argued that the students and lecturers and many schools in Uganda depended on the internet and social media for communication and research. A discussion on this has established that teachers'

⁴¹⁸ Dr. William Tayebwa – Assessing the impact of Social media on political communication and civic engagement in Uganda. (Edited by Mathias Kamp)

Chapter Seven.



MEDIA SELF-REGULATION

“The media play an enormously important role in the protection of human rights. They expose human rights violations and offer an arena for different voices to be heard in public discourse. However, the power of the media can also be misused to the extent that the very functioning of democracy is threatened.”⁴¹⁹

Introduction.

Self-regulation is a form of regulation that is established voluntarily. A grouping or body establishes its own mechanisms for regulation and enforcement that are not imposed, for example, in a statute or regulation. Regulation of the media presents special problems. On the one hand, the right to freedom of expression requires that the state refrain from interference in peoples’ enjoyment of their rights.⁴²⁰ This is quite challenging given that the media has a big influence on public opinion through its critical reporting and accountability mechanisms, thus becoming an attractive target for control. Governments often seek to transform the media from watchdog to lapdog, by making the work of independent journalists

⁴¹⁹ Thomas Hammarberg: Ethical Journalism: Self-regulation protects the independence of Media. by accessed at https://www.coe.int/en/web/commissioner/blog/-/asset_publisher/xZ32OPEoxOkq/content/ethical-journalism-self-regulation-protects-the-independence-of-med-1/pop_up accessed on January 9, 2022

⁴²⁰ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 BY Justine Limpitlaw



and publications impossible and sometimes illegal.⁴²¹ Self-regulation is based on fear of persecution, which either the journalist or her/his close associate have experienced as *Kasoma (2000)* notes. *Summer (1996)* discusses self-regulation as fear sensed by media practitioners themselves or colleagues in the process of gathering news. Media bodies often introduce self-regulation in the form of codes of media ethics and good governance. Some media outlets, including in European countries, have been turned into propaganda megaphones for those in power, while other media have been inciting xenophobic hatred against minorities and vulnerable groups. We have also seen that unrestrained commercial ambitions can encourage a culture of illegal and unethical activity in the newsroom – as the phone hacking scandal in the United Kingdom demonstrated with shocking clarity. In this scenario, a media house undertook illegal hacking of people's individual telephones while investigating the matter of a murdered school girl Milly Dowler whose phone was hacked after her abduction in 2002. In a full-page editorial on page three, the newspaper offers an apology for the hacking of phones;

"We praised high standards, we demanded high standards but, as we are now only too painfully aware, for a period of a few years up to 2006 some who worked for us, or in our name, fell shamefully short of those standards.

"Quite simply, we lost our way," the paper admits.

"Phones were hacked, and for that this newspaper is truly sorry.

"There is no justification for this appalling wrongdoing. No justification for the pain caused to victims, nor for the deep stain it has left on a great history.

"Yet when this outrage has been atoned, we hope history will eventually judge us on all our years."

⁴²¹ ARTICLE 19 (2010) Memo on the Press and Journalists Amendment Bill 2010

Here is one of the instances where an English newspaper comes up to apologize for its misdeeds exhibiting professional misconduct. Such reckless and intrusive journalism can damage public confidence very quickly – and be used as an excuse by governments to impose media regulation or even censorship. This would, of course, further undermine the existence of critical, investigative journalism.

To prevent such tendencies the media community needs to develop a system of effective self-regulation – based on an agreed code of ethics and a mechanism to receive and respond to complaints, for instance through an ombudsman or a media council.

The idea of self-regulation springs out of the desire by quality-conscious journalists and media to correct their mistakes and to make themselves accountable to the public. One purpose is to develop ethical principles which would protect individuals or groups from unacceptable abuse in the media. This idea is not new. There have been attempts to build a system for such ethical self-regulation in a number of countries. Unfortunately, these efforts have not always yielded the desired results⁴²².

Self-regulations exist in various degrees in media organization all over the world. For many reasons journalists censor themselves in producing news and other kind of stories. As a result, they may consciously or unconsciously, withholding information and reshape the content of such stories. The study of *Fourie (2015)* defines self-regulation as the conscious suppression of one's ability, rights, or freedom to express oneself.

⁴²² Ethical Journalism: Self-regulation protects the independence of Media. by Thomas Hammarberg accessed at https://www.coe.int/en/web/commissioner/blog/-/asset_publisher/xZ32OPEoxOkq/content/ethical-journalism-self-regulation-protects-the-independence-of-med-1/pop_up on January 9, 2022



Kasoma (2000) reveal that self-regulation is based on fear of persecution which either journalists or his or her close associates have to explain. Studies done on self-regulation and its causes in the media organization owned by the state and those run by the private considers how the freedom of press may affect the degree and kinds of self-regulation. The concept of media freedom covers the degree of freedom enjoyed by the media and the degree of freedom and access to media context Fourie (2016). The essential norm is that media should have certain independence, sufficient to protect free and open public expression of ideas and information. The second part of the issue raises the question of diversity, a norm that opposes concentration of ownership and monopoly of control, whether on the part of the state media industries as McQuail (2000) note.

In Ugandan media houses, take for instance at Daily Monitor, journalists practice self-regulation. But journalists in particular are often accused of self-regulation and or deciding what story and or words to eliminate in, the process of self-regulation as they face serious repercussions for swift and controversial reporting. Therefore this research study thought to examine the private and state media in Uganda as they practice self-regulation when producing news.

The United Nations Educational, Scientific and Cultural Organization (UNESCO) defines and highlights the importance of self regulation of the media in upholding the right to freedom of speech and expression. According to Andrew of UNESCO (2011), self regulation is a combination of standards setting out the appropriate codes of behavior for the media that are necessary to support freedom of expression, and process how those behaviors will be monitored or held to account.⁴²³ The media in Uganda plays a number of roles. The media provides a

⁴²³ Andrew- UNESCO (2011), The importance of self regulation of the media in upholding freedom of expression, <http://unesdoc.unesco.org>, pg 12.

platform on which several issues ranging from health, education, corruption, agriculture and cultural related issues. This makes it possible to generate knowledge to those who require it in different sectors. On the contrary, the media can also undermine democracy in a country like Uganda. For example, the media can choose to consolidate one person because he or she has money or support of the people. That situation will lead to popularization of an individual at the expense of those that actually would perform better and can promote conflict and social division in a society.⁴²⁴ According to Andrew in the UNESCO report (2011), self regulation preserves independence of the media which protects it from partisan interference which makes them a better efficient as a system of regulation as the media understand their own environment better.¹⁶⁴ Ugandan media ought to manage their own working environment and ensure that it is within the law as stated in The Press and Journalist Act 1995 (Chapter 105) and The Electronic Media Act 1996 (Chapter 104).

Although the government claims to have permitted the greatest freedom of speech than its predecessors as Drost (1996) put it out that private media has not hesitated to act against journalists over step the mark by publishing sensitive information which may endanger the stability of the country, this has been achieved through encouraging media groups to carry out self-regulation.

⁴²⁴ Andrew- UNESCO (2011), The importance of self regulation of the media in upholding freedom of expression 164 Same as above

HISTORY OF MEDIA SELF REGULATION

The history of media regulation begins with the application of the printing press to book production from the mid-15th century onwards in Western Europe. Initially, printing was simply a more productive alternative to the copying of manuscript texts by hand, which had not been formally regulated, although in practice it took place mainly under the oversight of authorities of church or state. As the printing trade and industry expanded, especially after 1500, both church and state took an increasing interest in the content of what was being printed and published, especially with a view to combating heresy or dissent. This led very widely to the licensing of all printers by the state and/or the requirement for advance approval by church authorities for texts to be published. The export and import of books was also controlled or forbidden. Authors and printers could also be severely punished for publications deemed heretical or treasonable. In more autocratic states, such as the Ottoman Empire and Russia, printing was simply banned for two hundred or more years. Between the 16th and 19th centuries in Western Europe and North America, the history of media regulation was one of struggle against restrictions on publication waged in the name of political freedom and human rights, but also on behalf of the printing trades and industries, including the rights of authors. The freedom to publish was achieved by gradual change in Britain and by revolution in France at the end of the eighteenth century and gradually in territories of the Austrian and Prussian Empires during the nineteenth century. Similar freedoms were never really attained in Russia, even after the Revolution of 1917, nor in the British colonies and Japan until much later in the twentieth century. For most of the world during the modern era, repressive and punitive media regulation in the interest of state power has been the norm. A new dimension to regulation was added by the invention of new media during the nineteenth century, especially the electric telegraph, then the telephone and wireless, which led to public radio broadcasting from 1920 onwards. All these media were closely regulated by

national laws that were more or less required by international agreements relating to technical requirements (e.g. radio frequency allocation). They also served other interests of state, including military and economic considerations. Often regulation took the form of control by state bodies or public monopolies. In other cases, such as the United States, supervision was exercised by a powerful governmental body (the Federal Communications Commission). During the early 20th century, the cinema film was also established, typically regulated locally for reasons of safety (fire) and/or content (moral standards). Broadcast media (radio and television) were the most closely regulated of all media nearly everywhere during the twentieth century and they have never achieved the degree of freedom enjoyed by print media. Since about 1980, new forms of distribution by cable and satellite have led to a great expansion of media output and to more relaxed regulatory regimes, especially in relation to content. Although there has been deregulation of media, it is often remarked that, in response to the advent of new media and changed conditions, we are really in a period of regulation where regulatory frameworks are amended to reflect new economic and/or political

Key self-regulatory provisions intended to govern the media in Uganda.

The *Independent Media Council of Uganda (IMCU)* was formed in February 2006 by 42 media houses. One of the objectives of the IMCU is to promote the growth of a responsible, free media adhering to the highest standards of journalism.⁴²⁵ The IMCU also deals with complaints concerning the conduct of the media. The IMCU

⁴²⁵ MEDIA LAW HANDBOOK FOR EASTERN AFRICA – VOLUME 2 BY Justine Limpitlaw



was registered as an NGO in July 2006 and as a body corporate in January of 2007. It is also a member of the World Association of Press Councils.⁴²⁶

In order to ensure that journalists meet the standards the IMCU expects from its members, it introduced a Journalism Code of Ethics, the main aspects of which are summarized as follows:

1. A journalist must maintain the highest levels of journalistic standards, integrity and independence.⁴²⁷
2. A journalist must always identify himself or herself as a journalist and the organization for which he or she works.⁴²⁸
3. A journalist must not accept bribes or any other form of inducement meant to influence his or her professional performance.⁴²⁹
4. A journalist must always declare any conflicts of interest.⁴³⁰
5. A journalist has a responsibility to remain accurate, balanced and fair in the execution of his or her duties.⁴³¹
6. Media houses and journalists must give aggrieved parties the right of reply to materials broadcast or published about them.⁴³²

⁴²⁶<http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/Independent%20Media%20Council%20of%20Uganda.pdf>, last accessed 20 September 2020

⁴²⁷ Justine Limpitlaw - MEDIA LAW HANDBOOK FOR EASTERN AFRICA – vol.2

⁴²⁸ *ibid*

⁴²⁹ *ibid*

⁴³⁰ *ibid*

⁴³¹ *ibid*

⁴³² *ibid*

7. Journalists have a moral responsibility to monitor government and other centres of influence and power on behalf of the public.⁴³³

8. Journalists have a social responsibility to educate the public regarding matters affecting them.⁴³⁴

9. Journalists must respect privacy and human dignity and weigh such matters against the public's right to know.⁴³⁵

10. No media practitioner shall engage in plagiarism.⁴³⁶

11. Journalists must protect the confidentiality of their sources and divulge them only as required by a court of law.⁴³⁷

12. Journalists may not intrude into grief and shall take utmost care and behave with discretion and sympathy when reporting matters relating to the dead and gravely ill.⁴³⁸

13. Media houses may not profiteer from deliberate exploitation of the misfortune of those afflicted by grief.⁴³⁹

14. The media must generally avoid identifying the innocent relatives or friends of persons accused or convicted of a crime.

⁴³³ Justine Limpitlaw - MEDIA LAW HANDBOOK FOR EASTERN AFRICA – vol.2

⁴³⁴ Justine Limpitlaw - MEDIA LAW HANDBOOK FOR EASTERN AFRICA – vol.2

⁴³⁵ *ibid*

⁴³⁶ *ibid*

⁴³⁷ *ibid*

⁴³⁸ *ibid*

⁴³⁹ *ibid*



15. Media houses and journalists have a responsibility to protect both the victims of sex crimes and children.

16. The media must take extra care when dealing with the publication of adults-only material.⁴⁴⁰

17. The media must use due caution when publishing pictures in order not to do unnecessary harm.

18. The media may not publish or broadcast material intended or likely to cause hostility or hatred towards a person or group of people in relation to their race, ethnic origin, nationality, religion or political affiliation.⁴⁴¹

19. The media must exercise a high level of individual and corporate citizen responsibility and in a manner that is conducive to an atmosphere that is congenial to national harmony.⁴⁴²

20. All news, views and comments must be backed by facts and measured in language and tone.⁴⁴³ 21. It is the responsibility of the media to highlight potential conflicts before they explode, and help society heal wounds after conflicts have concluded.⁴⁴⁴

While the IMCU ostensibly deals with complaints concerning the conduct of the media, there is no publicly available information that we have been able to find that deals with actual examples of enforcement by the IMCU. This is problematic because the effectiveness of self-regulation and the public's faith in self-regulation is only as good as the self-regulatory body's ability to enforce compliance with its

⁴⁴⁰Justine Limpitlaw - MEDIA LAW HANDBOOK FOR EASTERN AFRICA – vol.2

⁴⁴¹ ibid

⁴⁴² ibid

⁴⁴³ ibid

⁴⁴⁴ ibid

codes of ethics. It is not clear if the IMCU is in fact an effective self-regulatory body.⁴⁴⁵

Analytical, scholarly examination of self-regulation.

Cronau (1996) notes that self-regulation can develop in journalists from an internalizing of the values of the news organization which they work over time through training of socialization, journalists develop a set of news values and an ability to know what makes good news and what does not.

Kohut (2000) notes that the possible reasons for their censorship include advertisers, friends of their boss, the reporters' relations with the source and other possible and related reasons and comments that media which are close to the state face difficult challenges. Journalist are paid professionals working for mainly commercial media that try to supply what the audiences will accept and what advertisers will pay for as Gans (2003) insinuates.

Nyamnjoh (2005) demonstrates that private attacks on the media claim defamation, invasion of privacy or violation of the validity of these concerns. The existence and occasional utilization of laws on sedition encourages self-regulation. Journalists fear laws that control the media, *Tettey (2001)* notes that among hindrances to press freedom are the maintenance of anachronistic laws on libel and sedition, regulation, physical harassment of journalists and the violation of their premises and equipments, denying them access to inputs and audiences debilitating media laws.

According to Solomon (2005), journalists practicing self-regulation often favour private authorities over other groups with different views in a number of ways.

⁴⁴⁵ Justine Limpitlaw - MEDIA LAW HANDBOOK FOR EASTERN AFRICA – vol.2



Information could be suppressed in such ways as choosing safe-side avoiding sensitive issues or giving responsibilities to faithful bosses suppressing the stories in favour of politicians in power, giving emphasis for official speeches over other significant events and unquestioning the news worthiness where private authorities are involved..

The state owns and operates the television systems. They give prominent coverage to officials who are generally those critics of the private. Yet the regime and ruling party made repeated attempts to restrict reporting of their activities. Sussman (1999) notes that journalists are arrested for not revealing sources and defamation suits are brought by private ministers.

Self-regulation in News Production.

According to Lowebstein (1956) a completely free press is one in which newspapers periodicals; news agencies, books and television have absolute independence and critical ability except for minimal libel and obscenity laws. International media organisations often position themselves as watchdogs of media practitioners throughout the world; try to set freedom of the press standards for all countries. At a minimum, the committee to protect journalists lobbies the rights of journalists to report the news without fear of reprisal as CPJ (2004) declares. Press freedom groups such as reporters frontiers issue annual reports measuring the amount of freedom journalists and the media have in each country and the efforts made by private to see that press freedom is respected (RSF 2002b).

Bergers (1995) notes that gate keeping as a prepublication process with those journalists who directly and indirectly select news or any information and make final decisions for publication in media organisations decide what will be written about. He further demonstrates that the news we get in is important news that will

attract and keep the attention of readers or audiences not necessarily what is important news.

REGULATIONS AFFECTING THE MEDIA

Regulations are subordinate legislation.⁴⁴⁶ They are legal rules that are made in terms of a statute. Regulations are legal mechanisms for allowing a body other than parliament to make legally binding rules governing an industry or sector, without needing parliament to pass a specific statute thereon.⁴⁴⁷

Key regulations that affect the media.

The Copyright and Neighboring Rights Regulations, 2010 (Copyright Regulations)

The Copyright Regulations are made by the minister responsible for justice after consultation with the collecting societies. The regulations affect broadcasters in particular as the nature of their business is the distribution of audio and audio-visual material produced by other people and organizations. Regulation 18 prohibits the unauthorized production, distribution or broadcasting of any sound or audio-visual recordings except under license issued by the owner of the neighboring rights or a collecting society. The importation of pre-recorded sound recordings or audio visual recordings may only be done following the application and clearance from the owner of the material or else a collecting society representing the interests of the owner – regulation 23.

⁴⁴⁶ Justine Limpitlaw - MEDIA LAW HANDBOOK FOR EASTERN AFRICA – vol.2

⁴⁴⁷ ibid

Regulation 24 specifies that no person may, without the consent of the performer or a collecting society representing the performer:

1. Fix a performer's live performance not previously fixed on a physical medium
2. Broadcast to the public a performer's unfixed performance
3. Directly or indirectly reproduce a fixation of a performance
4. Distribute to the public the original or copies of a performer's performance
5. Conduct a public performance. Consent to do any of these things must be by contractual agreement with either the performer or representing collecting society setting out the terms and conditions in line with the performer's wishes.

Broadcasters themselves are also protected under regulation 25 of the Copyright Regulations, which provide that without contractual consent, no person may:

1. Broadcast a broadcaster's broadcast
2. Fix a broadcast
3. Reproduce a fixation of a broadcast. Any person who contravenes these regulations commits an offence and is liable to a fine, a term of imprisonment or both in terms of regulation 33 of the Copyright Regulations.

2. The Press and Journalist (Fees) Regulations, 2014 (Fees Regulations)

The Fees Regulations are made by the minister responsible for information under section 42 of the Press Act after consultation with the UCC. The regulations relate directly to the press and outline the fees payable under the Press Act.

These include:

- *Registration of editors*
- *Enrolment of journalists*

- *Registration of journalists*
- *Accreditation of foreign journalists*
- *Fees in relation to disciplinary proceedings*
- *Classification of films, video material, plays and related apparatus.*

3. The electoral commission should come out strongly to ensure that candidates respect the rights and freedoms of the media. In the same vein, EC should also desist from passing unfair regulations against the media which inhibit a free operating environment.

4. Political candidates together with their supporters should desist from targeting journalists and media houses during the campaigns and elections season.

5. The police should arrest, investigate and take to court perpetrators of violence and threats against journalists and media houses during political campaigns.

6. The police and army should desist from targeting journalists and media houses giving coverage to the opposition and other dissenting views.

7. The media should remain fair, balanced and objective to all candidates during the campaigns. The media should also be united to defend their rights and freedoms during such times.

8. The donor, diplomatic and international community should ensure that the state respects and promotes media rights and freedoms at all times.

9. Mass sensitization of the public so that it can realize not only the role it can play in promoting media rights but also not to be part of the people abusing media rights. This can be through say no to media abuse campaigns. Demonstrations by journalists could also aid if the other proposed mechanisms fail.



10. Trainings of media personnel: The media industry has been awash with untrained journalists/ news reporters. Low professionalism among media practitioners has in some cases led to irresponsible. Inaccurate and unbalanced media reports that have lwei the potential to excite and inflame rather than inform.⁴⁴⁸

It is important to note that Self-regulation has an impact on the nature quality of news produced.

Breed (1995) notes that the more or less consistent orientation shown by a paper, not only in its editorial but in its news columns and headlines as well, concerning selected issues and events means journalists follow or stick to the genres of the concern media house when writing headlines and news columns.

According to **Fourie (2004)** policy is converting due to the existence of ethical norms of journalism, policy often contravenes those norms. And no executive is willing to risk embarrassment by being accused of open commands to slant a news stories.

Katz (1994) comments that individual people have an engaged role in the movement of information and opinion such as a proprietary interest in the medium itself.

McCombs (1972) notes that increased need not materially decrease the freedom of media. In the real world, there is no totally devoid of accountability and there have been to be ways of reconciling one with the others if we want freedom of expression and the press to maintain its legitimacy.

⁴⁴⁸ UHRC statement on World Press Freedom Day 3rd May 2016: ensuring the safety of journalists and media workers.



Chapter Eight



FREEDOM OF EXPRESSION IN UGANDA

Introduction

Article 29 of the 1995 constitution of the Republic of Uganda.

29. Protection of freedom of conscience, expression, movement, religion, assembly and association.

(1) Every person shall have the right to—

(a) freedom of speech and expression which shall include freedom of the press and other media;

(b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning;

c) freedom to practise any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution;

(d) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and

(e) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

(2) Every Ugandan shall have the right—

(a) to move freely throughout Uganda and to reside and settle in any part of Uganda;

(b) to enter, leave and return to, Uganda; and

(c) to a passport or other travel document.

Some of the indicators used to assess the the state of the freedom of expression in Uganda include the following: increasing government threats, intimidation and harassment,⁴⁴⁹ government banning a political pressure group calling for peaceful change, harassed and intimidated journalists and civil society activities in 2012,⁴⁵⁰ public gatherings accompanied by arrests and detention of organizers and participants.⁴⁵¹ Numerous journalists have been injured or have been beaten by police while covering the opposition demonstrations.⁴⁵² This situation analysis shows that there is a problem with the enjoyment of the freedom of expression.⁴⁵³ The continuing problematic situations illustrated in the literature where early reports from 1999 to 2013 and 2014 show the same issues still exist and are even

⁴⁴⁹ Human Rights Watch (2010) The media minefield Report pg 2

⁴⁵⁰ The Human Right Watch, in its world report p1

⁴⁵¹ The Human Right Watch, in its world report (2013) available at Human Right Watch. org, p1

⁴⁵² Human Rights Watch (1999) Hostile to Democracy; the Movement System and Political Repression in Uganda. New York, Washington

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worsening. This takes me into asking the question: What are the reasons why freedom of speech and expression has not changed?⁴⁵⁴

Freedom of speech can serve a multitude of functions: dissemination of information; expression of the will of the people and general ideas.⁴⁵⁵ One of the most disputed areas in contemporary human rights law is that of freedom of expression which begs a question; how far does this right extend particularly when threats to national security exist?⁴⁵⁶ When freedom of expression or free speech provisions are contained in bills of rights or charters of rights, it is clear that these are rights are entitled to some protection from government interference.⁴⁵⁷ So, what is the scope of freedom of expression or free speech? Written constitutions and bills of rights invariably protect freedom of speech as one of the fundamental liberties guaranteed against state suppression or regulation.⁴⁵⁸ Barendt found out that the philosophical and political arguments about the justifications for a free speech principle are on this approach highly relevant to constitutional interpretation.⁴⁵⁹ Freedom of expression is necessary for the attainment of truth, individual fulfillment, maintaining balance between stability and change in society and for successful functioning of the society.⁶ Freedom of expression and free speech has limitations and restrictions. Subject to paragraph 2, Art. 10 of the European Convention on Human Rights (ECHR), it is applicable not only to information or ideas that are favorably received or regarded as inoffensive or as a

⁴⁵⁴ UiO - Faculty of Law – University of Oslo- Uganda’s compliance with its legal obligations with regard to freedom of speech and expression: Challenges and prospects 2016 -

⁴⁵⁵ Rhona, S (2012) *International Human Rights*, 5th ed. Oxford, University Press, pg 302

⁴⁵⁶ Sorabjee, Soli K (1993), *Freedom of expression*; Commonwealth Law Bulletin, pg 1712

⁴⁵⁷ Barendt, E. (2007), p.1

⁴⁵⁸ Barendt, E. (2007), p.1

⁴⁵⁹ Barendt, E. (2007) *Why Protect Free Speech-Freedom of speech*. 2nd ed. Oxford University Press, 201, pp.1-40

matter of indifference, but also to those that offend, shock or disturb the State or any other sector of the population⁴⁶⁰.

Therefore, any formality, condition, restriction or penalty imposed must be proportionate to the legitimate aim pursued.⁴⁶¹ In *Handyside v. the United Kingdom* judgement of December 1976 § 49, the court stated that – tolerance and respect for equal dignity of all human beings constitute the foundations of a democratic and pluralistic society. Hence, it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance..., provided that any formalities, conditions, restrictions or penalties imposed are proportionate to the legitimate aim pursued.⁴⁶²In *Surek (no.1) v. Turkey 1999* (Grand Chamber), the applicant published two readers' letters vehemently condemning the military actions of the authorities in their struggle for independence and freedom. The applicant was convicted of – disseminating propaganda against the indivisibility of the State and provoking enmity and hatred among the people. The Court held that there had been no violation of Art.10 (freedom of expression). The Court noted that the impugned letters amounted to an appeal to bloody revenge and that one of them had identified persons by name, stirred up hatred for them to the possible risk of physical violence. The above two cases show conditions in which the right to free speech and expression can be checked under the international law.

⁴⁶⁰ UiO - Faculty of Law – University of Oslo- Uganda's compliance with its legal obligations with regard to freedom of speech and expression: Challenges and prospects 2016 -

⁴⁶¹ Hate speech (2016)European Courts on Human Rights, Pg 1

⁴⁶² Hate speech (2016)European Courts on Human Rights



Uganda is a country in the sub-Saharan Africa situated in the Lake Victoria basin. The country borders Rwanda, Tanzania, Kenya, Sudan and the Democratic Republic of Congo. The 2006 election in Uganda was the first in 25 years in which multiple parties were permitted to compete following the referendum in 2005 that changed the one party system.

However, the government's tolerance for political expression and competition was limited.⁴⁶³

Uganda had a single party under, one leadership since 1986 when the National Resistance Movement (NRM) party came into power under the leadership of Yoweri K. Museveni now president. The country now has a multi party system in place.

Uganda's presidents have always been aware of the dangers of a 'hostile' press. In the 1960's, Milton Obote told the nation that: since the constitution purposely provided for press freedom in order that this freedom could serve the interests of the people as a whole, if any newspaper adopted an anti-Ugandan attitude (and) created division all in the name of the press freedom, such publications were unconstitutional.⁴⁶⁴

There is need to establish what the state of freedom of speech and expression is in Uganda. The investigation on the interaction of all these various elements will help in informing us on whether or not the state of freedom of speech is largely respected according to law in place or not.

⁴⁶³ Democracy Web (2010) available at democracyweb.org/expression/Uganda

⁴⁶⁴ Bernard Tabaire (2007) The press and Political Repression in Uganda: Back to the Future?,

East Africa faces the same problem at the regional level. At least 13 journalists were killed in the Eastern Africa in 2013. This highlights the gravity of the situation by referring to a number of cases of human rights violations against journalists and media outlets across East Africa. The report on the status of freedom of expression in East Africa 2013 added that the killing of journalists is the ultimate form of censorship and a severe blow to democracy as emphasized by Henry Maina, Director of Article 19 East Africa. The East African report compiles data about Tanzania, Kenya, Uganda and Rwanda.⁴⁶⁵

Ifex is a global network that deals with the defending and promoting free expression. Ifex report (2015) showed the review of the prosecution's evidence in a mass trial of 51 alleged supporters of Egypt's Muslim Brotherhood showed that the government presented no evidence of criminal behavior besides the testimony of one police officer. The Ifex report further highlights that on April 11th, 2015, an Egyptian judge convicted and sentenced 37 people to life in prison and confirmed the death penalties of 14 others for their alleged roles in organizing opposition to the military's removal of former president Mohamed Morsy in July 2013.⁴⁶⁶ Further more, the Ifex report adds that the charges ranged from publishing false news to conspiring to overthrow the interim government. However, Human Rights Watch (HRW) shows that the state presented little evidence that the defendants did anything but spread news about mass sit in-in opposing the coup or

⁴⁶⁵ Report on the status of Freedom of Expression in East Africa (2013),

(<https://ejournalistdefencenetwork.org/News-and-Highlights/report-on-status-of-freedom-of-expression-in-eastern-africa.html>)

⁴⁶⁶ ifex: The global network, Defending and promoting free expression (2015)

(https://www.ifex.org/egypt/2015/04/20/life_sentences_death_penalties/)



organize and publicize peaceful opposition to Morsy's removal.⁴⁶⁷ "The fact that people who covered and publicized the mass killings in 2013 could go to prison for life or be executed while the killers walk free, captures the abject politicization of justice," said Joe Stock, deputy Middle East and North Africa director of HRW.⁴⁶⁸

At a global level, there is evidence which shows that freedom of speech and expression has its own problems as shown by statistics. A report from Freedom of the Press shows the global picture. It shows that out of 197 countries and territories that were assessed during 2013, a total of 63 (32 percent) were rated free and 70 (36 percent) were rated not free. This is compared with edition covering 2011 where 66 were rated as Free, 72, Partly Free, and 59 Not Free.⁴⁶⁹ Therefore, using the statistics provided and comparing the state of freedom of expression in the 2011 and 2013, a deterioration in those countries rated free had reduced from 66 in 2011 to 63 in 2013. That showed a decline in the two years difference. In addition, the same source cites countries like Brazil, Ecuador, Cambodia, Maldives, Thailand, Nepal, Sri Lanka, Russia, Taiwan, Ukraine and Hungary showing varying reductions in points in terms of rating these states in regard to the freedom of expression situation in their countries.⁴⁷⁰ The general situation with regard to the right to freedom of expression in Africa has been on the decline especially in the Northern part of

Africa which was characterized by a number of so-called Arab spring-where several authoritarian governments were challenged. These uprisings have included countries like Tunisia, Egypt, Mali, and Guinea-Bissau in the Sub-Saharan

⁴⁶⁷ ifex: The global network, Defending and promoting free expression (2015)

⁴⁶⁸ ifex: The global network, Defending and promoting free expression (2015)

⁴⁶⁹ Freedom House-freedom of the Press (2013) available at freedomhouse.org p. 3

⁴⁷⁰ Freedom House-freedom of the Press (2013) available at freedomhouse.org p.5-7

Africa.⁴⁷¹ This trend shows that there is a serious violation of the right to freedom of Expression in most countries as outlined above. The Freedom of the Press 2014 report suggests that global press freedom has fallen to its lowest level in over a decade, according to the latest Freedom House's press freedom survey. According to the Freedom of the Press report, this was driven by major regression in several Middle Eastern countries; countries of Eastern Africa and deterioration in the relatively open media environment of the United States.⁴⁷²

Evaluation of the right to freedom of expression

While vigorously advocating for democratic reform and respect for civil and political rights elsewhere in Africa, the international community has remained remarkably quiet on abuses of political rights in Uganda.⁴⁷³ The HRW report shows how the United States has on occasion called for a more plurastic democratic system in Uganda and justified the need to respect fundamental rights like the rights to freedom of expression, association and assembly.⁴⁷⁴ Why has the International community largely remained quiet about the abuse of civil and political rights in Uganda? The HRW report continues to appeal that, the acquiescence of the International community to human rights abuses in Uganda serves to undermine respect for human rights both there and elsewhere on the African continent, and indeed worldwide.

⁴⁷¹ Freedom House-freedom of the Press (2013) available at freedom.house.org p.9

⁴⁷² Freedom House-freedom of the Press (2014) available at freedom.house.org

⁴⁷³ Human Rights Watch (1999)(<http://www.hrw.org/reports/1999/uganda/Uganweb-02.htm>)
pg 1

⁴⁷⁴ Human Rights Watch (1999) pg 1



Ifex (2015) has reported that Burundian authorities shut down media outlets as protests intensify. Journalists are being harassed and radio stations prevented from broadcasting as the authorities clamp down on the media in an attempt to contain protests in wake of President Pierre Nkurunziza who was to run for a third term. According to the latest reports, Radio Publique Africaine (RPA), Burundi's most popular private-owned radio station was closed down today (27 April 2015), forced to suspend live coverage of protests, accused of inciting an uprising by providing live coverage of the protests. Five radio stations were raided in the process, radio transmitters disconnected with the intention to silence all the critics.⁴⁷⁵ This highlights the fact that the practice of freedom of speech and expression is big a problem across the East African Community.

As cited in the original source, Viljoen (2012) has argued that the Special Rapporteur on Freedom of Expression in Africa, who represents the established to monitor state compliance with the Declaration of Principles on Freedom of Expression in Africa.⁴⁷⁶ Viljoen found out that when reports of massive violations of the right to freedom of expression are received, the Special Rapporteur may under take investigative missions to a particular country. He or she may make 'public interventions' in form and 'urgent appeals.'⁴⁷⁷ The Commission grants observer status to NGOs entitling them to address the Commission during its public sessions. The author continues to show that the participation of NGOs has increased significantly over the years, making them by far the most visible

⁴⁷⁵ ifex- Reporters Without borders (2015)
(https://www.ifex.org/burundi/2015/04/27/news_media/)

⁴⁷⁶ Viljoen (2012), *International Human Rights Law in Africa*, 2nd Ed. Oxford, University Press pg 377

⁴⁷⁷ Viljoen (2012), pg 377

presence at these sessions with more than 100 NGOs represented.⁴⁷⁸ It was on this basis that the government invited the Commission to come in and assess the situation in 2010 and

“seek an invitation from the Uganda government to visit the country and assess media laws and freedom of expression, both in Kampala and at radio stations outside Kampala, in advance of the 2011 elections.”⁴⁷⁹

As Uganda planned for general elections in 2011, freedom of expression across the country was in significant jeopardy. This Human Rights report shows that since 2005, attempts by Uganda journalists to conduct independent political reporting and analysis in print and on radio have been met by increasing government threats, intimidation and harassment.⁴⁸⁰ This report adds that more than 90 interviews over the course of nine months in 2009 and early 2010 that document the aggressive and arbitrary nature of state responses to criticism of the government and the ruling NRM party. That in some cases, these threats are overt, such as public statements by resident district commissioner that a journalist should be “eliminated” or a police summons on charges of sedition, incitement to violence, or promoting sectarianism.⁴⁸¹ Also the government uses its national laws to bring charges against journalists, restrict the number of people who can lawfully be journalists, revoke broadcasting licenses without due process of law and practice other forms of repression.⁴⁸² These kinds of restrictions on both media outlets and individual

⁴⁷⁸ Viljoen (2012), pg 383

⁴⁷⁹ Human Rights Watch (2010) The media minefield Report pg 4

⁴⁸⁰ Human Rights Watch (2010) The media minefield Report pg 2

⁴⁸¹ Human Rights Watch (2010) The media minefield Report pg 2

⁴⁸² Human Rights Watch (2010) The media minefield Report pg 2



journalists were fully on view in September 2009, when Uganda experienced two days of rioting.⁴⁸³

The HRW world report of 2013 has pointed out that after 26 years of President Museveni's rule, increasing threats of freedom of expression, assembly and association raise serious concerns. This report has highlighted that the government banned a political pressure group calling for peaceful change, harassed and intimidated journalists and civil society activities in 2012.⁴⁸⁴ The HRW report outlines police interference in, and unlawful obstruction of, public gatherings accompanied by arrests and detention of organizers and participants. The Mayor of Kampala and opposition leader were charged with organizing unlawful assembly with the purpose of inciting the members of the public against police.⁴⁸⁵ The HRW report also shows that police restricted public debate and expression of concerns over governance thought out, journalists continue to be physically attacked in the course of their work.

Several reports and scholarly writing over many years highlight an obstructive conduct on the part of the Ugandan authorities which inhibit the thriving of the right to freedom of expression and also the general human rights situation where the government is employing hostile rhetoric and an array of tactics to intimidate and obstruct the work of NonGovernmental Organizations (NGOs) on sensitive issues like good governance, human rights, land, oil etc. The 2013 HRW report adds that the tactics used include; closing meetings, forcing NGO representatives

⁴⁸³ Human Rights Watch (2010) The media minefield Report pg 2

⁴⁸⁴ The Human Right Watch, in its world report (2013) (<http://www.hrw.org/world-report/2013/country-chapters/uganda>) p1

⁴⁸⁵ The Human Right Watch, in its world report (2013) available at Human Right Watch. org, p1

to issue apologies, occasional physical violence, threats, harassment and heavy handed bureaucratic interference in NGO registration and operations.⁴⁸⁶

A recent HRW report -Keeping the people uninformed (2016) highlights a number of issues that deliberately affect the right to free speech and expression. At the start of this report is a photo from 2013 which shows the employees of the Daily Monitor newspaper with their mouths taped shut, singing slogans during a protest against closure of their premises by the government of Uganda, outside their offices in the capital Kampala on

May 20, 2013. The HRW report adds; the police raided Uganda's leading independent newspaper and disabled its printing press after it published a letter about a purported plot to stifle allegations that Uganda president Yoweri Museveni is grooming his son for power.⁴⁸⁷

HRW report, Keeping the people uninformed (2016) added highlighting a number of issues that were prevalent prior to the February 2016 presidential elections in Uganda. Intimidation of the media and civil groups was pronounced. In the words of this report- I think the government intends to keep the people uninformed. You see, uninformed people are easy to manipulate...As journalists, we are forced to cover up. In reporting, you don't hit the nail on top. you have to communicate carefully- Radion journalist, Jinja September 2015.⁴⁸⁸

⁴⁸⁶ The Human Right Watch, in its world report (2013) available at Human Right Watch. org, p2

⁴⁸⁷ Human Right Watch report, Keeping the people uninformed (2016),

<https://www.hrw.org/report/2016/01/11/keep-people-uninformed/pre-election-threats-free-expression-and-association-uganda>

⁴⁸⁸ Human Right Watch report, Keeping the people uninformed (2016), <https://www.hrw.org/report/2016/01/11/keep-people-uninformed>



This 2016 HRW report, considers and analyses a number of key issues. It noted that as Ugandans headed to parliamentary and presidential elections in February 2016, freedom of expression and association were under serious threat. Political tensions were running high and the government faced public discontent on a range of issues such as government allocation for health and education services, corruption, widespread unemployment combined with massive youth unemployment and the rising cost of living.⁴⁸⁹ This HRW report continues to add that in response, during the past year, numerous state agencies and officials like police, internal security officials and resident district commissioners (presidentially appointed senior civil servants who monitor government programs and security in each district) had engaged in a range of tactics to intimidate and obstruct speech critical of the government, particularly in rural areas and during non-English radio broadcasts outside Kampala, where government action is subject to less international and domestic scrutiny.⁴⁹⁰ The 2016 HRW report also pointed out the existence of broad and vaguely worded laws criminalizing various contents of speech discourage journalists and civil society from criticism of government, limits access to information for voters and has a chilling effect on the debate on public issues important during campaigns and elections.

The Press release of the Article 19 Organization (2012) shows that the Government of Uganda had rejected Human Rights Council (HRC) recommendations on free expression.⁴⁹¹ The press release declares that freedom of expression is under attack and the government should have used the opportunity of the Universal Periodic Review to commit to addressing violations of free expression. This press release adds that Canada and Latvia recommended the government invite the United Nation (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, verify and assess alleged violations of the right

⁴⁸⁹ Human Right Watch report, Keeping the people uninformed (2016)

⁴⁹⁰ Human Right Watch report, Keeping the people uninformed (2016)

⁴⁹¹ Article 19, The Press release (2012)

to freedom of expression.⁴⁹² It further adds that at least four journalists had been killed since 1995. The Press Index Report 2011 indicates that violence meted out against journalists had doubled from 58 to 107 cases in 2011.⁴⁹³ This press release points out several aspects which are key indicators of the violations of the right to freedom of expression in the country.⁴⁹⁴

Human Right Watch report (2016) in Uganda shows what was happening in January prior to the elections in February. The report identified pre-election threats to freedom of expression and free speech. This report documents how some journalists and activists were facing increased threats as the elections in Uganda came close. The Human Right Watch report goes on to add that while print journalists working in English had some relative freedom, radio journalists particularly those working in local languages whose listeners are based in rural areas faced harassment and threats from some government and party officials. These include the police, resident district commissioners who represent the president, internal security officials and the Uganda Communications Commission, the government regulator.⁴⁹⁵

Human Right House Network (2009) points out that the government's refusal to allow the king of Buganda Kingdom to visit his subjects in Kayunga district was followed with wide spread protests. In response to these protests, the Broad Casting

⁴⁹² . Article 19, The Press release (2012) available at Article 19

⁴⁹³ Article 19, The Press release (2012)

⁴⁹⁴ The Press release (2012)

(<http://www.article19.org/resources.php/resource/2981/en/uganda:-government-rejects-human-rights-council-recommendations-on-freeexpression>)

⁴⁹⁵ Human Right Watch report (2016) " Keep the people informed"
<https://www.hrw.org/publications>



Council, a body responsible for regulating electronic media in Uganda closed down four FM radio stations i.e. Radio Sapencia, Akabozi FM, Central Broad Casting (CBS) and Suubi FM. The Human Right House Network (2009) continues to show that the Broadcasting Council blamed the radios for mobilizing masses for demonstrations and promoting hatred in their programs. Another ban was placed on the popular talk shows known as bimeza (local name for platforms for debates on public issues) on grounds that they were illegal.⁴⁹⁶

While carrying out its research, Human Rights Watch, press release (1999) in its efforts discovered that several NGOs had apparently overstepped the boundaries established by the government and had been subject to government harassment.⁴⁹⁷ This statement continues to show that one of the long-running cases of government interference with the activities of a civil society group had been the refusal of the government to register the Uganda National NGO. The NGO Forum had stated that its aim was to provide a common forum for all domestic, foreign, and international NGO active in Uganda in order to enhance dialogue between NGO community and the government and to promote networking and information exchange between NGOs. This position touches the general human rights situations at large.⁴⁹⁸

The African Commission on Human and Peoples Rights report (2014), oral intervention on the report of Special Rapporteur and access to information, the East and Horn of Africa Human Rights Defenders Network (EHARD) is deeply concerned about the range of challenges faced by media groups and media works on the continent. In Uganda for example, numerous journalists have been injured or beaten by police while covering the opposition demonstrations. The report adds

⁴⁹⁶ Human Right House Network (2009) (<http://humanrightshouse.org/Articles/11857.html>)

⁴⁹⁷ Human Rights Watch (1999) available at HRW

⁴⁹⁸ Human Rights Watch (1999) available at Human Rights Watch. org

that in the context of peaceful protests, effective and proportionate policing is essential to balance the freedoms of assembly, association, expression and access to information, with the need to maintain public order and the safety of the demonstrators, state officials, observers and the general public.⁴⁹⁹ This report goes on to add that in cases of targeted attacks on journalists, there is need for independent, impartial and timely investigations and prosecutions at the national level.⁵⁰⁰ Free speech is the basis for legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process, and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be.⁵⁰¹

Freedom House report (2013) high lights a number of vital issues which include the following; it states that in April and May 2011, Besigye (opposition leader at the time) and his Activists for Change (A4C) pressure group led a “walk to work” campaign of marches against corruption and the rising cost of living where the police violence resulted into 10 deaths and hundreds were arrested. Attempts to renew the protests in October led to 40 arrests and treason charges for three of the organizers. This report adds that in 2012, a police officer was killed while trying to disperse an A4C rally.⁵⁰² This all attests to the fact that there is high tension in Uganda to which the right to freedom of expression is restricted for various reasons

⁴⁹⁹ Human Rights Watch (1999) *Hostile to Democracy; the Movement System and Political Repression in Uganda*. New York, Washington

⁵⁰⁰ Human Rights Watch (1999) *Hostile to Democracy* available at [Human Right Watch. org](http://HumanRightWatch.org), p2

⁵⁰¹ Anine and Helge (eds) (2009) *Freedom of Speech Abridged: Cultural, Legal and Philosophical Challenges*, Goteborg: NORDICOM pg. 18

⁵⁰² Freedom House (2013) available at freedomhouse.org

by the government. The 2013 report further suggests that freedom of assembly is officially recognized but often restricted in practice.

Statistics from the Transparency International (2013) rank Uganda at number 140 out of 177 countries as shown by the corruption perception index.⁵⁰³ This further measures the violations of freedom in the world. It reflects the degree of freedom that journalists and news organizations enjoy in each country and the efforts made by the authorities to ensure respect for this freedom.⁵⁰⁴

The legal framework concerning freedom of expression and speech in Uganda.

It should be understood that the domestic law of Uganda does not apply in isolation of the international law. Therefore, as such under this section I have assessed the legal framework from the international level so as to be able to establish the interaction between both domestic and international legal instruments and how they relate to freedom of expression in general and Uganda in particular as seen below.

The international legal framework on freedom of expression in Uganda

At the international level, it can be observed that the right to freedom of expression is guaranteed in both Art.19 of the UDHR and Art.19 (1&2) of the ICCPR. At the regional level, this right is provided for in Art.9 of the African Charter, Art.10 of the European Convention and Art.13 of the American Convention. The ICCPR and the African Charter constitute binding obligations for Uganda. The other legal

⁵⁰³ Transparency International (2013) (<http://www.transparency.org/country#UGA>)

⁵⁰⁴ Transparency International (2013) (<http://www.transparency.org/country#UGA>)

sources, namely the UDHR and the Inter-American and European Convention will mainly be used from a comparative legal perspective.

It can be noted that the concept of human rights had long been there before the adoption of these international human rights instruments, the expression “human rights” came into everyday jargon only since the World War II (WWII) with the founding of the United Nations and the adoption of the Universal Declaration.⁵⁰⁵ Freedom of expression was included in these instruments not only because of its significance to democracy but also because the media had played a big role in aiding the warfare as it was used to spread the war propaganda.

The United Nations Treaty Collections shows that Uganda ratified and became a party to the ICCPR on 21 June 1995.⁵⁰⁶ The obligations and duties of states under international law are construed as having to respect, protect and fulfill human rights. States must not only refrain from interfering with the enjoyment of human rights, but also must take the necessary positive steps to ensure the enjoyment of a wide range of human rights.⁵⁰⁷

The right to freedom of expression is included in Art. 19 of both the ICCPR and the Universal Declaration of Human Rights (UDHR).

According to Article 19 of the ICCPR:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of*

⁵⁰⁵ Encyclopdia Britanica (www.britanicca)

⁵⁰⁶ United Nations Treaty Collections (2014) (<https://treaties.un.org/Pages/>)

⁵⁰⁷ United Nations Human Rights (2012) available at ohchr.org



*all kinds, regardless of frontiers, either orally, in writing or in print, in form of art, or through any media of his choice.*⁵⁰⁸

3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
- a. For respect of the rights or reputations of others;*
 - b. For protection of national security or of public order, or of public health or morals.*⁵⁰⁹

The UDHR is similar to the ICCPR in as far as the first two paragraphs are concerned. However, the ICCPR is more detailed as compared to the UDHR. It shows the duties and responsibilities. It also outlines that this freedom of expression can be restricted under the law.

The African Charter on Human Peoples' Rights (ACPHR) (1981), Article 9 (2) states clearly that, every individual shall have the right to express and disseminate his opinions within the law.⁵¹⁰ Uganda ratified this Charter in 1986.⁵¹¹ Chapter I-VI of the preamble of the Declaration of the Principles of Freedom of expression in Africa (2002) was adopted by the African Commission on Human and People's Rights, 32nd session, 2002, in Banjul Gambia. It comprehensively outlines what needs to be done in the process of achieving the freedom of expression to its

⁵⁰⁸ Art .19 ICCPR and UDHR and Universal Declaration of Human Rights (UDHR)

⁵⁰⁹ Art .19 ICCPR

⁵¹⁰ Brownlie and Goodwin (2010), Brownlie's Documents on Human Rights 6th Ed. Oxford, University press.

⁵¹¹ Art 9 (2) ACPHR

fullness in both the private and public spheres.⁵¹² This should be adopted by state parties to the ACPHR. In the implementation Declaration of the Principles of Freedom of expression in Africa, states parties to the ACPHR should make every effort to give practical effect to these principles. This legal instrument is not legally binding but depends on the states' act of good faith.

Uganda legal framework on freedom of expression

Under this section, I will assess the domestic legal framework of Uganda and how it relates to freedom of speech and expression. Understanding the Ugandan law context makes the comparison between the international and domestic legal frameworks achievable. The result of this then it that an assessment of whether or not Uganda is complying with its legal obligations can be realised. On this note therefore, I will analyze different instruments of law in Uganda that explain and relates to freedom of expression. Namely:-

The 1995 constitution

History suggests that before the British and Germans contented for the territory, Uganda had three different indigenous political systems: the hima caste system, the Bunyoro royal clan system and the Buganda kingship system.⁵¹³ In 1955, a constitutional monarchy with ministerial government based on British model was formed. Uganda became an independent Commonwealth nation on October 9, 1962 under a constitution much influenced by the British. The formation of the Ugandan Constitution is largely associated with the Ugandan history which i will

⁵¹² The Declaration of the Principles of Freedom Of expression in Africa (2002), University of Minnesota: Human rights Library

(<http://www1.umn.edu/humanrts/achpr/expressionfreedomdec.html>).

⁵¹³ Constitutional net, supporting constitutional builders globally- (<http://www.constitutionnet.org/country/constitutional-history-uganda>)



not explain in detail. But, it should be observed that colonialism and its politics eventually gave birth to the Ugandan constitution.⁵¹⁴

Chapter Four of the Ugandan Constitution addresses the protection and promotion of fundamental and other human rights and freedoms. This is clearly international human rights law embedded in the domestic law of Uganda. Simmons stated that usually treaties and their ratification exogenously introduce a new issue into domestic politics as a case is in Uganda shown in our Constitution.⁵¹⁵ Article 29 of the Ugandan constitution adheres to the protection of freedom of conscience, expression, movement, religion, assembly and association.⁵¹⁶

The constitution of Uganda upholds the freedom of speech. Art.29 (1)(a) states that freedom of speech and expression shall include freedom of the press and other media.⁵¹⁷ (b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning.”⁵¹⁸ The Constitution is the supreme law of Uganda and, subject to the provisions of sections 5 and 6, if any other law is inconsistent with this Constitution, this Constitution shall prevail and other law shall, to the extent of inconsistency, be void.⁵¹⁹ It is evident that Uganda has ratified and signed the major human rights instruments. There is not a convention that is

⁵¹⁴ Uganda, history (<http://thecommonwealth.org/our-member-countries/uganda/history>)

⁵¹⁵ Simmons (2009), *Mobilizing for Human Rights. International law in Domestic politics.* Cambridge University Press, pg 356.

⁵¹⁶ Constitution of Uganda

⁵¹⁷ Art 29(1a) Constitution of Uganda

⁵¹⁸ Constitution of Uganda (1995) pg 45

⁵¹⁹ Constitution of Uganda

clear-cut on freedom of speech and expression specifically. However, ICCPR to which Uganda is a party was ratified in 1995.⁵²⁰ Art 19 (1&2) of the ICCPR address the right to free speech and expression. This is evidence that the Ugandan Constitution art. 29 specifically domesticates international law.

The Press and Journalist Act 1995 (Chapter 105)

This is an Act to ensure the freedoms of the press, to provide for a council responsible for the regulation of the mass media and to establish an institute of Journalists in Uganda. Section 2 of this Act indicates that;

*No person or authority shall, on grounds of the content of a publication, take any action under this Act or any other law to prevent the-printing, publication, or circulation among the public, of a newspaper.*⁵²¹

The Press and Media Act Section 3, compliance with the other laws; Nothing contained in section 2 absolves any person from compliance with any law-prohibiting the publication of pornographic matters and obscene publications insofar as they tend to offend or corrupt public morals.⁵²² This Act has explains the law for the people in the media. This is intended to comply with the domestic law that relates to freedom of expression.

The Electronic Media Act 1996 (Chapter 104)

This is an Act for the setting up of a broadcasting council to license and regulate radio and television stations, to provide for the licensing of television sets, to

⁵²⁰ UNHR

(http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN)

⁵²¹ The Press and Journalists Act , Chapter 105 (1995) (section 2)(<http://www.ulii.org/ug/legislation/consolidated-act/105>)

⁵²² The Press and Journalists Act , Chapter 105 (1995) (section 3)



amend and consolidate the law relating to electronic media and to provide for other related matters.⁵²³

The Uganda Communications Bill 2012 passed into law, merged the Broadcasting Council

(BC) and the Uganda Communications Commission (UCC) into one body. The bill, which first came to parliament in March as the Uganda Communications Regulatory Authority Bill 2012, is now known as the Uganda Communications Regulatory Authority Bill 2012.

Therefore, the Act now consolidates and harmonizes the Uganda Communications (UCC) Act 1997 and Electronic Media Act 2000.⁵²⁴

Under the new law, a person who installs and operates a television station, radio or any other related broadcasting apparatus without a license issued, commits an offence and is liable for a fine not exceeding 1.9 Million shillings or imprisonment not exceeding four years or both.

Francis Kagolo states; freedom of expression under Art. 19 of the ICCPR is recognised as a right in the ICCPR which states;⁵²⁵

Every citizen has a right of access to information in the possession of the State or any other organ or agency of the state except where the release of the information is likely to prejudice the security of sovereignty of the State or interfere with the right of any other person.

In Uganda, Kagoro noted that freedom of expression is guaranteed in in Art. 29 (1) (a) of the constitution which states; “Everyone shall have a right to freedom of speech and expression which shall include freedom of the press and other media”

⁵²³ Uganda Legal Information Institute- The media Act (1996) (<http://www.ulii.org/ug>)

⁵²⁴ URN (2012) (<http://ugandaradionetwork.com>)

⁵²⁵ The impact of legal restriction to the freedom of expression in Uganda

Freedom of expression is a cornerstone of democratic rights and freedoms and thus lies at the foundation of a democratic society.⁵²⁶

However, as Art. 19 (3) of the ICCPR allows, nowhere in the world is this freedom absolute. In Uganda, it is restricted in Art. 41 (1) which states:-

Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person

This provision of the law makes journalism and freedom of expression very difficult as numerous questions are left unanswered. Whose privacy is protected, and who decides when privacy invasion has occurred? Such lack of clarity directly impedes the fact finding and reporting capabilities of journalists, thus hampering their right to exercise freedom of expression.⁵²⁷ Freedom of expression is further restricted under Art.43 of the constitution which provides general restrictions on the enjoyment of the rights for the good of others' rights, public interest and security of the state. Indeed, "the rights of others" has become broad and unspecific justification for limiting freedom of expression in Uganda. Yet, the country still has a number of other legal limitations, both criminal and civil, that restrict enjoyment of freedom of expression.⁵²⁸

⁵²⁶ The impact of legal restriction to the freedom of expression in Uganda

⁵²⁷ The impact of legal restriction to the freedom of expression in Uganda (<https://franciskagolo.files.wordpress.com/2012/06/final-workpdf.pdf>)

⁵²⁸ <https://franciskagolo.files.wordpress.com/2012/06/final-work-pdf.pdf>



Impact of other legislations on media

The 1950 Uganda Penal Code

The 1950 Penal Code contains a number of sections that restrict the freedom of media. It defines offences that criminalize sedition⁵²⁹ (Penal Code Act 1950: sec 40), sectarianism (sec 41), Incitement of violence (sec 51) and libel (sec 79 which also includes publishing of defamatory information)⁵³⁰. Despite the legal guarantee under the constitution and international laws, criminal charges through the above sections of the domestic law continue to be a method through which journalists have been framed and charged as a way of scaring them from expressing their views on government policies and actions⁵³¹ reports that many Commonwealth countries to date have dropped many sections of this law, but in Uganda, journalists like Mwenda⁵³² and opposition supporters continue to be charged with sedition charges including opposition politicians like MP Betty Kanya, MP Betty Nambooze and Medard Ssengona⁵³³.

In its submission to the United Nations, Article 19 argues that the Penal Code is not only vague but ‘*susceptible to unreasonable wide interpretations by both authorities and those subject to the law*’ it is therefore clear that such ‘*draconian law*’ has a

⁵²⁹ The Penal Code Act defines sedition as when a person alters or publishes statements aimed at bringing hatred, contempt or disaffection against the president, the government or the judiciary. According to HRNJ-Uganda/IFEX 2010, In 2005, journalist Andrew Mwenda and the East African Media Institute, petitioned the Constitutional Court challenging the provisions on sedition in the Penal Code Act, available on http://www.ifex.org/uganda/2010/08/25/sedition_law_null/ (accessed on 29.03.2012)

⁵³⁰ Bob Denis Odongo ; Human rights and media in Uganda; a critical analysis of the mass media freedom

⁵³¹ (Amnesty International, 2011:9; Article 19 submission to UN). IFEX (2010) and HRNJ (2010)

⁵³² According to HRNJ-Uganda and IFEX 2010, Out of the 25 times, Andrew Mwenda, a Ugandan journalist has been charge, 18 times were with the offences of sedition.

⁵³³ Bob Denis Odongo ; Human rights and media in Uganda; a critical analysis of the mass media freedom

chilling effect on freedom of expression in any democratic country. In a landmark case of freedom of expression, the Constitutional Court on August 25, 2010, nullified sections 39 and 40 and Cap. 120 of the Penal Code Act which defines and establishes law on sedition; also removed are sections 42, 43 and 44, which put in place a law promoting sectarianism⁵³⁴.

Similarly, in the case of *Charles Onyango Obbo & Others Vs Attorney*, the Constitutional Court⁵³⁵ nullified the offense of publication of false news under section 50 of the penal code of Uganda as being unconstitutional. Despite the Court ruling on section 50 of the Penal Code in February 2004, more charges resurface under the nullified law; journalist Yoweri Musisi of CBS was charged with publishing false news in March 2011, an offense that no longer existed. The case was later dropped on May 18, 2011 after his lawyers and HRNJ-U challenged the legality of the charge following a Supreme Court ruling in 2004 (HRNJU,2011:21; Amnesty International, 2011: 9-10)⁵³⁶.

The 1995 Press and Journalist Act

The 1995 Act whose content regulates the practice of media has been a subject of criticism especially the registration clause, which requires licensing of the practice of journalism; perhaps, placing conditions on who qualifies to practice journalism as put down in section 26 and 27 of the above Act even worsens the situation (Free

⁵³⁴ See; HRNJ-U, 'Constitutional Court nullifies law on sedition,' 25 August 2010, accessed at: http://www.ifex.org/uganda/2010/08/25/sedition_law_null/. accessed on 14.03.2012

⁵³⁵ Also see; Lead Judgment by Justice Joseph Mulenga of Supreme Court of Uganda, 2004 in Constitutional Appeal No. 2 of 2002 between Charles Onyango Obbo and Andrew Mwenda and Attorney General.

⁵³⁶ Bob Denis Odongo ; Human rights and media in Uganda; a critical analysis of the mass media freedom



House, 2010). The Act becomes worse with the proposed amendment of January 29, 2010 by the government (The 1995 Press and Journalist Act). Article 19 criticizes the Act as not being in line with the international legislation because it puts too many conditions on the kind of person who may practice journalism and yet this is mentioned nowhere in the international legislations of freedom of expression (Article 19.2010: 1).⁵³⁷

The 1996 Electronic Media Act, cap 104

The Electronic Media Act gives the Broadcasting Council unchecked and excessive powers to act with impunity on the media outlets by regulating media content (HRNJ-U, 2011:27). Such power became practically experimented during the September 11, 2009 closure of four radio stations Central Broadcasting Service (CBS), Radio 2 (Akaboozi FM), a Catholic Church run FM station Sapientia, and Suubi FM) during the riots and demonstration in Kampala⁵³⁸. In addition, the Broadcasting Council has abused its powers on many occasions by ordering suspension of critical journalists, banning public debates and live broadcast coverage of riots and demonstrations as well as blocking the Social Network Facebook and Twitter on April 14, 2011 during the walk to work protest (HRNJ-U, 2011:27). According to

Article 19, the Council's unquestioning compliance with decisions from the government poses a great threat to free practice of media; the Council lacks

⁵³⁷ Bob Denis Odongo ; Human rights and media in Uganda; a critical analysis of the mass media freedom

⁵³⁸ See; HRNJ-Uganda UPR Report p.3 available on <http://www.hrnjuganda.org/index.htm> accessed on 27.02.2012

independence but operates under directives from the government through the Ministry of Information⁵³⁹.

The 2002 Anti-Terrorism Act

In force since June 2002, the Anti-Terrorism Act focuses on criminalizing coverage of mostly opposition politicians, dissident, and rebels. Under section 9, it prohibits publication of items that promote terrorism (HRNJ-U, 2011:28). It has been argued that, the definition of ‘terrorism’⁵⁴⁰ as captured in the Act is ‘vague’ and creates fear among journalists to the extent that it becomes difficult for journalists to report any clashes between government and any rebels without risking imprisonment (HRW, 2010: 48,). The law does not permit any form of coverage of organization or any group and individual suspected to be engaged in a terrorist act by way of direct engagement or financial support⁵⁴¹. Section 8 and 9 focuses on ‘*publishing or disseminating news or materials that promote terrorism*’. This section is hostile to media freedom because it illegitimately contributes towards restricting freedom of media (HRNJ, 2011).⁵⁴¹ Similarly, Section 19 provides for tapping or interceptions of any communication by an assigned officer of Ministry of Security. The implication is that no longer can the sources of news of journalists be secure as there is a third party intercepting under the provision of this law (Amnesty International, 2011: 14). A journalist can be required to reveal his sources of

⁵³⁹ Bob Denis Odongo ; Human rights and media in Uganda; a critical analysis of the mass media freedom

⁵⁴⁰ HRNJ- U (2011) captures the definition in the Act as ‘An act of terror is any act or omission aimed at forcing government to change any thing(policy, law, practice etc) and in through doing that a person dies’ p.28 ⁵⁴¹ Ibid. p2

⁵⁴¹ Bob Denis Odongo ; Human rights and media in Uganda; a critical analysis of the mass media freedom

information during the investigation under this Act, something that is both unethical, and undermines the practice of journalism (HRNJ-U, 2011:28).

The Public Order Management Bill 2009

With the major aim of “*safeguarding public order and other related matters*”⁵⁴², the bill prevents freedom of media and freedom to assemble. The proposed law is in contradiction with the

Ugandan Constitution of 1995, the Africa Charter on Human and People’s Rights, the International Covenant on Civil and Political Rights, and the Universal Declaration of Human Rights among other regional and international treaties on freedom of the media (Amnesty International 2011, Article 19, 2010). It infringes on a number of rights including freedom of speech and expression and rights to public gatherings, and gives government through the Inspector General of Police and the Minister of Internal Affairs unchecked powers over managing public gatherings, at which the media are almost invariably present (An Analysis of Public Order Management Bill of Uganda, 2009).

Neither the proposed restrictions in the bill, nor its scope, match the international standard permitted under the international human rights law of which Uganda signed and is bound by, specifically the ICCPR and the African Charter on the right to peaceful assembly and freedom of expression (Amnesty International, 2011:28). The bill has far reaching consequences for wide sections of the population if passed into the law. The effects on the peaceful assembly and

⁵⁴² See; the Preamble of the Public Order Management Bill 2009

expressions would be much on the media, human rights defenders and the political parties (ibid).⁵⁴³

The Regulation of Interception of Communication Act, 2010

Introduced by the Minister of Security, passed into law in July and into force on September

03, 2010, the bill lacks safeguards on right of freedom of expression and privacy (Amnesty International, 2010). Human rights activists disagree with the arguments advanced by the government of guarding the '*security*' of the country and dismiss such a law as contradicting the rights of privacy enshrined in the 1995 Ugandan constitution⁵⁴⁴, The law is not in harmony with the national, international and regional treaties, (ACHR, ICCPR,UDHR)⁵⁴⁵. In its submission to the United Nations, Article 19 argues that the law gives too much power on surveillance, interceptions of electronic, communications and postal mails by allowing intrusion into communications of organizations, groups and individuals including media professionals. The Act does not define the grounds for interceptions and gives

⁵⁴³ Bob Denis Odongo ; Human rights and media in Uganda; a critical analysis of the mass media freedom

⁵⁴⁴ See Report of the sessional committee on Information and communication technology (ICT) on the regulation of interception of communication bill 2007, June 2010 available in the office of Clerk to parliament Uganda.

⁵⁴⁵ As Amnesty international puts it, this right is also provided for under Article 29 of the Ugandan Constitution, Article 19 of the UN International Covenant on Civil and Political Rights (ICCPR) and Article 9 of the African Charter on Human and Peoples Rights (ACHPR). Uganda is party to both treaties. Article 27 of the Ugandan Constitution guarantees the right to privacy which is also provided for under Article 17 of the ICCPR available on <http://www.amnesty.org/en/library/asset/AFR59/016/2010/en/4144d548-bd2a-4fed-b5c6993138c7e496/afr590162010en.pdf> (accessed 30.03.2012).



unchecked powers to Minister of Security over control of ‘*Monitoring Centre*’⁵⁴⁶⁵⁴⁷ (Amnesty International, 2010). Where it defines, for example ‘*National security*’ the definition is broad, section one of the Act says ‘*national security of Uganda includes matters relating to the existence, independence or safety of the State*’ (Communication Act, 2010). As argued by many journalists and in agreement HRW, 2010; Article 19, 2010; UHRC, 2010 and Amnesty International, 2011, what constitutes ‘*national security*’ has been termed ‘*vague*’. Analysts look at it as a deliberate attempt to suffocate and stifle media freedom in a free democratic society; even the Johannesburg Principles on national security re affirms that such security concerns should not be generalized to include⁵⁶.

‘protecting a government from embarrassment or exposure of wrongdoing’

Although intensions of the Act may be to protect ordinary citizens through utilizing legal avenues, it does not state for example, the issues which a judge should consider before the interception warrant is issued.⁵⁴⁸ The implication could mean a judge may not be required by law to consider specific human right issues before issuing the warrant of interception and this is likely lead to gross human rights violations. And yet, the warrant issued may also not conform to the international standards (Amnesty International, 2010). The interpretation of this law for the media practitioners and human rights defenders is that, they can no longer be secure, because their sources of information would be easily accessed by the government through the government interception centre that is granted the legal authority to tap communication.

⁵⁴⁶ See; Section 3 (1) (a) (c) & (4) of the Act.

⁵⁴⁷ Johannesburg Principles, principle 2

⁵⁴⁸ Bob Denis Odongo ; Human rights and media in Uganda; a critical analysis of the mass media freedom

International legal obligation that relates to freedom of expression

The International Covenant on Civil and Political Rights (ICCPR) is the treaty agreement central to anchoring freedom of expression in the international human rights law. The vast majority of the world's nations have both signed and ratified the treaty.⁵⁴⁹ Once state has signed and ratified the ICCPR, then is legally bound by under international law to observe and respect human right obligations under this treaty. The freedom of expression is included in Art.19 of the ICCPR. So what does “legally binding mean in this this context? Among others, party to the ICCPR has the obligation to ensure that its domestic system protects the rights specified in the treaty, including measures outside the formal law.⁵⁵⁰ General Comment No. 31 (80) outlines a number of obligations for states which are parties to the covenant. That every party has a legal interest in the performance by every other State Party of its obligations. This follows from the fact that the “rules concerning the basic rights of the human person” are *erga omnes* obligations.⁵⁵¹

According to the General Comment (GC) No. 31 (80), Article 2 defines the scope of the legal obligations undertaken by State Parties to the covenant. A general

⁵⁴⁹ Article 19: Freedom of expression anchored in international law

(2012)(<http://freespeechdebate.com/en/discuss/article-19-freedom-ofexpression-anchored-in-international-law/>)

⁵⁵⁰ Article 19: Freedom of expression anchored in international law (2012)(

<http://freespeechdebate.com/en/discuss/article-19-freedomof-expression-anchored-in-international-law/>)

⁵⁵¹ International covenant on civil and political rights, General Comment No. 31,(2004) pg 1



obligation is imposed on States Parties to respect the covenant rights and to ensure them all to individuals in their territory and subject to their jurisdiction. Art 2 (1) also highlights the need by State parties to refrain from violation of the rights recognized by the covenant, and any restrictions on any to those rights must be permissible under the relevant provisions of the covenant.⁵⁵²

The European court of Human Rights has repeatedly held that that freedom of expression applies not only to inoffensive ideas, “but also to those that offend, shock or disturb the state or any sector of the population”, international human rights law allows for restrictions on the exercise of freedom of expression if necessary and proportionate for certain specific purposes including respect of the rights or reputations of others or to protect national security or public order.⁵⁵³

The office of the high commissioner for Human Rights (2011) report has highlighted a number of key issues that should be addressed in dealing with freedom of speech and expression. The UN Special Rapporteur on freedom of opinion and expression, the Organization for Security and Co-operation in Europe (OSCE) representative on freedom of the media, the, -the Organization of the American States (OAS) Special Rapporteur on freedom of expression and the ACHPR Special Rapporteur on freedom of expression and access to information argued stressing the fact that crimes against freedom of expression, if committed by state authorities, represent a particularly serious breach of the right to freedom of expression and the right to information, but that also states have an obligation

⁵⁵² International covenant on civil and political rights, General Comment No. 31,(2004) pg 3

⁵⁵³ Amnesty International, censorship and free press (2012)

(<https://www.amnesty.org/en/latest/news/2012/01/france-bill-genocidedenial-threatens-freedom-expression/>) pg 1

to take both preventive and reactive measures in situations where non-state actors commit crimes against freedom of expression.⁵⁵⁴

The UN human rights-office of the high commissioner report goes on to argue that state officials should unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression.⁵⁵⁵ This report further argues that states should reflect in their legal systems the fact that crimes against freedom of expression are particularly serious. Need to ensure that crimes against freedom of expression are subject to independent, speedy and effective investigations and prosecutions and also ensure that victims of crimes against freedom of expression have access to appropriate remedies.⁵⁵⁶

According to ifex (2013), in its press release- Reporters without Borders shows a situation in which reporters could face up to 25 years in jail under new South African Bill. This report shows disappointment by the South African (SA) national assembly's adoption of the new version of the Protection of State Information Bill (POSIB) with 190 votes, 73 against and one absentee.⁵⁵⁷ "The government has insisted on pushing this bill through parliament , turning a deaf ear to the many objections that have been raised since it was first submitted five years ago," Reporters without Boarders said. This report carried on to argue that "journalists would have less leeway to work if this bill became law and we therefore have no

⁵⁵⁴ United Nations Human Rights-Office of the High Commissioner (2011)
<http://www.osce.org/fom/91595?download=true> Pg 1 and 2

⁵⁵⁵ United Nations Human Rights-Office of the High Commissioner (2011) pg 3

⁵⁵⁶ United Nations Human Rights-Office of the High Commissioner (2011) pg 3 and 4

⁵⁵⁷ ifex - Reporters Without boarders (2013)

(https://www.ifex.org/south_africa/2013/04/26/south_africa_national/) pg 1



hesitation in adding our voice to the national and international protests, and the reservations expressed by the UN Human Rights Committee.⁵⁵⁸ This report concludes by pointing out that in view of the SA media, opposition and many anti-POSIB campaigners, the bill would undermine freedom of information by exposing journalists to draconian penalties and forcing them to censor themselves. Sentences of up to 25 years in prison for revealing classified state information would pose a major threat to journalists, who often base their stories on leaks. The reports has further argued that it was designed to prevent or dissuade journalists from investigating allegations of corruption within the government or ruling African National Congress or President Zuma's circle of associates.

Domestic legal obligation that relates to freedom of expression

Freedom of opinion and expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society.⁵⁵⁹ The obligation to respect freedoms of opinion and expression is binding on every state party as a whole. All branches of the state (executive, legislative and judicial) and other public or governmental authorities, at whatever level;- national, regional or local are in the position to engage the responsibility of the state party.⁵⁶⁰ A number of domestic legal obligations that relate to freedom of expression include the following as shown below;

⁵⁵⁸ ifex - Reporters Without borders (2013) (https://www.ifex.org/south_africa)

⁵⁵⁹ International Covenant on Civil and Political Rights- General Comment No. 34 (2011) Geneva (<http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>)

⁵⁶⁰ International Covenant on Civil and Political Rights- General Comment No. 34 (2011) Geneva (<http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>)

Derogation

According to the General Comment (GC) No. 5, Article 4 (1981) paragraph 1 states that, when a public emergency which threatens the life of a nation arises and it is officially proclaimed, a State party may derogate from a number a number of rights to the extent strictly required by the situation. The State party, however may not derogate from certain specific rights and may not take discriminatory measures on a number of grounds. The State party is also under an obligation to inform the other States parties immediately, through the the General-Secretary , of the derogations it has made including the reasons therfor and the date on which the derogations are terminated.

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the covenant, including the right to freedom of opinion and expression ‘in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed’. However, such measures must be consistent with their obligations under international law and must not involve discrimination based on the basis of race, color, sex, language, religion or social origin. Article 4 also confirms that any state party to the present covenant availing itself of the right of derogation shall immediately inform the other states parties to the present covenant, through the intermediary of the Secretary General of the UN, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.⁵⁶¹

⁵⁶¹ ICCPR, 4 (3)



As noted in the The observer news paper (2015) Uganda, like any other democratic society, is committed to uphold, protect and promote the right to freedom of speech and expression. The observer adds that it is for this reason that the right is entrenched in the most authoritative legal instrument on the land, the Ugandan Constitution.⁵⁶² The Constitution guarantees to every Ugandan the right of freedom to hold opinions, receive and impart ideas and inform without interference. As I have already shown, this report highlights the importance of Art 29 (1) (a) of the Constitution, Art 41 (1) and Art 20 (2) which enjoins all organs and agencies of government and all persons to respect, uphold and promote the rights and freedoms of the individuals and groups enshrined in the constitution.⁵⁶³

Hence in my view, in accordance with the law of Uganda as outlined in the ICCPR and Ugandan Constitution, this Right to Freedom of expression is guaranteed in the legal instruments. Because of its importance in democracy, it is imperative to note that it should be respected at all times unless the situation dictates otherwise.

The Constitution of Uganda paragraph 44 states;

Prohibition of derogation from particular human rights and freedoms. Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following freedoms⁵⁶⁴;

- a. Freedom from torture and cruel, inhuman or degrading treatment or punishment;
- b. Freedom from slavery or servitude;

⁵⁶² The Observer(2015), Uganda: Judiciary Will Jealously Guard Freedom of Speech

⁵⁶³ The Observer(2015), Uganda: Judiciary Will Jealously Guard Freedom of Speech

⁵⁶⁴ The Constitution of Uganda

- c. the right to fair hearing and;
- d. the right to an order of habeas corpus

What is also necessary should be within the boundaries of law as outlined in the section below.

Criteria for imposing limitations on the freedom of expression

Under article 19 (3) of ICCPR, the freedom of expression may be limited as *provided for by law and when necessary to protect* the rights or reputations of others, national security, public order, or morals. Limitations must be *prescribed by legislation* necessary to achieve the desired purpose and *proportionate to the need on which limitation is predicated*. Basically, the necessary criteria to be fulfilled for imposing lawful limitations to the freedom of expression are that:

- a. such limitations need to be provided in law
- b. be necessary in a democratic society, and
- c. be proportionate to fulfilling those needs

Paragraph 3 GC No.10: Article 19 (Freedom of opinion) states that in order to know the precise regime of expression in law and practice, the committee needs in addition pertinent information about the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right. This GC No.10 shows that it is the interplay between the principle of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.⁵⁶⁵

⁵⁶⁵ General Comment No. 10: Article 19 (Freedom of opinion), Nineteenth session (1983)



In addition, GC paragraph 3 stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason, certain restrictions on the the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.⁵⁶⁶

The Observer (2015) shows limitation of the Law in the Constitution in relation to the Freedom of expression. Katureebe of the Observer news paper 2015 explained Art. 43 of the Constitution and pointed out its limation nature. This Art. 43 shows that freedom of expression is not actually absolute and it may be restricted. Katureebe stated that Art. 43 of the Constitution provides general limitations on fundamental and other human rights and freedoms, which includes freedom of expression.

This Article states;-

“(1) In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others of the public interest.

(2) Public interest under

(a) Political persecution

(b) Detention without trial

(c) Any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society.⁵⁶⁷

⁵⁶⁶ General Comment No. 10: Article 19 (Freedom of opinion), Nineteenth session (1983)

⁵⁶⁷ Uganda: Judiciary Will Jealously Guard Freedom of Speech

This actually produces two sides of the same coin. That is, the same constitution provides guarantees and at the same time sets restrictions. *Katureebe* of the Observer added that on the other hand, there is interest to keep the enjoyment of the individual's rights in check, on social considerations, which are also set out in the Constitution. Where there is a conflict between the two interests, the courts have and will continue to come up to resolve it, having regard to the different objectives of the Constitution.⁵⁶⁸

In *Charles Onyango- Obbo and Another verses the Attorney General* (Constitutional Appeal No. 2 of 2002), the Ugandan Constitutional Court declared section 50 of the Penal Code Act, which criminalized publication of a false statement, rumour or report, which is likely to cause fear and alarm to the public or to disturb the public peace as being inconsistent with article 29 (1) (a) of the Constitution.⁵⁶⁹

In practice therefore, in the lead judgment of *Joseph Mulenga*, with which all the other justices of the Supreme court concurred, *Mayingo Deputy Chief Justice* went to great length to explain the above constitutional provision in five critical areas: freedom of expression in a democracy, falsity and freedom of expression, limitation and freedom of expression, the standard of limitation and prejudice to the public interest.⁵⁷⁰

⁵⁶⁸ Bart Katureebe, The Observer (2015) (<http://www.observer.ug/viewpoint/37279-judiciary-will-jealously-guard-freedom-of-speech>)

⁵⁶⁹ Bart Katureebe, The Observer (2015) (<http://www.observer.ug/viewpoint/37279-judiciary-will-jealously-guard-freedom-of-speech>)

⁵⁷⁰ Uganda: Judiciary Will Jealously Guard Freedom of Speech



Rights of reputation of others

In a case, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia Herzegovina* (Application no.17224/11) (2015)- A case on defamation proceeding brought against four NGOs following the publication of a letter written to highest authorities of the district complaining about the entertainment editor of a public radio station. The applicant NGOs complained that the local domestic courts' decisions against them had breached their right to freedom of expression. They maintained that their intention had been to publicise the letter, which had occurred without their knowledge, but to inform those in authority about certain irregularities in a manner of considerable public interest...⁵⁷¹ The Court held that there had been no violation of Art. 10 (freedom of expression) of the Convention. It had found in particular that the national courts, which had heard witnesses in the defamation proceedings, had collectively held that the applicant NGOs had acted negligently in simply reporting the entertainment editor's alleged misconduct... The national courts had therefore struck a fair balance between the radio entertainment editor's right to reputation and the applicant NGOs' right to report irregularities about the conduct of a public servant to the body competent to deal with such complaints.⁵⁷² In practice therefore, cases dealing with the rights of reputation of others on freedom of expression shows how difficult but also necessary in handling issues addressing the right to freedom of speech and expression.

⁵⁷¹ *Medžlis Islamske Zajednice Brčko and Others v. Bosnia Herzegovina* (2015)- (Final Judgment) European Court on Human Rights

⁵⁷² *Medžlis Islamske Zajednice Brčko and Others v. Bosnia Herzegovina* (2015)- (Final Judgment) European Court on Human Rights

Comparing derogation and limitation, the Observer (2015) noted that these two situations are usually grave circumstances presenting actual mischief or danger to “the rights of others” or “public interest”. In those exceptional circumstances, the Constitution of Uganda allows for derogation or limitation in order to avert or remove real mischief or danger.⁵⁷³ The observer proceeds to add that the court must play a balancing act- the need to promote freedom of expression, while at the same time protecting the rights of others. This is what the constitutions demands- that the enjoyment of one’s rights must not prejudice the rights of others.

National security

The national security limitation would justify prohibitions on transmission of information, including ‘official secrets’, which would adversely affect the security of the nation, provided the prohibition is reasonable, is effective to protect national security, and restricts freedoms of expression no more than is necessary to protect national security.

Every government restricts speech to some degree. Common limitations on speech relate to: hate speech and classified information.⁵⁷⁴ The exercise of these rights carries “special duties and responsibilities and will “therefore be subject to certain restrictions” when necessary “for respect of the rights or reputation of others” or “for the protection of national security or of public order”.⁵⁷⁵ That said, personally I too concur with this argument. What is challenging is that governments usually take advantage of such law and interpret it in a way that best protects its own interests. This is so common in young democracies where the rule of law is young

⁵⁷³ Uganda: Judiciary Will Jealously Guard Freedom of Speech

⁵⁷⁴ Challenges of freedom of speech, assembly and association in Africa- Case of Uganda

⁵⁷⁵ Challenges of freedom of speech, assembly and association in Africa- Case of Uganda

and fragile. As above, in Uganda, most public rallies of the opposition are usually denied congregations on grounds of security issues especially of people's properties.

Public order and morality

The Uganda public order bill was initially proposed in 2009 and passed 2013.⁵⁷⁶

The Public Order Management Act 2013 states:

- a. the proposed site of the public meeting, the estimated number of persons expected, the purpose of the public meeting; and
- b. any other relevant information.

The Public Order Management adds that;

1. In the absence of Form A referred to in subsection (2), the organizer shall give notice in writing containing the information required under Form A.⁵⁷⁷
2. The notice to give under this section shall be in triplicate and copies shall be given to the applicant and the proprietor of the venue where public meeting shall be held
3. Where a public meeting is held, each of the person organizing it commits an offence if; or
 - A. the requirements of this section as to notice have not been satisfied; or
 - B. the date when it is held, the time when it starts, or its route, differs from the date, time or route specified in the notice.⁵⁷⁸

In The Public Order Management Act, included is the –principle of managing public order.

⁵⁷⁶ BBC News (2013) Uganda Public order bill is 'blow to political debate'

⁵⁷⁷ Uganda Public Order Management Act, 2013

⁵⁷⁸ Uganda Public Order Management Act, 2013

It states;

- (1) *The underlying principle of managing public order is to regulate the exercise of the freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition in accordance with Articles 29 (1)d and 43 of the Ugandan Constitution.*⁵⁷⁹

‘Public order’ is understood to mean the rules which ensure the peaceful and effective functioning of society. The limitation in article 19 (3) of the ICCPR would justify prohibitions on speech that may incite crime, violence or mass panic, provided the prohibition is reasonable, is effective to protect public order and restricts freedom of expression no more than is necessary to protect public order.

The *Public Order Bill* was passed despite fierce criticism from religious leaders, opposition Members of Parliament (MPs) as well as the public and rights groups. The

Public Order Management Act makes it clear that ‘police approval’ would be required if three or more people want to gather publically to discuss political issues.⁵⁸⁰

The bill gives discretionary powers to police to veto gatherings of as few as three people in a public place to discuss political issues. Police must receive a written note of public meetings seven days in advance and they may take place between 6:00 and 18:00.⁵⁸¹ These are some of the sections of the Public Order Bill. This law seems to place more powers in the hands of the public authorities, mainly the police.

⁵⁷⁹ Same as above

⁵⁸⁰ BBC News (2013) Uganda Public order bill is ‘blow to political debate’

⁵⁸¹ BBC News (2013) Uganda Public order bill is ‘blow to political debate’



This of course makes the freedom of expression problematic hidden in the idea of ensuring public order. I do believe that gatherings can happen spontaneously and it is just the duty of the police to guide the group without interference, until for some reason that group runs riot while destroying people's property. The act of arresting people in any place who are more than three is unconstitutional, Art. 29 Constitution of Uganda and does not respect the international obligations as shown in the Art. 19 of the ICCPR in regard to freedom of speech and expression.

Freedom of expression and the media

In Liberal societies, broadcasting freedom is now considered to be important⁵⁸². African governments have been more reluctant to liberalize the airwaves to some extent because of the potential public outreach it has.⁵⁸³ In the 2006 elections, both the newspaper-The Monitor and KFM radio were stopped from publishing results as they came in.⁵⁸⁴ The covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint to inform public opinion. The public also has a corresponding right to receive media output.⁵⁸⁵

The Human Rights Committee, in General Comment No. 25 on the participation in public affairs and the right to vote, elaborated on the importance of freedom of expression for the conduct of public affairs and effective exercise of the right to

⁵⁸² Barendt (1995), *Broadcasting law – A comparative study*, Oxford university press. Pg 32

⁵⁸³ Hyden, Leslie & Folu (eds) (2002) *Media and Democracy in Africa*, New Jersey, New Brukswick

⁵⁸⁴ Peterson (2006, *Uganda presidential, parliamentary and local council elections*), NCHR, University of Oslo, pg 16.

⁵⁸⁵ General Comment No 34 (2011) pg4

vote. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.⁵⁸⁶ There have been legal consequences to certain re known individuals in the country. In *Charles Onyango Obbo and Anor V Attorney General* (constitutional appeal No.2 of 2002), *Onyango Obbo* and *Andrew Mujuni Mwenda*, the appellants were practicing journalists respectively Editor and senior reporter of the monitor newspaper. On 24 October 1997, the two were jointly charged in the magistrates' court on two counts of the criminal offence of "Publication of False News" contrary to section 50", which makes publication of false news a criminal offence, contravenes that protection. The particulars of offence in one count recited the following excerpt from the story as the alleged false news.⁵⁸⁷

"President Laurent Kabila of the newly named Democratic Republic of the Congo (formerly Zaire) has given a large consignment of gold to the Government of Uganda as payment "for services " by the latter during the struggle against the former military dictator, the late Mobutu Sese Seko".⁵⁸⁸

The alleged false information that Lt. Col. *Andrew Lutaya*, played a key role in the transfer of the gold consignment from the Democratic Republic of Congo to Uganda "

ON 24th November 1997, the appellants who believed that their prosecution was a violation of their several rights guaranteed by the Constitution, decided to seek legal relief through a joint petition to the Constitutional Court, under Art. 137 of

⁵⁸⁶ General Comment No 34 (2011) pg 5

⁵⁸⁷ Charles Onyango Obbo, Andrew Mujuni Mwenda and Anor V attorney general (constitutional appeal No.2 of 2002)

(<http://www.ulii.org/ug/judgment/supreme-court/2004/1>) pg 1-7

⁵⁸⁸ Charles Onyango Obbo, Andrew Mujuni Mwenda and Anor V attorney general 2002 pg 1-7



the Constitution, seeking, inter alia, declarations: that the action of the Director of Public Prosecutions (DPP) in processing them under section 50, was inconsistent with the provisions of Art 29(1) (a) ... of the constitution.⁵⁸⁹

Subsequently, the Constitutional Court considered the petition and decided-

- (a) Unanimously, that the Director of Public Prosecutions- DPP's action in prosecuting the appellants was not consistent with the Constitution; and
- (b) by majority of four to one, that section 50 is not consistent with Article 29 (1)(a) of the Constitution.⁵⁹⁰

Adherence of public authorities to freedom of expression; A socialistic view

Jeeshan explains Thomas Scanlon's theory of freedom of expression, identifying its foundations in the liberal theories of Locke and Mill in order to provide an introduction to what should be understood by the term 'freedom of expression' in a liberal society, and to offer an explanation as to why acts of expression are deemed to be acts protected from legal prosecution or censorship.⁵⁹¹ As Scanlon (1972) has noted:

'persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises of your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all the opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says he has

⁵⁸⁹ Charles Onyango Obbo, Andrew Mujuni Mwenda and Anor V attorney general 2002 pg 1-7

⁵⁹⁰ Charles Onyango Obbo, Andrew Mujuni Mwenda and Anor V attorney general 2002 pg 1-7

⁵⁹¹ Jeeshan (2002), An introduction to freedom of expression (http://www.richmond-philosophy.net/rjp/rjp20_gazi.php)

*squared the circle, or that you do not care wholeheartedly for the result...*⁵⁹²

A further question that ‘an adequate account of freedom of expression should answer is this: To what extent does the doctrine rest on natural moral principles and to what extent is it an artificial creation of particular political institutions?’⁵⁹³ Looking at the above social science position, it is imperative to note that free speech is one of the major factors necessary in the liberal and democratic society. Hence we can agree that this right forms part of the core basis for the thriving of a free democratic society. As Scanlon points out, we need to be on guard so that those that have power, are not allowed to use institutions of law and put their interests into law hence sweeping away the opposition.

Literature widely acknowledges that the police force has the duty to protect the public. However, often times, the police has been largely blamed for implementing the interests of the current government something that has resulted into fights between the people, police authorities and journalists. Dispersion is usually with force through tear gas, beating, arrests of people and journalists have fallen victims often times. Social science has a deep understanding using theories to express and explain law and how it protects the interests of the powerful at the expense of the weak. It is this position that usually results in the suppression of this right to freedom of expression.

In her theory, Scanlon’s – a theory of freedom of expression, two distinctive features of

Scanlon’s account on free speech are identified

1. Scanlon argues that the key distinction isn’t between speech or expression (which is protected) and other forms of action (which aren’t),

⁵⁹² Scanlon (1972), a theory of freedom of expression , Philosophy and Public affairs, Vol. 1, No. 2 (Winter, 1972), pp 204-205

⁵⁹³ Scanlon (1972), pg 205



but rather between expression which moves others to act...which gives rise to actions by others, in other ways like providing them with the means to do what they want.⁵⁹⁴

2. The basic principle of expression is not concerned with acts which are not protected, but justifications for restricting speech.⁵⁹⁵

In her theory, it is observable that often, the focus is put on restricting freedom of expression rather than its protection. The ruling parties often take advantage to restrict rather than protect to avoid over criticism which may make such governments weak and become unpopular.

There has to be reasons behind the arguments to allow speech; we cannot simply say that the first Amendment says so, therefore it must be so. The task is not to come up with a principle that always favors expression, but rather, to decide what is good speech and what is bad speech. A good policy “will not assume that only relevant sphere of action is the head and larynx of the individual speaker”. It is more in keeping with the values of a democratic society, in which every person is deemed equal, to allow or prohibit speech that singles out specific individuals and groups as less than equal.⁵⁹⁶

Law enforcement

In Uganda, the interpretation and enforcement of the law is the duty which courts perform at all times just like any other court in the world. The difference comes

⁵⁹⁴ Scanlon’s “ A theory of Freedom of Expression (<http://ocw.mit.edu/courses/linguistics-and-philosophy>) Pg.2

⁵⁹⁵ Scanlon’s “ A theory of Freedom of Expression, pg.3

⁵⁹⁶ Stanford encyclopedia of philosophy (2002), Freedom of speech (<http://plato.stanford.edu/entries/freedom-speech/#DemFreSpe>)

from the efficacy of these courts. It is such a duty that these courts are either trusted or mis-trust, efficient or not.

Role of domestic courts in ensuring freedom of expression

Courts of law at a general level have tried to pass judgment to give Ugandans freedom of speech like in *Muwanga Kivumbi Vs AG*. However, the state had again passed the Public Order Management bill into law that curtails freedom of speech and assembly. According to the respondent, as the law stands now, one must seek police permission first to hold a political gathering of more than three people, demonstration or political meeting. Yes, this true in reference to the Public Order Management Act 2013. This Act, lays it clearly stating that permission must be sought before holding any public or political gatherings of more than three people.⁵⁹⁷ For this respondent, everywhere in the world, courts are meant to be for everyone. However, this respondent thinks the low levels of education and poverty meant that most Ugandans cannot really use courts to enforce their freedom of expression. To the respondent, the Ugandan courts seem to be only for the elites and a ground for the educated class who know about their rights and therefore freedom of speech and expression mainly is for the educated.⁵⁹⁸ This serves in two ways; The first, the educated are knowledgeable about their rights and can pursue justice easily. Secondly, the educated may have some income and hence can hire a lawyer when taken to courts of law or when the state has violated their right to free speech and expression.

⁵⁹⁷ According to field work I carried out using questionnaires in August 2014

⁵⁹⁸ According to field work I carried out using questionnaires in August 2014



On the other hand, courts of law have managed to pronounce themselves on matters relating to freedom of press such as in the popular *Charles Onyango Obbo and Kivumbi cases*. On prominent cases like the above, this respondent felt that courts in Uganda work harder than normal because of the nature of the case and popularity of the applicants. The other respondent said that the courts are not independent while administering justice due to economic and political factors which tend to influence some decision making in regard to particular cases. This respondent added that free speech is limited especially on politically related matters. Finally, the last respondent giving his opinion on the same issue as the rest above noted that courts of law have not fully internalized and fully appreciated this freedom. Many times they have made decisions without fully according the suspect due attention simply because he prefers the language whose interpreter they can not avail.⁵⁹⁹

It be should recognized that enforcement through courts at this point exposes a few loop holes as expressed in the opinions of respondents from different media houses in Uganda. It is such weaknesses of the courts of law that makes Ugandans seeking justice on matters relating to their rights on free speech and expression mis-trust the justice system of Uganda.

Courts play such a vital role in the interpretation of the law, a duty they have been entrusted with by the society. However, sometimes people feel that these courts have been largely influenced by the politics of the time to make decisions sometimes that are unfair to those searching for justice. While on the whole courts are seen as useful. When it comes to upholding the freedom of speech, the picture emerges from my respondents as a mixed one.

Further more, regarding the role of domestic courts in ensuring freedom of expression in Uganda, when I asked about how the courts of law in Uganda deal

⁵⁹⁹ Same as above

with the cases brought before them involving journalists on matters of freedom of expression, several opinions were shared during the interviews with these respondents. In some instances, the cases have been handled in a free and fair manner though they are delayed in most cases whereas in other instances, the courts are partly independent because they are largely controlled.

The opinions on the efficacy of the courts can be tested in the case of *Muwanga Kivumbi vs. AG* (constitutional petition No.9 of 2005), as an example of a case on freedom of expression but not necessarily about journalists, the court ruled that Section 32 of the Police Act on refusing public rallies was directly in contradiction with enjoyment of the fundamental rights and freedoms as stated in Article 20 (1) (2) and Article 29 of the constitution of Uganda.⁶⁰⁰In my assessment, I have had the opportunity to read through a draft of the judgment of Byamugisha JA. I fully agree with her reasoning and conclusion that the powers given to the Inspector General of Police, under section 32 (2) of the Police Act (Cap 303 Laws of Uganda), to prohibit the covering of an assembly or any formation of a procession in any public place is an unjustified limitation on the enjoyment of a fundamental right.⁶⁰¹

However, it is quite unfortunate that politics of the day seem to always find a way of influencing the decisions sometimes. Looking at this case ‘*Andrew Mujuni Mwenda & Anor V Attorney General* (2006)’, Andrew a renown journalists had made remarks about the public holidays the president had put in place to mourn the death of Late John Garang, the former president of South Sudan and he had

⁶⁰⁰ Muwanga Kivumbi Vs Attorney General (Constitutional Petition No.9 of 2005)(<http://www.ulii.org/ug/judgment/constitutionalcourt/2008/4>)

⁶⁰¹ Muwanga Kivumbi Vs Attorney General (Constitutional Petition No.9 of 2005)

criticized the president. Sometimes the courts, resolve such journalist’s related cases impartially, even when there is clear influence from the politics of the moment. This though, does not happen in most instances as a mixture of politics in justice system often brings negative consequences to jurisprudence.

Conclusion

I have made suggestions on what needs to done in order to improve the right to free speech and expression in Uganda in the last chapter of this book. This forms a road map on what should done by the Ugandan public authorities, the political actors, the civil society and media professionals if this right of free speech and expression is to be a success. This therefore forms my own opinions on what I think is needed to better the situation. Uganda has come a long way since its independence, hence need for strengthening its institutions and consolidate a democratic society. Creation of systems that uphold and follow the rule of law is very important in the prosperity of any state. The history of Uganda has always rotated around bloodshed. In his, own remarks in past decades, the president of Uganda had stated that the problem of leadership in Africa is the desire to over stay in power. Therefore, the right to free speech will always be affected as governments seek to extend stay in power thus cracking down on any individual or media outlets like news papers, radio stations, television stations and face book that may start criticizing the policies, programs and actions of the government. The high rates of unemployment, poor health services and poor universal primary education have made the public or media to openly criticize the government.

Chapter Nine



CONCLUSION AND RECOMMENDATIONS

Conclusion.

It is not within doubt that media exposes human rights abuses. The media create awareness about the need to promote the observance of human rights through the print media by writing messages on human rights situations in Uganda, use the online platforms to mobilize and let the world know the various abuses and conformities in place, and there is sensitization on the need to respect, promote and safeguard human rights.

It is undoubtable that there are several ways showing the effectiveness of media in promoting human rights which are advocacy, research and information exchange, capacity building and network development, monitoring, documentation and reporting under regional and international mechanisms as well as institutional strengthening and development.

Role of courts in ensuring freedom of expression.

Courts of Law in Uganda play a major role in the enforcement and interpretation of both the domestic and international legal instruments that relate to the freedom of speech and expression in Uganda. The main international legal instruments applicable to Uganda include; the 1948 Universal Declaration on Human Rights (Article 19), the 1966 ICCPR



(Articles 19 (1&2) and the 1981 African Charter on Human Peoples' Rights (ACPHR) (Art.9). Other relevant sources include cases tried in relation to the issue, Human Rights Committee Recommendations and Universal Period Review (UPR) process. At the domestic level, the legal frame work constitutes; the Constitution of Uganda (Art.29) as the primary source, The Press and Journalist Act 1995, Uganda Chapter 105 and The Electronic Media Act 1996 (Chapter 104). These form some of the core sources of law used by the courts in the pursuit of justice related to free speech and expression as a right. According to my findings, courts have been blamed for failure to enforce outcomes without political interference especially in cases that involve the political opponents. In my assessment, this was shown as the biggest challenge the courts of law are facing in Uganda. It is sad to note that this occurrence has generated mistrust of the public towards the role courts and police. Hence, there is need for total independence of courts in Uganda if the right to free speech and expression is to achieve its goal in a supposedly democratic country like Uganda.

Respect for Freedom of expression by public authorities pursuant to domestic and international obligations.

Uganda plays compliance with both domestic and international law. Uganda has ratified many of these international legal instruments like the ACPHRs and ICCPR. Uganda has engaged with international bodies entrusted with the international enforcement of human rights as the Human Rights Committee and the Human Rights Council. Also importantly, Uganda has the its Constition which it follows, as its the supreme law of the land. While Ugandan domestic courts that have been put in place to interpret the law, the question is whether these courts do conform with the international legal standards in regards to human rights. During my field work, one respondent stated that actually courts work, but the problem is political

interference in some cases where the government has interest. The famous case was when the main opposition leader of Forum for Democratic Change Dr. Kiiza Besigye had been once arrested on accusations of rape but this case fortunately, was thrown out as not being credible by the Supreme Court. I can therefore say that indeed Uganda's domestic legal instruments are in conformity with the international legal standards of human rights instruments, but political influence remains the biggest challenge.

Media faces resistance from state security organizations such as the army. The study found out that media's staff and administration of the platforms are sometimes targeted by security agents when they question the authenticity of efforts by the state organs like the police. Furthermore, women and girls human rights are not well promoted or even defended in Uganda. The government and private human rights organizations are working with leap attention to the rights of women and girls. The media cannot reprimand the army and police because these organs are seemingly immune to public scrutiny and as such they can hardly heed the call by media to account for the human rights abuses they carry out.

Media promotes access to systematic and reliable information about human rights through availing information in print that is leaflets, magazines, banners, brochures, and availing information in digital that is on social media like facebook, twitter, imo and many others which has helped and will continue to provide access to information for all who need it today and in the future. Hence, media has been at the fore front of promoting domestic human rights services and purposes. They substantiate the human rights commissions, hybrid institutions which combine several mandates, including that of equality body, and human rights institutes and centers. Others conclusions drawn are a such;

- The implication was that lack of support by institutions causes self-regulation. This leaves a very big challenge to media organizations and government.
- It has also been found out that self-regulation manifests in news production and this will in turn improve the journalists be well disciplined.



- It has been self-regulation play an important role in promoting good journalism among journalists. The news makers have often encouraged individuals to be conscious of the content they write.
- Media campaigns should increase public awareness of the broader context in which self-regulation can be practiced and promote debate on the issues.

Free speech and expression amid presidential elections period

In my view, the most difficult period faced by the prominent opposition leaders in Uganda has been that before and during the concluded presidential elections in Uganda February 18, 2016. Before, the elections, there were evidences of the arrest of FDC leader Col. Dr. Kizza Besigye and the ousted Mayor Lord Major Erias Lukwago. Kampala South chief, Siraje Bakaleke said the two were organizing a rally to call for 2016 general poll boycott.⁶⁰² Again Kizza was arrested during the polling days on allegations of planning chaos. There was media restriction on airing some programmes that criticise the government. Several HRW reports used show how restrictions are put on some radio stations airing some programmes in local languages. Radios are discouraged to stop political sensitization and awareness programs. In addition, it is alledged that social media like facebook, twitter and whatsapp were temporarily interfered with during voting. Such acts do not show fairness. They only support the view that free speech and expression is suffocated towards and during presidential election periods. This makes it difficult for the right to free speech and expression to grow. This implies that Uganda's elections have adverse effects mainly negative towards promotion of free speech and expression.

⁶⁰² New vision (2015) http://www.newvision.co.ug/new_vision/news/1326144/besigye-lukwago-arrested

Recommendations

In light of the foregoing, the following general recommendations are to be considered;

It is recommended that legislative review is taken in to consideration. Most especially, the Mass Media and Access to Freedom of Information, the Constitution imposes an excessive fines and rigorous punishment on journalists and media institution owners for minor violations of the provisions. Human rights are sensitive issues that possibly might fall in the prohibited areas under the proclamations. The media is not willing to take such risk and chose to avoid issues related to human rights. This is affecting the most important factor in the realization of human rights, which is the creation of popular support and awareness.

Recognizing the limitations and shortcomings of the media with respect to human rights promotion, one can begin to craft media related human rights management program that maximizes the beneficial attributes while circumventing the now obvious limitations. The magnitude of human rights has become so huge that it should not be neglected.

The media educates and informs the public, and also perform the role of agenda setting which makes mass media audience to consider as important any issue which the media concentrate on.

Different arms of government need to be educated on the role and contribution of the media in the enforcement, respect and promotion of human rights in Uganda. International law dictates that human rights are to be protected by the government.

NGO's too need to be directed on the way towards advocating for justice and protection of human rights in Uganda as these recently have been at the forefront of advocating for human rights for particular groups.

Sensitize the public on their rights and obligations in the promotion of human rights in Uganda. The public needs to be enlighten about the available remedies upon any violation of their rights and the procedure to follow.

Academicians too ought to be encouraged to pursue mastery in media rights and the law related to such because it is only after knowing your entitlements that you can properly claim them. It is worth appreciating that studies about media law are currently in place at various institutions and academicians too can acquire expertise in the same through post graduate studies. A difference is made when not only people in the media profession but all members of the population have understood the rights of journalists, that as friends and relatives, we can agitate and advocate together for their rights.

National human rights institutions have to strive in assisting the media in its effort to promote and educate human rights. In a country where tolerating Societies and Charities involvement in human rights advocacy is lesser, these institutions have an enormous responsibility in circulating information regarding human rights to the public. The current activities of national human rights institutions compare to the responsibilities they assume, is insignificant. Therefore, they should establish constant relationship with the media through several activities including continuous training to the journalists about human rights, organizing media forums and presenting and sponsoring programs for the purpose of awareness creation to the general public.

Media institutions must have a clear editorial policy which gives their detailed position and degree of coverage on human rights. Except UBC, both media institutions covered under this study were not able to present an editorial policy that explains their interest and potential in human rights coverage. This creates confusion and misguides their journalists on to what extent they are expected to cover human rights.

Media institutions should find a balance in covering economic, social and cultural rights and civil and political rights. Currently, especially the government media which is driven by development journalism is more focused on economic and social matters which left civil and political rights less addressed and promoted. The private media also, demonstrated unbalanced coverage on human rights by giving civil and political rights less attention. In order to have a balanced coverage on human rights, government can assist the media by appreciating active political participation and organizing, when necessary, political debates among different

political parties. This will give the media a topic to raise and discuss human rights issues in general and civil and political rights in particular.

Journalism schools, media institutions, national human rights organizations and non-governmental actors should act towards creating awareness among the journalists about human rights. It will not be appropriate to expect the media to promote and actively participate in a concept they do not understand. Lack of adequate knowledge and understanding on human rights is the main obstacle identified for the media reluctance in engaging on programs related to human rights. Creating awareness among journalists will generate initiation and interest in organizing programs devoted to human rights.

Government, to the extent possible, has to work towards ensuring the public right to get access to accurate, timely and inexpensive information as guaranteed under UCC Act. Currently, the public is not in a position to afford newspapers, or electronic devices to get information. This affects the media effort to promote human rights, democracy and good governance since their message, whatever the extent might be, only reaches a few percent of the general population. The government ought to provide support to media institution so that they will provide information as inexpensive as possible. For example, it is possible to subsidize publishing companies who actively engage in the promotion of human rights or provide tax free materials for the publishers.

There is need to encourage Self-regulation based on a code of ethics.

For us to attain diligent and professional service, the concept of “ethics” cannot be done away with. Ethics in journalism is often termed as “ethical journalism”. This refers to standards of good practice applicable to journalists. Though reporters and editors are not megaphones for any particular interests not even in matters relating to human rights – they can contribute to a better society through genuine professionalism. In essence, ethical journalists serve the public’s right to know. They are professional also in the sense that they seek the truth and resist any

pressure to convey distortions, be they from media owners, business interests or political forces.⁶⁰³

There is a need to encourage a deeper discussion of how to promote ethical journalism, also in relation to social media and other online information. It is positive that the trade unions for journalists have taken up this challenge. However, governments also have a responsibility to play in this as visible in UK government's reaction to the *phone hacking scandal*. They should protect freedom and pluralism of the media and avoid any regulation which would undermine freedom of expression, including on internet-based media. Any limits should be narrowly and clearly defined and reflected in law.

Ethics and Media Self-regulation demands that journalists have a mastery of concepts such as;

- *Accuracy - fact-based reporting Privacy and Humanity;*⁶⁰⁴
- *to do no harm to anyone Independence*⁶⁰⁵
- *to report with NO propaganda,*⁶⁰⁶
- *fake news Impartiality*⁶⁰⁷
- *to tell all sides of the story Responsibility*⁶⁰⁸,

There is need to outset the common and erroneous belief that journalism is free speech. Journalism is not a free speech, free expression, it is constrained expression, and it works in a framework of values and ethics, in framework of professional standards given in the Press Code/Code of Ethics for journalists. Journalism has public purpose and it has to be done in public interest⁶⁰⁹. Therefore,

⁶⁰³ Ethical Journalism: Self-regulation protects the independence of Media. by Thomas Hammarberg accessed at https://www.coe.int/en/web/commissioner/blog/-/asset_publisher/xZ32OPEoxOkq/content/ethical-journalism-self-regulation-protects-the-independence-of-med-1/pop_up on January 9, 2022

⁶⁰⁴ <https://rm.coe.int/panel3-2-zurovac-the-role-of-the-media-self-regulatory-mechanisms/16808ee63f> - Self regulatory body for print and on-line media accessed on Jan 9, 2022

⁶⁰⁵ *ibid*

⁶⁰⁶ *ibid*

⁶⁰⁷ *ibid*

⁶⁰⁸ <https://rm.coe.int/panel3-2-zurovac-the-role-of-the-media-self-regulatory-mechanisms/16808ee63f> - Self regulatory body for print and on-line media accessed on Jan 9, 2022

⁶⁰⁹ Addressing hate speech in the media; the role of regulatory authorities and the judiciary. Accessed at <https://rm.coe.int/panel3-2-zurovac-the-role-of-the-media-self-regulatory-mechanisms/16808ee63f> on 8th January 2021 https://www.coe.int/en/web/commissioner/blog/-/asset_publisher/xZ32OPEoxOkq/content/ethical-journalism-self-regulation-protects-the-independence-of-med-1/pop_up

this calls for specific education of all media personell for the sake of ethical and quality work. the ethics of journalism and this idea of self regulation is affected by the onset of blogging; the adaptation of “social media influencers” who have taken up the role of providing uncredited, unverified and unauthentic information on Facebook, Instagram, twitter, TikTok among others since these people are usually not trained at all. Indeed, the emergence of new journalism in the form of bloggers, twitterers, YouTube commentators and others have certainly added important eyewitness accounts, but the communicators behind these are not always trained and fully aware of the extent of their responsibilities.⁶¹⁰

Blanket internet shutdowns, along with blocking or throttling certain communications apps and platforms, contravene international human rights law and standards including the International Covenant on Civil and Political Rights (ICCPR) which all of the above states have either signed or ratified. In 2020, the Human Rights Council strongly condemned in its Resolution 44/12 the use of internet shutdowns to “intentionally and arbitrarily prevent or disrupt access to or dissemination of information online” and called on states to refrain from such practices.

Many states should to stop blocking access to the internet, including social media platforms and messaging apps, before, during, and after national exams. Instead, we encourage governments to look into less intrusive, specific, legitimate, necessary, proportionate, and proven measures to prevent exam leaks and cheating, while ensuring high-quality, secure, and unrestricted internet access for all people.

It is clear that the government policy and legislation relating to internet shutdowns in Uganda should be reviewed and measures put in place to ensure that there is a respect for human rights both in the international sphere and domestic sphere.

⁶¹⁰ Ethical Journalism: Self-regulation protects the independence of Media. by *Thomas Hammarberg* accessed at https://www.coe.int/en/web/commissioner/blog/-/asset_publisher/xZ32OPEoxOkq/content/ethical-journalism-self-regulation-protects-the-independence-of-med-1/pop_up on January 9, 2022

Constitutionalizing the limitations on media freedom

Since the adoption of the 1995 Constitution of Uganda, there has been very little alignment of certain pieces of legislation which have not been prioritized by the government. It is essential that the government embarks on an alignment process to align Uganda’s legislation with the current Constitution such that key limitations to rights are expressed clearly and well-defined setting out the law clearly in an unambiguous manner. Where the law seeks to limit certain right, such limitation should be established in a constitutional manner. communication and research activities at the selected schools were severely curtailed during the internet shutdown period.

Improving freedom of expression in Uganda

Political will and commitment. Political will in my view can be understood as the willingness of the government in power putting in place strategies and plans that are all inclusive without discrimination on the basis of any political affiliations. “Political will” refers to that collective amount of political benefits and costs that would result from passage of any give law.⁶¹¹ On the other hand, I can define political commitment as the will by the authorities or leaders to uphold and implement all the decisions and laws by remaining faithful in fulfilling them through the holding of the constitution of that country. Political will is very important if freedom of expression and speech is to be upheld and fully realized in Uganda. This is so because it helps to create a favorable environment in which all can compete favorably without fear of persecution. Political will is a very big factor in creating a positive environment. Once there is political will, then an equal ground is be laid down for equal opportunities guaranteed to all through free participation. For example journalists would be allowed to freely publish

⁶¹¹ Quora (2012) <http://www.quora.com/What-is-the-definition-of-political-will>

information from either the opposition or government without fear of being thrown to jail; public rallies would be allowed freely. This is what Ugandan leadership is required of to realize the bigger objective of free participation of all citizens of the country. One of the major challenges faced by the courts of law as stated by the respondents is politics. Negative politics has implications that are not conducive for the flourishing of the right to free speech and expression. Politics tends to bring mistrust and competition. Hence, willingness of government to initiate a conducive atmosphere exhibits a positive political will. Political commitment would address the desire by the government to keep its promise of upholding the rule of law. In my assessment, political will and political commitment would result in efficacy in the promotion of free speech and expression as a human right.

Better use of the African system of human rights protection. There is a strong need for the African Union (AU) to fully involve itself in solving African problems that are related with the right to free speech and expression. The African Court on Human and People's Rights is operational now since early 2009. The Courts mandate is to judge the compliance by a State Party with rights included in the ACHPR and other instruments on the protection of human rights ratified by a State of which freedom of speech and expression is part.⁶¹²With the presence of An African Court then in my assessment, I think that its presence should force some African governments to observe and respect the right to free speech and expression. As shown earlier, the abuse of this right has on several occasions resulted into chaos like demonstrations and property destruction in Uganda. The Commission may submit a case to the Court if a situation has come to its attention that, in its

⁶¹² Practical guide -African Court on Human and People's Rights towards the African Court of Justice and Human Rights pg 3,



view, constitutes one of serious and massive violations of human rights (Art. 119.4 of the Interim Rules of Procedure of the African Commission). This is possible if the State party has ratified the Court's Protocol.⁶¹³ This shows that if fully implemented in Africa, then the role of the Commission and the Court in dealing with issues related to the right of free speech and expression would be easily accepted and respected. This is because, the court and Commission would be seen as tailor made for solutions related to African problems. On a number of occasions, the AU has been accused of lack of intervention into African problems related to freedom of expression and this has always resulted in deaths, imprisonment and exiles. The current situation in Burundi master-minded by President Pierre Nkurunziza has resulted in the suffering of millions of people and many have lost their lives. The Rwanda genocide of 1994 left nearly a million people dead when a few people misused the media to the destruction of the Tsutsi tribe and in Darfur, several still dying; Clashes in Uganda between police and politicians or civilians can also be highlighted. It is high time AU became fully operational and functional to deliver solutions to African challenges associated with free speech and expression. This would become a deterrence method to leaders and ultimately result in respecting the right to free speech and expression in Africa generally and Uganda in particular.

Embracing of an all encompassing practice of democracy; Free speech and expression are some of the requirements for a just and democratic society. This aspect can be attained through allowing full participation of the citizens of a country. Most cases, it's the disadvantaged who are usually the victims like the

⁶¹³ Practical guide - African Court on Human and People's Rights towards the African Court of Justice and Human Rights pg 70

poor or disabled. Uganda ratified the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol in 2008. Uganda has made commendable strides in the promotion and protection of the Rights of Persons with Disabilities (PWDs). This includes enactment of Persons with Disabilities Act 2006 and ratification of the CRPD and its Protocol without any reservations.⁶¹⁴ An all inclusive approach would greatly promote the voice of everyone which in turn makes service delivery better. The best way in which their local needs from the community level can be addressed, is through the human rights approach of bottom-up representation. By this, I imply a situation where the needs of the local people in communities are channeled up for intervention. This can be attained democratically through participation. Participation can be understood as a process through which individuals make contributions regarding issues at hand through leadership of their choice. Participation in a democratic society has a direct relationship with human rights both directly and indirect. Therefore, Uganda should on this note allow free and equal participation of all without any discrimination and interference within bounds of law.

More transparency in the Electoral Commission (EC) of Uganda. On different occasions, the EC has been accused of mishandling of the election procedures, delays and vote rigging. Voting is a way people choose the leaders of their choice and interests. In the 18th February 2016 concluded presidential elections, there was a feeling of lack of trust in the EC as the oppositions on several occasions called for some changes but all fell on deaf ears. Therefore, I would recommend the need for a more independent EC in dealing with the votes independent of any government in power. Independence of the EC means that we would have a

⁶¹⁴ Submission for Uganda Human Rights Commission to - The Committee on the Convention on the Rights of People With Disabilities, 2016, pg 1



representative democracy in which the right to free speech and expression would grow and actually help to create a positive change in respective communities.

Better enforcement of the law concerning freedom of expression. The instruments of law in Uganda both international like the ICCPR, ACPHRs, ECHR, ACHR and the constitution of Uganda are clear on what should be done to achieve the right to free speech and expression. Art 29 (1), (a-e) is about Freedom of Assembly, Association and Expression.⁶¹⁵ The term freedom of expression is sometimes used synonymously, but includes the act of seeking, receiving and imparting information ideas, regardless of medium used.⁶¹⁶ It is noteworthy that the right to assembly peacefully rests at the core of the functioning democratic systems and is closely related to other cornerstone of democracy and pluralism.

Thus therefore actually shows that the law in Uganda is available. She suggests that there is need to enable the law if the right to free speech is to be realized. The law is formulated to guide the acts of the people and its nation.

Press related offences

Conclusion and recommendations.

There's evidently great need for a general over haul of the law of defamation in all aspects if it is to measure up to the accepted standards of laws in democratic societies. Criminal libel should be scrapped from the law book and instead the law of defamation should be kept for civil litigations only. certainly there's no need to codify the law of defamation in the penal code.

Litigants and plaintiff should be made to prove their cases when they prefer charges and the defendant should only be called upon to defend his case when the plaintiff has sufficiently established his case.

⁶¹⁵ Sarah (2014) Challenges of Freedom of Speech, Assembly and Association in Africa –Case of Uganda
(<https://www.linkedin.com/pulse/20141209082148->

⁶¹⁶ Sarah (2014) Challenges of Freedom of Speech, Assembly and Association in Africa –Case of Uganda

Damages should be awarded in accordance with proof that they are worth being awarded to successful litigants. Sincerely honorable men and women of good repute in society deserve high amounts of damages once defamed but this must be an established fact, the onus to rely on the claimant before such damages are awarded.

An analysis of the different government Uganda has had since the colonial period to date under the N.R-M government reveals consistent interference in the freedom of the press through various state mechanism such repressive laws, such a defamation and a above all arrests intimidations and harassment of journalists.

Freedom of the press is necessary for democracy to, thrive. Entrenched and legalized state interference in the media are hall marks of dictatorial governments. It's therefore penitent that to achieve a free and democratic society there's need to establish a constitutional frame work founded on well established principles of democracy through institutionalized respect of the fundamental human rights and freedoms.

This can only be realized if there is transparency and accountability by the rulers to the ruled and a clear understanding and recognition of the fundamental freedoms and rights. Journalists deserve all respect in society since they act as a torch bearers in the struggle for human rights and freedom of all aspects. The laws which are conceptually archaic and oppressive need to be scrapped if the institution of journalism is to survive. The government should be seen to encourage transparency in all sectors of our society and it must not portray itself as an oppressor of its critics. Acts like a ban on advertisement to the private media should not be encouraged in our society since such acts are not only archaic in nature but outdated in this era of constitutionalism. The Uganda constitution 1995 provides a bill of rights in article 25 and spells down the freedom of the press in more clear and enunciated above press freedom is not absolute and therefore the same constitution qualifies freedom of the press. However this is not enough, there is need to inculcate into the hearts of the citizen the spirit of constitutionalism, rule of law and above all respect for fundamental human rights.

The state should be seen to champion this since it is the fundamental role of the state to protect her citizens. Culture of tolerance, fostering mutual respect and understanding of the beliefs and practices of others should be encouraged. There must be a realization that no single individual or group of individuals can claim

monopoly of truth and morality similarly monopoly of the media will not ensure peace and stability in the country but will instead open more wounds of discord.

The public has a right to expect that public media, the operation of which is paid for from the public money, and was clearly paid for with the blood of many who have died for the sake of freedom, must provide a general forum for viewers and will adequately reflect the various shades of opinion and aspiration of the various groups in society.

The judiciary should not be seen to condone persecution rather it should promote prosecution where necessary. The judiciary as such has a duty to apply its skills and good judgement in the exercise of its interpretative powers and purposefully advancing freedom rights. It is imperative that when the effective exercise of these rights is claimed to be a bridged the courts should weigh the circumstances and appraise the substantiality of the reasons advanced in support of the challenged regulations. A abridgement of freedoms of the press impairs the opportunities for public education which is essential to the society as a whole.

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Appendix one: ULS Statement on the continued illegal detention of Mr. Rukirabashaija by state and security agencies

The ULS is deeply concerned with the continued illegal arrest and detention of Advocates by the law enforcement agencies. The latest of these is the arrest of Advocate Nicholas Opiyo, the Executive Director of Chapter Four Uganda, who was picked up on December 22, 2020 from Kamwokya at Lamaro Restaurant by alleged law enforcement officers dressed in plain clothes. It is revealed that the details of his whereabouts are currently unknown without any information on preferred charges against him and neither has he been brought to court.

The abduction from Kamwokya and the incommunicado detention of Nicholas Opiyo is high handed and unnecessary. He could have been summoned through his usual address or ULS. The security agencies that arrested him should therefore respect his basic civil liberties including access to lawyers, medical personnel and family. They should respect the privacy and property rights of his phones and car which is yet to be accounted for. Detaining a citizen incommunicado is illegal and unconstitutional. Nicholas Opiyo should be immediately and unconditionally released.

Article 23 of the Constitution of Uganda grants suspects under detention a right to be brought before court not later than 48 hours from the time of their arrest. This right should not be violated regardless of the excuse. Also, those arrested should be detained in areas gazetted by law .

Adv. Nicholas Opiyo's right to have access to an advocate of his choice has to be respected. His right to know the charges preferred against him should also be respected in the same spirit. His right to police bond should also be respected as well as the 48 -hour rule should be respected as allowed by law, and the ULS highly condemns this act.

The ULS pledges to follow this matter keenly to ensure that justice is done and the perpetrator(s) are brought to book.

For God and My Country.

PHEONA WALL President

Appendix two: The Electronic Media Act

THE ELECTRONIC MEDIA ACT.

Statutory Instrument 104—2.

The Electronic Media (Television) (Forms) Rules.

Arrangement of Rules.

Rule

1. Citation.
2. Forms for television licences and various registers. **Schedule**

Schedule

THE ELECTRONIC MEDIA ACT.

Statutory Instrument 104—2.

The Electronic Media (Television) (Forms) Rules.⁶¹⁷ *(Under section 28 of the Act.)*

1. Citation.

These Rules may be cited as the Electronic Media (Television) (Forms) Rules.

2. Forms for television licences and various registers.

The forms contained in the Schedule to these Rules shall be used where they are appropriate.

⁶¹⁷ These Rules were made under the Television (Licensing) Act, 1964 Revision, Cap. 268. When the Electronic Media Act repealed that Act, these Rules were saved by operation of the Interpretation Act, Cap. 3, section 12. References in these Rules to “the Act” are to the Electronic Media Act.

Schedule.

rule 2.

Forms.

Form A.

Television Viewers Licence. *The Electronic Media Act.*

Year 20 _____

No. _____

Uganda



Government

(Not transferable.) (To be produced on demand.)



Enter "N" for New or "R" for Renewal.

Issued in accordance with section 22 of the Electronic Media Act.

Holder's name _____

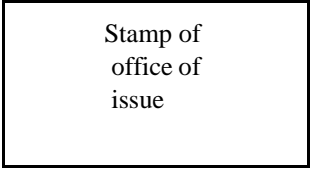
Holder's address _____

Set normally used at _____

Make of receiver _____

Model number _____

Serial number _____



Date of commencement _____

Original

Shs. 5.

*Reverse side of licence.*⁶¹⁸

1. It is the responsibility of the licensee to ensure that the details entered on the front of this licence are correct.
2. When a new licence is issued, it is the responsibility of the licensed dealer to enter on the front of this licence the make of the receiver, model number and serial number. For renewals, all details will be entered by the Broadcasting Council.
3. This licence comes into effect on the date of commencement specified in it and will expire on the 31st December next.
4. Before there is a change of owner of the viewing set to which this licence relates, this licence must be taken to the Ministry responsible for information and broadcasting for cancellation. The Ministry may authorise the issue of a new licence on payment of the prescribed fee.
5. This licence is valid for Uganda only.
6. This licence must be produced when applying for a renewal.

⁶¹⁸ Item 5 on the reverse side of the licence in Form A, as found in S.I. 268-3 of the 1964 Revision, has been omitted because it was superseded by Cap. 104, section 22.

Form B.
Television Repairers Licence. *The
Electronic Media Act.*

Year 20 _____

No. _____



Uganda Government

Holder's name _____

Business premises _____

Date of commencement _____

Original Shs. 200.

Endorsements.

(Details of transfers and licensing officer's consent to be endorsed below.)

Reverse side of licence.

1. This licence comes into effect on the date of commencement specified in it and will expire on the 31st December next.
2. This licence is valid only for the business address entered on it. Separate licences are required where it is desired to deal through branches or agents.
3. This licence may not be transferred without the consent of a licensing officer.
4. There are severe penalties in law for carrying out television repair work other than in accordance with a licence.
5. This licence must be exhibited in a conspicuous place at the premises to which it relates.

Form C.
Television Dealers Licence. *The
Electronic Media Act.*

Year 20 _____

No. _____



Uganda Government

Holder's name _____

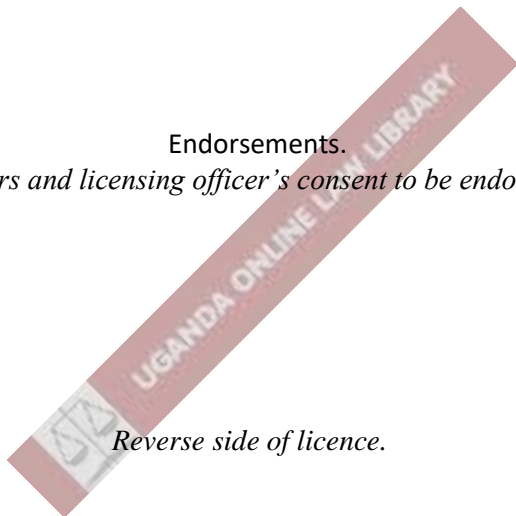
Business premises _____

Date of commencement _____

Original

Endorsements.

(Details of transfers and licensing officer's consent to be endorsed below.)



Reverse side of licence.

Shs.

300.

1. This licence comes into effect on the date of commencement specified in it and will expire on the 31st December next.
2. This licence is valid only for the business address entered on it. Separate licences are required where it is desired to deal through branches or agents.
3. This licence may not be transferred without the consent of a licensing officer.
4. There are severe penalties in law for unlicensed and other illegal dealing.
5. This licence must be exhibited in a conspicuous place at the premises to which it relates.

orm D.

Record of Television Viewing Receivers.

The Electronic Media Act.

Register to be kept by holder of dealers licence.

Details of television viewing receivers in stock	Details of television viewing receivers sold
--	--

Date taken into stock	Make of receiver	Model number	Serial number	Exfactory price	Date sold (or hired) ⁶¹⁹	Name of purchaser (or hirer)	Address of purchaser (or hirer)
<i>This record is for inspection by authorised officers.</i>							

Form E.
Record of Television Repairs or Replacement of Parts.
The Electronic Media Act.

Register to be kept by holder of repairers licence.

Licensed owner (or hirer)	Address of licensed owner (or hirer)	Viewers licence number	Make of viewing receiver	Model number	Serial number	Work carried out

History: S.I. 268-3.

⁶¹⁹ Insert "S" after date if set has been sold and "H" if set has been hired.



Appendix three: Press and Journalist Act

Press and Journalist Act
Chapter 105

Legislation as at 10 February 2014

FRBR URI: /akn/ug/act/statute/1995/6/eng@2014-02-10

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Uganda

Press and Journalist Act Chapter 105

Commenced on 28 July 1995

[Up to date as at 30 September 2020]

[Note: The version of the Act as at 31 December 2000 was revised and consolidated by the Law Reform

Commission of Uganda. All subsequent amendments have been researched and applied by Laws.Africa for ULII.]

[Amended by [Press and Journalist \(Amendment of Fourth Schedule\) Instrument, 2014 \(Statutory Instrument 5 of 2014\)](#) on 10 February 2014]

An Act to ensure the freedom of the press, to provide for a council responsible for the regulation of mass media and to establish an institute of journalists of Uganda.

Part I – Interpretation

1. Interpretation

In this Act, unless the context otherwise requires —

- (a) “**chairperson**” means the chairperson of the council;
- (b) “**council**” means the council established under section 8;
- (c) “**editor**” includes a person who is, at any given time, in charge of programme production at a radio or television station;
- (d) “**electronic media**” means communication of any message to the public by television, radio, video, cinema or by any other electronic apparatus;
- (e) “**executive committee**” means the executive committee of the institute established under section 18;
- (f) “**exhibition**” means an exhibition of art, film or videotape with or without sound effects, made by means of cinematography or other means for public consumption;
- (g) “**general assembly**” means the general assembly of the institute;
- (h) “**journalist**” means a person who is enrolled as a journalist under this Act;
- (i) “**mass media**” includes newspapers, posters, banners and electronic media published for public consumption;
- (j) “**Minister**” means the Minister responsible for information;
- (k) “**newspaper**” means a publication which contains all or any of the following—
 - (i) news;

- (ii) articles;
 - (iii) entertainment;
 - (iv) advertisements;
 - (v) reports of occurrences;
 - (vi) views; and
 - (vii) comments or observations which are published for distribution to the public either daily or periodically;
- (1) “**roll**” means the roll of journalists;
- (m) “**secretary**” means secretary to the council.

Part II – Mass media

2. Right to publish a newspaper

- (1) A person may, subject to this Act, publish a newspaper.
- (2) No person or authority shall, on grounds of the content of a publication, take any action not authorised under this Act or any other law to prevent the —
- (a) printing;
 - (b) publication; or
 - (c) circulation among the public, of a newspaper.

3. Compliance with other laws

Nothing contained in section 2 absolves any person from compliance with any law

- (a) prohibiting the publication of pornographic matters and obscene publications insofar as they tend to offend or corrupt public morals;

- (b) prohibiting any publication which improperly infringes on the privacy of an individual or which contains false information.

4. Access to official information

A person may have access to official information subject to any law in force relating to national security, secrecy or confidentiality of information.

5. Registration of particulars relating to an editor

- (1) A proprietor of a mass media organisation shall, on appointing an editor, register with the council the following particulars in relation to the editor—
 - (a) his or her name and address;
 - (b) certified copies of the relevant testimonials as proof of his or her qualifications and experience;
 - (c) the name and address of the newspaper; and
 - (d) such other particulars as may be prescribed by the council.
- (2) The proprietor shall notify the council within thirty days of its coming to his or her notice of any change in any of the particulars referred to in subsection (1).
- (3) Any person who contravenes this section commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings and, in case of failure to pay the fine, to imprisonment for a term not exceeding three months.

6. Functions of an editor

A proprietor and editor of a mass media organisation shall — (a) ensure that what is published is not contrary to public morality;

- (b) retain a copy of each newspaper published by the organisation and a copy of each supplement to it for not less than ten years;
- (c) in the case of electronic media, retain a record of all that is broadcast by a radio or television station for not less than thirty days.

7. Disqualification of an editor.

A person shall not be appointed an editor of a mass media organisation if —

- (a) he or she is less than eighteen years of age;
- (b) he or she is of unsound mind;
- (c) he or she is an undischarged bankrupt or insolvent;
- (d) he or she is not ordinarily resident in Uganda;
- (e) he or she does not possess the requisite qualifications prescribed by the council.

Part III – Media Council

8. Establishment of the Media Council

- (1) There is established a council to be known as the Media Council.
- (2) The council shall consist of—
 - (a) the director of information or a senior officer from the Ministry responsible for information, who shall be the secretary to the council;
 - (b) two distinguished scholars in mass communication appointed by the Minister in consultation with the National Institute of Journalists of Uganda;

- (c) a representative nominated by the Uganda Newspapers Editors and Proprietors Association; (d) four representatives of whom —
 - (i) two shall represent electronic media; and
 - (ii) two shall represent the National Institute of Journalists of Uganda;
 - (f) four members of the public not being journalists, who shall be persons of proven integrity and good repute of whom —
 - (i) two shall be nominated by the Minister; and
 - (ii) one shall be nominated by the Uganda Newspapers Editors and Proprietors Association;
 - (iii) one shall be nominated by the journalists; and
 - (g) a distinguished practising lawyer nominated by the Uganda Law Society.
- (3) The persons referred to in paragraphs (c), (d), (e) and (f) shall be appointed by the Minister.
 - (4) The chairperson of the council shall be elected by the members from among their number.
 - (5) Members of the council shall hold office for a period of three years upon such terms and conditions as may be specified in the instruments of appointment and shall be eligible for reappointment.
 - (6) A member of the council may resign his or her office in writing, addressed to the chairperson and in case of the chairperson to the Minister.

9. Functions of the council

- (1) The functions of the council shall be—

(a) to regulate the conduct and promote good ethical standards and discipline of journalists; (b) to arbitrate disputes between — (i) the public and the media; and

(ii) the State and the media;

- (c) to exercise disciplinary control over journalists, editors and publishers;
 - (d) to promote, generally, the flow of information;
 - (e) to censor films, videotapes, plays and other related apparatuses for public consumption; and (f) to exercise any function that may be authorised or required by any law.
- (2) In carrying out its functions under subsection (1)(e), the council may refuse a film, videotape or apparatus to be shown, exhibited or acted for public consumption.

10. Meetings, etc. of the council

- (1) The First Schedule to this Act shall apply to meetings and other matters of the council specified in that Schedule.
- (2) The Minister may, by statutory instrument and after consultation with the council, amend the First Schedule to this Act.

11. Remuneration of members of the council

Members of the council may be paid such remuneration or allowances as may be approved by the Minister.

12. Annual report

The council shall, within three months after the end of each year, submit to the Minister an annual report on all its activities; and the Minister shall lay the report before Parliament within three months after receiving it.

Part IV – The National Institute of Journalists of Uganda

13. Establishment of the institute

- (1) There is established an institute to be known as the National Institute of Journalists of Uganda.
- (2) The institute shall be a body corporate with perpetual succession and a common seal and may sue or be sued in its corporate name.
- (3) The institute may, subject to any limitations conferred in this Act, acquire, hold, manage and dispose of any property, movable or immovable, and enter into any contract or other transaction and do anything which may in law be entered into or done by a body corporate.

14. Objects of the institute

- (1) The objects of the institute are —
 - (a) to establish and maintain professional standards for journalists;
 - (b) to foster the spirit of professional fellowship among journalists;
 - (c) to encourage, train, equip and enable journalists to play their part in society;
 - (d) to establish and maintain a mutual relationship with international journalists organisations and other organisations with a view to enhancing the objectives of the institute;
 - (e) to carry on such activities as are incidental or conducive to the attainment of the objects specified in paragraphs (a), (b), (c) and (d) of this section.
- (2) Without prejudice to the general effect of subsection (1), the institute shall under that subsection have the following functions —
 - (a) to advise on courses of study, the conduct of qualifying examinations and generally on matters related to professional education for journalists in Uganda;

- (b) to ensure the maintenance of professional education for journalists;
- (c) to promote the usage of journalism which is not contrary to public morality; (d) to encourage research in journalism for the advancement of professionalism; (e) to make byelaws of the institute.

15. Membership of the institute

- (1) Membership of the institute shall be of the following categories—
 - (a) full membership; (b) associate membership; and (c) honorary membership.
- (2) A person shall be eligible for full membership of the institute if —
 - (a) he or she is a holder of a university degree in journalism or mass communication; or
 - (b) he or she is a holder of a university degree plus a qualification in journalism or mass communication, and has practised journalism for at least one year.
- (3) The general assembly may set qualifications for associate membership of the institute or may provide that a specified class of members of a society or institute may qualify for associate membership of the institute.
- (4) The general assembly may award honorary membership to a person who has made an outstanding contribution towards the realisation of the objects of the institute, except that no honorary member shall be liable to pay any subscription fee.
- (5) An associate or honorary member shall not be eligible to vote.

16. Application for membership of the institute

- (1) A person may apply to the executive committee for full membership or associate membership, and the committee shall, if it is satisfied that the applicant is an eligible person, inform the general assembly to approve the enrollment of the applicant as a full member or associate member of the institute on payment of the prescribed fee.
- (2) Upon the enrollment of a person under subsection (1), the general secretary shall cause to be issued to him or her a certificate of enrollment.
- (3) A person shall not be eligible for enrollment under this Act, unless that person has complied with such requirements, whether relating to instruction, examination or otherwise, as to the acquisition of professional skill and experience as may be specified in the byelaws made for that purpose by the institute.

17. Disqualification from membership of the institute

A person shall not be enrolled or continue to be a member of the institute if—

- (a) he or she is of unsound mind;
- (b) he or she is an undischarged bankrupt or insolvent; or
- (c) he or she is convicted of an offence under this Act or an offence involving moral turpitude; but this paragraph shall cease to apply two years after the completion of the sentence.

18. Executive committee

For the proper management of the affairs of the institute, there shall be an executive committee consisting of a president, a vice president, a general secretary, a treasurer, an assistant general secretary and three other members, all of whom shall be elected annually by the institute at a general meeting.

19. Functions of the executive committee

The functions of the executive committee shall be—

- (a) to maintain and publish the roll of members of the institute;
- (b) to secure international recognition of the institute;
- (c) to ensure the maintenance of professional standards among members of the institute;
- (d) to promote the publication of a journal of the institute;
- (e) to do anything that is incidental to the functions of the council or for the furtherance of the objects of the institute.

20. Meetings of the committee and of the general assembly

The Second and Third Schedules to this Act shall apply to meetings of the executive committee and the general assembly.

Part V – Financial provisions

21. Funds of the institute

- (1) The funds of the institute shall consist of— (a) grants from the Government;
- (b) annual subscription fees from members;
- (c) fees and other monies paid for services rendered by the institute; (d) grants, gifts or donations from sources acceptable to the institute; and (e) monies borrowed by the institute for the performance of its functions.
- (2) All monies of the institute shall be managed through a fund to be established by the general assembly.

- (3) The institute may operate a bank account in a bank determined by the executive committee, and the bank account shall be operated in a manner decided by the general assembly.

22. Borrowing powers

The executive committee may borrow money on terms that may be agreed upon by the Government for the performance of the functions of the institute.

23. Investment

The executive committee may invest monies of the institute in any securities issued or guaranteed by the Government or in any other projects approved by the Government.

24. Financial year

The financial year of the institute shall be the calendar year that is twelve months beginning from the 1st day of January and ending on the 31st day of December each year.

25. Accounts and audit

- (1) The institute shall keep proper books of account and prepare an annual financial statement of account for the preceding financial year not later than the 31st day of March in the following year.
- (2) The books and account of the institute shall be submitted within three months after the end of each financial year to the Auditor General to be audited by him or her or by an auditor appointed by him or her.
- (3) The Auditor General shall report annually to the Minister, as soon as is practicable after auditing the accounts of the institute, the result of his or her examination, and the report shall state his or her opinion.
- (4) The Minister shall, within three months after receipt of the report referred to in subsection (3), lay the report before Parliament.

Part VI – Regulation of public practice

26. Registration of journalists

The name and particulars of a person enrolled under this Act shall, on presentation of the certificate of enrollment to the council, be entered on the register of journalists of Uganda.

27. Practising certificate

- (1) The council shall, upon payment of the prescribed fees, issue a practising certificate to a person who is enrolled under this Act.
- (2) The practising certificate shall be valid for one year and is renewable upon payment of the prescribed fee.
- (3) No person shall practise journalism unless he or she is in possession of a valid practising certificate issued under this section.
- (4) A person who contravenes subsection (3) commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings and in case of failure to pay the fine to imprisonment for a period not exceeding three months.
- (5) In this section, a person is deemed to practise journalism if he or she is paid for the gathering, processing, publication or dissemination of information; and such person includes a freelance journalist.

28. Refusal to grant a practising certificate

No person shall be granted a practising certificate by the council if —

- (a) he or she is not enrolled; or
- (b) he or she has failed to comply with any order made under this Act.

29. Accreditation card

- (1) No person being an employee of a foreign mass media organisation or working as a freelancer for that mass media shall practise

journalism in Uganda unless he or she is in possession of an accreditation card issued by the council.

- (2) The accreditation card referred to in this section shall be issued upon payment of fees and upon such terms as may be prescribed by the council.

Part VII – Disciplinary committee and inquiries

30. Disciplinary committee

- (1) There is established a disciplinary committee consisting of—
 - (a) the chairperson of the council, who shall be the chairperson of the committee;
 - (b) the secretary to the council, who shall be the secretary to the committee;
 - (c) four members elected by the council from among their number.
- (2) The council shall, when hearing disciplinary cases, appoint an advocate of not less than five years' standing to advise the disciplinary committee.
- (3) Four members of the committee shall form a quorum.

31. Complaints against a journalist

- (1) A complaint or an allegation against a journalist, which if proved would constitute professional misconduct, may be made to the disciplinary committee by any person, and the complaint or allegation shall be reduced into writing.
- (2) The secretary shall, upon receipt of a complaint, within thirty days refer the matter to the committee which shall fix a date for the hearing of the complaint.
- (3) The committee shall give the journalist against whom the complaint or allegation is made an opportunity to be heard and shall furnish him or

her with a copy of the complaint and any other relevant document at least fourteen days before the date fixed for the hearing.

32. Procedure of the committee

The procedure to be followed by the committee in the hearing of the complaint shall be as provided in the First Schedule to this Act.

33. Committee's decision

After hearing the journalist to whom the complaint relates and after considering the evidence adduced, the committee may dismiss the complaint if no ground for a disciplinary action is proved, or if a ground for a disciplinary action is proved, impose any or a combination of the following penalties—

- (a) that the journalist be admonished or be required to apologise to the aggrieved party in the manner specified by the committee, including the same boldness of lettering on the page where the article appeared in the newspaper;
- (b) that the practising certificate of the journalist be suspended for a specified period not exceeding six months;
- (c) that the media organisations which published the matter that led to the complaint pay compensation to a person who suffered loss or injury as a result of the misconduct.

34. Appeal to the High Court

- (1) A journalist or complainant aggrieved by the decision or order of the committee may appeal against the decision or order to the High Court within fourteen days from the date on which the report of the committee was delivered to that journalist or complainant.
- (2) An appeal made under this section shall be—

(a) made by petition in writing under the hand of the journalist or complainant; and (b) heard and decided upon by a judge of the High Court after summary hearing.

- (3) Where the council suspends a journalist, the journalist shall not, while an appeal is pending under this section, be entitled to practise.

35. Implementation of the committee’s orders

- (1) The council shall be responsible for the implementation of the committee’s orders.
- (2) The secretary shall ensure that an order of the committee is noted in the register against the name of the affected journalist and shall send a certified copy of the committee’s decision to the National Institute of Journalists of Uganda.

36. Revocation of suspension of a journalist

The council may, on receiving new facts relating to a case of a journalist on suspension, revoke the suspension.

– Miscellaneous and transitional provisions

37. Report, etc. to be received in evidence

A report or order made by the council and signed by the chairperson and the secretary shall be received in any legal proceedings and shall be taken to be that particular report or order without further proof of its contents unless the contrary is shown.

38. Protection of source of information

A journalist shall not be compelled to disclose the source of his or her information except with the consent of the person who gave him or her the information or on an order of a court of law.

39. Seizure order

- (1) Whenever criminal proceedings have been instituted for an offence against the freedom of the press, the court may, on application to it for confiscation, order that the material involved in the offence be seized or issue a ban on the publication.
- (2) A seizure order shall be effected by the police and shall relate only to those copies which were intended for dissemination.
- (3) Any person aggrieved by the decision or order of the court may appeal to a higher court against the decision within thirty days from the date on which the seizure order was issued.

40. Professional code of ethics

- (1) A journalist enrolled under this Act shall be subject to the professional code of ethics provided in the Fourth Schedule to this Act.
- (2) A person who contravenes any provision of the professional code of ethics commits professional misconduct and shall be dealt with by the disciplinary committee.
- (3) The Minister may, by statutory instrument and after consultation with the council, amend the Fourth Schedule to this Act.

41. Practising journalists prior to commencement of this Act to continue to practise

A person who is practising journalism immediately prior to the commencement of this Act may continue to practise journalism until he or she is duly enrolled as a journalist in accordance with this Act.

42. Regulations

- (1) The Minister may, on the advice of the council, make regulations for better carrying into effect the provisions of this Act.
- (2) Without prejudice to the general effect of subsection (1), regulations may be made under it prescribing—

- (a) the particulars and other matters to be entered in the register;
 - (b) the fees to be paid under this Act;
 - (c) the procedure of the disciplinary committee and the manner of lodging a complaint; and (d) anything which under this Act is to be or may be prescribed.
- (3) Notwithstanding the Interpretation Act, the Minister may, with the approval of Parliament, by statutory instrument, increase any fines specified in this Act.

First Schedule (ss. 10, 32)

Meetings of the council and other miscellaneous matters

1. Meetings of the council

- (1) The council shall meet for the discharge of its duties at least once every two months or upon a request in writing to the chairperson by at least one-third of the members of the council at such time and place as the chairperson may appoint
- (2) A meeting of the council shall be convened by a notice issued under the signature of the secretary to the council at least fourteen days before the meeting; except that in the case of an emergency, a shorter notice may be given.
- (3) The chairperson shall preside at all meetings of the council; and in his or her absence, a person elected by the members present shall preside.
- (4) Seven members shall form a quorum at a meeting of the council.
- (5) Any decision at a meeting of the council may be determined by simple majority of the members present.
- (6) A member of the council shall have one vote; and in the event of equality of votes, the chairperson or person presiding at the meeting shall have a casting vote.

- (7) The council may invite any person to any of its meetings, but that person shall not have a voting right.
- (8) Subject to this Schedule, the council may regulate its own procedure.

2. Minutes

- (1) The secretary to the council shall cause to be recorded and kept minutes of all meetings of the council in a form approved by the council.
- (2) The minutes recorded under this paragraph shall be submitted to the council for confirmation at its next meeting following that to which the minutes relate and when so confirmed shall be signed

by the chairperson and the secretary in the presence of the other members present at the latter meeting.

3. Validity of proceedings not affected by any vacancy

The validity of any proceedings of the council shall not be affected by any vacancy among its members or by any reason only of the fact that any person not entitled to vote at any meeting attended or voted.

4. Disclosure to interest

- (1) If a person is present at a meeting of the council at which a matter is the subject of consideration and in which matter that person or his or her spouse is directly or indirectly interested in a private capacity, he or she shall, as soon as practicable after the commencement of the meeting, disclose that interest and shall not, unless the council directs otherwise, take part in any consideration or discussion or vote on any question relating to that matter.
- (2) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made.

5. Committees of the council

The council may establish committees as may be required for the efficient discharge of its functions.

6. Proceedings of the disciplinary committee

- (1) For the purposes of any complaint, the disciplinary committee may administer oaths or affirmations.
- (2) A person appearing as a party before the disciplinary committee may, at any stage of the proceedings, appoint an advocate to represent him or her or otherwise to assist the disciplinary committee.
- (3) For the purpose of carrying out its duties, the disciplinary committee may interview and correspond with any person as it may deem necessary.

Second Schedule (s. 20)

Meetings of the executive committee

- 1. The executive committee shall meet as often as the business of the executive committee requires, but the executive committee shall meet at least once in three months.
- 2. The president shall convene a meeting of the executive committee if a request for a meeting in writing addressed to the general secretary is received by him or her, signed by at least three members of the executive committee.
- 3. The executive committee shall meet at a time and place that may be determined by the president.
- 4. Notice in writing of a meeting of the executive committee shall be given to each member of the executive committee at least seven clear days before the date of the meeting.
- 5. The notice under paragraph 4 shall include, as far as practicable, a statement of the business to be transacted at the meeting.
- 6. The nonreceipt of a notice by any member shall not affect the validity of the proceedings of the meeting.

7. Five members of the executive committee shall form a quorum.
8. No notice shall be given of an adjourned meeting unless the meeting resolved otherwise.
9. In case of emergency and with the approval of the president, or the vice president in the absence of the president, a notice calling the meeting may be given to the members at least one clear day before the date of the meeting; and the nonexistence of the emergency shall not affect the validity of the proceedings of the meeting.
10. The president or, in the absence of the president, the vice president shall preside at any meeting of the general assembly.
11. The person presiding at a meeting may, with the consent of the meeting, adjourn the meeting of the executive committee to a place that may be determined by the president.
12. Questions proposed at a meeting of the executive committee shall be determined by a majority of the votes of the members present; and in case of equality of votes, the person presiding shall have a casting vote.
13. Proper minutes of the deliberations of the meeting shall be recorded and issued by the person presiding at that meeting, and those records shall be sufficient evidence of that meeting.
14. Subject to this Schedule, the executive committee may regulate its own procedure.

Third Schedule (s. 20)

Meetings of the institute

1. Annual general meeting

- (1) The institute shall hold an annual general meeting which shall be held before the 30th of June in each financial year of the institute, at a time and place that may be determined by the chairperson.

- (2) The following business shall be transacted at the annual general meeting —
 - (a) reception and consideration of the accounts of the institute and the auditor’s report;
 - (b) election of members of the executive committee; and (c) any other business.

2. A special general meeting

The president may convene a special general meeting of the institute whenever he or she considers it necessary and shall convene such meeting within fourteen days of giving notice of the meeting.

3. Notice of motion

- (1) A member writing to bring a motion not related to the ordinary business of the annual general meeting before the meeting may give notice to the general secretary to reach him or her at least five weeks before the date of the annual general meeting.
- (2) The motion must relate to the matters of the institute or to the profession.

4. Notice of meeting

- (1) The secretary shall send to each member of the institute notice of the meeting and the agenda for the meeting not less than fourteen days and not more than twenty-one days before the date of the meeting.
- (2) In the case of the annual general meeting, the secretary shall send with the notice— (a) a copy of the annual report of the executive committee;

- (b) a copy of the accounts of the institute together with the auditor's report;
 - (c) a list of persons nominated or proposed for election to the executive committee or as auditors; and
 - (d) a list of persons proposed for admission to membership of the institute.
- (3) The nonreceipt by any member of the institute of a notice of the meeting or any relevant document shall not invalidate the proceedings of the meeting to which they relate.

5. Associate member

Associate members shall be entitled to notice and shall speak during a meeting but shall not be entitled to a vote.

6. Chairperson of the meeting

- (1) The president or, in the absence of the president, the vice president shall preside at all meetings of the institute.
- (2) In the absence of both the president and the vice president, the members present shall elect one of the members to preside at the meeting.

7. Quorum of meetings

- (1) At the annual general meeting the quorum shall be one-third of the voting members of the institute; and if after fifteen minutes from the time appointed for the meeting the quorum is not met, the meeting shall stand adjourned to that day a fortnight later the same time and place.
- (2) On the date to which the meeting is adjourned, the meeting shall proceed to business notwithstanding that there may be less than one-third of the enrolled members.
- (3) At a special general meeting the quorum shall be one-half of the enrolled members; and if after fifteen minutes from the appointed time

for the meeting the quorum is not met, the meeting shall stand dissolved.

8. Adjournments

- (1) A person presiding at any meeting may adjourn the meeting from time to time and from place to place.
- (2) Only the business left unfinished at the meeting from which the adjournment took place shall be transacted at the adjourned meeting.
- (3) No notice shall be given of an adjourned meeting unless the meeting resolved so.

9. Voting at a meeting

- (1) Every question proposed at any meeting of the institute shall be determined by a simple majority of the members present and voting; and in case of equality of votes, the chairperson shall have a casting vote.
- (2) Voting shall be by secret ballot.

10. Minutes of meetings

Minutes of the meetings of the institute shall be properly recorded and shall be confirmed by the subsequent meeting and signed by the chairperson and secretary of the meeting, and that shall be sufficient evidence of the meeting.

Fourth Schedule (ss. 40(3), 42)

Professional code of ethics for journalists and editors

1. Application of code

This professional code of ethics applies to all persons practicing journalism and for the purposes of this code a person practises journalism if he or she is paid for the gathering, processing, publication or dissemination of information; and such person includes a freelance journalist.

2. Accuracy

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

3. Privacy

- (1) Journalists and editors shall respect the constitutional right to privacy of home, correspondence, communication or other property enshrined in the Constitution.
- (2) A journalist or editor must not photograph a person in a private place without that person's consent.
- (3) A journalist or editor shall not unlawfully search the person, home or property of any person or unlawfully enter the premises of any person.
- (4) For the purposes of this paragraph, a private place is a public or private property where there is a reasonable expectation of privacy.

4. Plagiarism

It is unacceptable for any journalist or editor to plagiarise the professional work of any person or expropriate the work of any person without acknowledging the contribution of the owner of the work and naming his or her sources of information.

5. Harassment

- (1) It is unethical for a journalist or editor to engage in intimidation, harassment or corruption.

- (2) It is unacceptable for a journalist or editor to unreasonably persist in questioning, telephoning, pursuing or photographing a person who has asked the journalist or editor to desist from such acts.
- (3) A journalist or editor shall not enter the property of another without consent, and where a journalist is granted permission to enter a person's property, the journalist must not remain on the property if asked to leave the property.

6. Journalist to identify himself or herself

A journalist or editor must identify himself or herself and the media organisation he or she represents when requested to do so.

7. Grotesque and gruesome pictures

- (1) It is unacceptable for a journalist or an editor to publish any material which is grotesque or gruesome in nature.
- (2) A journalist or editor may publish a grotesque or gruesome in the public interest but should demonstrate the public interest that justifies the publication of such a grotesque or gruesome picture and must in any case warn the public that the material to be published is grotesque or gruesome.

8. Obscene publications

- (1) Journalists and editors must not publish obscene material including writings, drawings, prints, paintings, printed matter, pictures, posters, emblems, photographs, cinematograph films or any other obscene objects, or any other object tending to corrupt morals.
- (2) Obscenity shall be construed in its ordinary meaning.

9. Intrusion into grief or shock

- (1) In a case involving personal grief or shock, any enquiry, approach or publication by a journalist or editor in regard such a case must be made

with sympathy and discretion and publication of such a case must be handled with sensitivity.

- (2) This paragraph should not be taken to restrict the right of the journalist or editor to report legal proceedings including inquests.
- (3) Where a journalist or editor is reporting suicide or any other death, care should be taken to protect the dignity of the person and the sensibilities of the relatives and public.

10. Children

- (1) A journalist or editor must not unnecessarily intrude on the learning environment of a child.
- (2) A journalist or editor must not interview or photograph a child on any issue involving the child or another child unless the parent, guardian or any person having custody of a child consents.
- (3) A journalist must not approach or photograph a child at school without the permission of the school authorities.
- (4) For the purposes of this regulation, the fame, notoriety or position of a parent or guardian is not justification for publishing details of a child's private life.
- (5) A journalist must not identify a child who is a victim or witness in a case relating to a sex offence.
- (6) In a case relating to a sex offence, a journalist must not use the word "incest" where a child victim may reasonably be identified from use of such word.
- (7) A journalist must take care that his or her report relating to a sex offence does not imply a relationship between the accused and the child.

11. Reporting of crime

Stories, pictures or information, which seek to exploit a particular crime or to glorify or glamourise crime in general, must not be published.

12. Clandestine devices and subterfuge

- (1) A journalist or editor must not intercept the communications of any person without the required legal authorization.
- (2) Engaging in misrepresentation or subterfuge by a journalist or editor, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.

13. Victims of sexual assault

A journalist or editor must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.

14. Financial journalism

- (1) Journalists and editors must not use for their own profit financial information they receive in advance of its general publication nor should they pass such information to others.
- (2) Journalists and editors must not write or publish stories about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.

15. Confidential sources

Journalists and editors have a moral obligation to protect confidential sources of information and shall not disclose the source of information; but they may only divulge the source in the event of an overriding consideration of public interest and within the framework of the law. [*Fourth Schedule substituted by section 2 of [Statutory Instrument 5 of 2014](#)*]



ABOUT THE BOOK

Freedom of opinion and freedom of expression are the foundation for every free and democratic society, a necessary condition to realise the principles of transparency and accountability we need to protect human rights (and) the basis for the full enjoyment of many other human rights. Though free speech was declared by the United Nations in 1948 to be a universal right, that is a hope, not reality.

A nation's media laws and policies are touchstones of its commitment to freedom of opinion and freedom of expression. A nation's openness to reform and willingness to balance competing interests in ways that enhance free speech are a product of its history, cultures, political contexts, and legal system. In most jurisdictions, the process of reform in media law and policy has customarily moved slowly. Advocates on either side of a dispute sift generations of theory, custom, precedent, and practice to propose answers to new questions that arise in free speech. Reform considerations often grow out of major advances in media technology, from moveable type, for example, and on to the camera, radio, and television. In the early 1990s, the Internet arrived in a new user-friendly form known as the World Wide Web and changed communications forever. With its interactive global platforms, millions of websites, and billions of users, the Internet heavily taxes the capacity of all jurisdictions to devise legal and regulatory responses to questions that began coming into view at light speed.

Still, media law and policy reform has and is taking place, sometimes in a major and liberating way, such as with the UK's Defamation Act of 2013, but more often in patchwork and restrictive ways as courts, legislators and regulators wrestle with grand dilemmas presented by the Internet and for twenty-first century communications. Fundamental questions are being re-examined: who is a journalist, who is a publisher etc. The questions are so large they seem philosophical, with no possible single answer, but the main purpose of media law and policy is to balance competing interests and uphold free speech.

In essays by some of the world's leading authorities on media law and policy in the Internet age, this book examines the opportunities and perils for media freedom and practice in an era of technology-driven change in Uganda. The essays explore the complications and contradictions of change and the consequences now and in the future for 'traditional' publications and journalists, for new online publications, and for people who take to Internet platforms to distribute ideas and opinions, theirs or those of others, to anyone in the world with a computer, smartphone or technology not yet devised, and who sometimes unwittingly subject themselves, potentially, to legal sanctions.

This book is not a catalogue of media law and policy reforms across the world, but instead is an examination of several key reforms to illuminate issues in current and historical, constitutional, and international contexts, with lessons and insights for those involved in different jurisdictions and stages of reform especially Uganda. Its author also defines the unique elements of the new media landscape and trace the 'very long process' of 'gradually protecting more speech' through both statute and case law in order to build a conceptual structure for considering the future.