

**AN ANALYSIS ON THE IMPACT OF MEDIA LAW ON MEDIA  
FREEDOM AND DEMOCRACY IN UGANDA**

**BY  
MBABAZI ANGELLA  
REG. NO. 1153-01024-00281**

**A DISSERTATION SUBMITTED TO FACULTY OF LAW IN PARTIAL  
FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF  
THE DEGREE OF BACHELOR OF LAWS OF KAMPALA  
INTERNATIONAL UNIVERSITY**

**JUNE 2019**

## DECLARATION

I, **Mbabazi Angella, 1153-01024-00281**, do declare that this dissertation is a presentation of my original research work. Wherever contributions of others are involved, every effort is made to indicate this clearly with due reference to the literature and appropriate citations.

Signature: 

Date: 5/07/2019

## APPROVAL

In my capacity as supervisor of the candidate's thesis, I certify that the above statements are true to the best of my knowledge and this paper is thus submitted with my consent.

Signature: W. Kabatabazi

Date: 05/07/2019

Ms. Winfred Kabatabazi

## DEDICATION

To:  
GRACE NEKESA

The foundation you gave me greatly molded me



## ACKNOWLEDGEMENT

The ultimate measure of a man is not where in moments of comfort and convenience but where he stands in times of difficulty.

Everything I am or ever will be is thanks to the Almighty God.

To my parents Grace Nekesa and Byabazaire James, not enough words can describe your enormous support you have rendered to me but nonetheless allow say thank you.

Special thanks go to my supervisor Madam Winfred Kabatabazi for his immeasurable assistance in coming with this academic text. For your enormous contribution to my study at Kampala International University, I shall forever be indebted.

To Charles Odongtho as a respondent that took part in this research, you have added value to my research paper, my utmost gratitude.

Lastly, my family and friends, you are amazing people; your encouragement saw me through with this great academic struggle.

There are many more people I could express my most sincere gratitude, but time, space, and the fear of skipping a name compel me to stop here. We shall meet in even greater places and other writings to be opined.

## LEGISLATIONS

### DOMESTIC

1. Anti-Terrorism Act 2002.
2. Anti-Pornography Act 2014.
3. Constitution of the Republic of Uganda, 1995.
4. Press and Journalist Act 2000.
5. Regulation of the Interception of Communications Act (2010).
6. Right of Access to Information Act 2005.
7. Uganda Communication Act (2013).
8. Penal code Act 1950
9. Uganda Broadcasting Corporation Act(2005)
10. The Inception of Communications Act(2012)
11. The Copyright And Neighboring 2006
12. The Official Secrets Act Cap 302 (1964)

### REGIONAL AND INTERNATIONAL INSTRUMENTS.

1. African Charter on Human and Peoples' Rights ("Banjul Charter") CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force ON 21 October 1986.
2. African Charter on Democracy, Elections and Governance, Adopted by the Eighth Ordinary Session of the Assembly, Held in Addis Ababa, Ethiopia, 30 January 2007
3. Charter of the United Nations, 24 October 1945, 1 UNTS XVI.
4. Declaration of Principles On Freedom of Expression in Africa (2002), adopted by the African Commission on Human and Peoples' Rights. at its 32nd Ordinary Session. 17-23 October, 2002: Banjul, The Gambia.
5. International covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966.
6. General Comment No. 34 on Article 19 ICCPR, Adopted on the 102nd session Geneva, 11-29 July 2011.
7. General Assembly Resolution A/RES/68/262.
8. Statute of the International Court of Justice, (1945) TS No. 993.
9. Universal Declaration of Human Rights G.A Res 217A (iii) UN. Doc A/811 (1948).
10. Windhoek Declaration on Promoting an Independent and Pluralistic African Press, arising out of a seminar organized by UNESCO, the United Nations Department of Public Information and UNDP in Windhoek, Namibia from 29 April – 3 May 1991. Available at [www.article19.org](http://www.article19.org).

## LIST OF ABBREVIATIONS

|        |   |                                                       |
|--------|---|-------------------------------------------------------|
| A.U    | - | African Union.                                        |
| A.G    | - | Attorney General.                                     |
| ACHPR  | - | African Charter On Peoples' and Human Rights.         |
| HRNJ   | - | Human Rights Network for Journalists.                 |
| ICJ    | - | International Court of Justice.                       |
| Id     | - | Ibid(same as the above)                               |
| ICCPR  | - | International Covenant On civil and Political Rights. |
| NIJU   | - | National Institute of Journalists of <i>Uganda</i>    |
| NTV    | - | NTV Uganda                                            |
| NBS    | - | Nile Broadcasting Service.                            |
| Pg     | - | Page                                                  |
| UBC    | - | Uganda Broadcasting Corporation.                      |
| UHRC   | - | Uganda Human Rights Commission.                       |
| UN     | - | United Nations.                                       |
| UPDF   | - | Uganda Peoples' Defense Forces                        |
| UPC    | - | Uganda Peoples' Congress.                             |
| UCC    | - | Uganda Communications Commission.                     |
| USAID  | - | U.S. Agency for International Development.            |
| UNESCO | - | United Nations Scientific and Cultural Organization.  |

## TABLE OF CONTENTS

|                                    |            |
|------------------------------------|------------|
| <b>DECLARATION.....</b>            | <b>i</b>   |
| <b>APPROVAL .....</b>              | <b>ii</b>  |
| <b>DEDICATION.....</b>             | <b>iii</b> |
| <b>ACKNOWLEDGEMENT.....</b>        | <b>iv</b>  |
| <b>LEGISLATIONS .....</b>          | <b>v</b>   |
| <b>LIST OF ABBREVIATIONS .....</b> | <b>vi</b>  |
| <b>TABLE OF CONTENTS .....</b>     | <b>vii</b> |
| <b>ABSTRACT.....</b>               | <b>x</b>   |

|                                                                                                                               |          |
|-------------------------------------------------------------------------------------------------------------------------------|----------|
| <b>CHAPTER ONE: UNDERSTANDING THE PLACE OF MEDIA IN UGANDA;ACRITIQUE<br/>OF THE PRACTISE OF MEDIA AND MEDIA FREEDOMS.....</b> | <b>1</b> |
| 1.0 Introduction.....                                                                                                         | 1        |
| 1.1 Background .....                                                                                                          | 3        |
| 1.2 Statement of the Problem.....                                                                                             | 4        |
| 1.3 Objective of the Study .....                                                                                              | 5        |
| 1.5 Hypothesis.....                                                                                                           | 6        |
| 1.8.2. Geographical Scope .....                                                                                               | 8        |
| 1.8.3. Subject/thematic scope.....                                                                                            | 8        |
| 1.9 Literature Review.....                                                                                                    | 9        |
| 1.10 Relevance of media.....                                                                                                  | 11       |
| 1.11. Challenges faced by the media and possible solutions .....                                                              | 12       |
| 1.12 Methodology .....                                                                                                        | 14       |
| 1.12.1 Research Design.....                                                                                                   | 14       |
| 1.12.2 Data Collection .....                                                                                                  | 14       |
| 1.12.3 Instruments for data collection.....                                                                                   | 15       |
| 1.12.4. Data Analysis .....                                                                                                   | 15       |
| 1.12.5 Sampling Design .....                                                                                                  | 15       |
| 1.13. Limitations of the Study.....                                                                                           | 16       |
| 1.14. Synopsis: .....                                                                                                         | 16       |

## **CHAPTER TWO: MEDIA AND MEDIA FREEDOMS AS A BED ROCK OF A GROWING DEMOCRACY; UNDERSTANDING THE ROLE OF MEDIA FREEDOMS ON MEDIA AND THE THRIVING OF DEMOCRACY IN UGANDA..18**

|                                                                                                                                                                                               |    |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| 2.1. Introduction.....                                                                                                                                                                        | 18 |
| 2.2. Democracy is impossible without a free media. ....                                                                                                                                       | 18 |
| 2.3 Media's contribution to the growth of democracy.....                                                                                                                                      | 19 |
| 2.3.1 The role of mass media in a democratic society. ....                                                                                                                                    | 20 |
| 2.4. Some of the ways in which media groups have lived up to the democratic ideal of the press as watchdog, public forum, catalyst of social reform, and builder of peace and consensus. .... | 20 |
| 2.4.1 Investigating the ills in society and agencies: Media as a public watch dog. ....                                                                                                       | 20 |
| 2.4.2 Media as a tool and forum for debate, dialogue and discussion. ....                                                                                                                     | 24 |
| 2.4.3 The Media as Peace and Consensus Builder.....                                                                                                                                           | 26 |
| 2.4.4 Voice of the people .....                                                                                                                                                               | 28 |
| 2.4.5 The role of the news media as civic forum .....                                                                                                                                         | 29 |
| 2.5 Negative contribution.....                                                                                                                                                                | 31 |
| 2.5.1 Publication of false/ biased information. ....                                                                                                                                          | 31 |
| 2.6 Conclusion .....                                                                                                                                                                          | 32 |

## **CHAPTER THREE: LEGAL FRAMEWORK FOR THE PROTECTION OF MEDIA FREEDOMS INTERNATIONAL, REGIONAL AND DOMESTIC GUARANTEES...32**

|                                                                                                        |    |
|--------------------------------------------------------------------------------------------------------|----|
| 3.0. Introduction.....                                                                                 | 33 |
| 3.1. National Laws Governing Media in Uganda .....                                                     | 33 |
| 3.1.1. The 1995 Constitution.....                                                                      | 33 |
| 3.1.2 The Uganda Communications Act 2013.....                                                          | 34 |
| 3.1.3 The Interception of Communications Act, 2010.....                                                | 36 |
| 3.1.4.The Right of Access to Information Act 2005 and the Access to Information Regulations 2011 ..... | 37 |
| 3.1.5 The Official Secrets Act Cap 302 .....                                                           | 37 |
| 3.1.6 The Press and Journalist Act 2000.....                                                           | 38 |
| 3.1.7 The Uganda Broadcasting Corporation Act (2005).....                                              | 39 |
| 3.1.8 The Media Council .....                                                                          | 39 |
| 3.1.9 The Computer Misuse Act, 2011.....                                                               | 41 |
| 3.1.10 The Copyright and Neighbouring Rights Act 2006.....                                             | 41 |
| 3.1.11 The Anti-Terrorism Act 2002 .....                                                               | 42 |

|                                                                                                   |           |
|---------------------------------------------------------------------------------------------------|-----------|
| 3.1.12 The Anti-pornographic Act.....                                                             | 43        |
| 3.1.13 The Penal Code Act, Cap 120 of 1950 .....                                                  | 43        |
| 3.2. International Obligations. ....                                                              | 50        |
| 3.2.1 The Universal Declaration of Human Rights and the media freedoms. ....                      | 50        |
| 3.2.2. The Covenants, Resolutions and General comments.....                                       | 51        |
| 3.2.3. The right to media/ expression as customary international law.....                         | 52        |
| 3.2.4. General assembly debates and Resolutions .....                                             | 53        |
| 3.2.5. United Nations World Press Freedom Day.....                                                | 54        |
| 3.2.6. Regional Level .....                                                                       | 54        |
| 3.2.6.1. The African Charter on Human and Peoples' Rights.....                                    | 54        |
| 3.2.6.2. The African Charter on Democracy, Elections and Governance (2007) .....                  | 55        |
| 3.2.6.3. The Windhoek Declaration on Promoting an Independent and Pluralistic African Press ..... | 56        |
| 3.3 Limitations in place on Media Freedoms.....                                                   | 57        |
| 3.3.1 National limitations.....                                                                   | 57        |
| 3.3.2 International limitations .....                                                             | 58        |
| 3.3.3 Court's attitude towards protection of Media Freedoms. ....                                 | 59        |
| 3.3.4 Case law at International Scene. ....                                                       | 61        |
| 3.5. Bodies charged with oversight regulation of the Media .....                                  | 62        |
| 3.6. Conclusion .....                                                                             | 63        |
| <br><b>CHAPTER FOUR: CHALLENGES, FINDINGS, RECOMMENDATIONS .....</b>                              | <b>64</b> |
| 4.0. Introduction.....                                                                            | 64        |
| 4.1 Challenges Impacting On The Enjoyment Of Media Freedom .....                                  | 64        |
| 4.2. Findings from the Field Work Study .....                                                     | 67        |
| 4.3. Recommendations.....                                                                         | 70        |
| 4.4 Conclusion .....                                                                              | 76        |
| <br><b>BIBLIOGRAPHY .....</b>                                                                     | <b>77</b> |
| <b>APPENDIX A: PERSON INTERVIEWED .....</b>                                                       | <b>85</b> |

## ABSTRACT

This paper discusses the effect of media laws on media freedoms. Considering the media as part and parcel of civil society, the author argues that media independence is critical to in the achievement of a free and democratic society. To do so, it traces the historical evolution of Media in Uganda showing how they have progressed over the years.

However, it is postulated that the growth of democracy in Uganda can be greatly enhanced by the support of media. Therefore the media laws should not be applied in such a way as to deter media freedoms.

The paper then discusses the law and policy framework in which media operates in Uganda before making proposals for solutions to the challenges that encumber their work.

The paper also discusses the problems encountered by the media in the process of promoting democratic politics. These include the legal and political environment, in which the media operate. This paper analyses the role of media in Uganda’.

Findings from this study reveal that the media does have a role to play in developing democracy and human rights. This role is important because it gives the media responsibility of serving the interests of the citizens and being the mediators of the democratic process.

# CHAPTER ONE

## UNDERSTANDING THE PLACE OF MEDIA IN UGANDA; A CRITIQUE OF THE PRACTISE OF MEDIA AND MEDIA FREEDOMS.

❖ Looking at the king's mouth, one would think that he never sucked at his mother's breasts..... Chinua Achebe in *Things Fall Apart*.

### 1.0 Introduction

The word "media" is adopted from the plural of the Latin word "medium". it is used as a collective noun to refer to television, radio, newspapers, magazines, films, the International Network (Internet)<sup>1</sup> etc. That is to say, all forms of information and data distribution, dissemination and communication. All these aspects are encompassed in agencies always referred to as publishing houses and the press.

In Uganda information dissemination has grown from single and personal publications to institutional publishing houses owned by both local international and government, this dates back as far as 1902. The media environment in Uganda is partially vivacious and continues to grow. According to Uganda Communications Statistics, there were 244 radio stations and 41 TV stations by July 2010 and newspapers like the Daily Monitor, New vision, the Observer, Red paper, Bukedde among others; radio stations include KFM, Capital FM, Dembe FM et.c, television stations like UBC, NTV, NBS among others. The worldwide trend in research to improve on workmanship globally gave birth to the international networking here in referred to as the internet. This is attributed to the government liberation policy.

Inspite of all the above, regulation of the media was inevitable, thus the creation of media law, which regulates media production and use. The practice of media law involves all types of legal issues that might arise during the production or consumption of various types of media. It is stated that every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media.<sup>2</sup> This places a constitutional burden on all organs and agencies of Government and all persons to respect, uphold and promote this fundamental right.<sup>3</sup> Expression through the media therefore is inherent and not granted by the state.<sup>4</sup>

---

<sup>1</sup> Busakorn Suriyasarn, " Internet & National development" Thai media & telecommunications, May 1998

<sup>2</sup> Article 29(1)(a) of the Constitution of the Republic of Uganda 1995.

<sup>3</sup> Article 20(2) ibid

<sup>4</sup> Article 20(1) id; Charles Onyango Onyango Obbo and Anor v Attorney General Constitutional Appeal No. 2 of 2002; Also the position in Christopher Mtikila v Attorney General Civil case No. 5 of 1993



This right is also recognized in international instruments ratified by Uganda like the International Covenant on Civil and Political Rights (ICCPR)<sup>5</sup>, African Charter on Human and Peoples' Rights (ACHPR)<sup>6</sup>. A broader discussion and deliberation shall be made on these conventions in my subsequent submission so as to have a clear understanding whether or not they have promoted or impeded media freedoms. Furthermore, (ICCPR) gives embodiments of what media freedom entails under article 19(2), it provides that right of media freedom includes freedom to seek, receive impart information and any ideas of all kind, regardless of frontiers either orally or in printing and through any other media choice. The enjoyment of such freedom necessitates absence of meddling by the state and its agencies.

According to the Oxford Dictionary, development means "a new stage in a changing situation."<sup>7</sup> The research shall therefore consider the role of media freedoms in the development of a democratic society.

Another key term in this dissertation will be democracy. Various definitions have been advanced to define the same however some notable definitions include; It is a system of government in which all people of a country elect their representatives<sup>8</sup> It can also be defined as system that accords fair and equal treatment to everyone in an organization and their right to take part in decision making.<sup>9</sup>

Developing democracies like Uganda require vibrant free and independent and gender sensitive media so that they can express themselves freely and raise their issues. This is a prerequisite for them to develop institutions and allow every one to participate in their governance.

This Chapter particularly explains the birth, growth of media in Uganda. It paints the bigger picture of where the media started and where it is now. A succinct statement of the problem is then made and the research objectives and questions are laid out. The chapter then turns its focus on how data was collected for this paper before giving a brief synopsis of the other chapters.

---

<sup>5</sup> Article 19(2) ICCPR Media includes; newspapers like the Daily Monitor, New vision, the Observer, Red paper, Bukedde among others; radio stations include KFM, Capital FM, Dembe FM etc, television stations like UBC, NTV, NBS etc

<sup>6</sup> Article 9

<sup>7</sup> F.G. Fowler and H.W. Fowler, eds. The New Pocket Oxford Dictionary, Oxford, 2001, ed. 9

<sup>8</sup> Oxford Advanced Learners Dictionary, 7<sup>th</sup> Ed Page 389

<sup>9</sup> Id

## 1.1 Background

According to Sewanyana Livingstone<sup>10</sup>, the first media outlets in Uganda were newsletters owned by missionaries; notable among these were, “Mengo Notes” first published in 1902 under Church Missionary Society, “Munno” published in 1911. Other newspapers included “Agafa e Mengo” owned by Buganda kingdom, Uganda Herald first published in 1912, “Matalisi” which was first published in 1923 among others.

Cracking media freedom dates back to the same era. Newspapers were subject to restrictions imposed by the colonial authorities, including the Newspapers Surety Ordinance No. 9 of 1910 and the Press Censorship Ordinance No. 4 of 1915 which penalized publication of information regarding British military activity. This crack down went on until independence.

In 1962, independence brought a short lived press freedom. Sewanyana further states that the first shot against media in post-independence era was in 1966 when UPC government deported Ted Jones, a Ugandan correspondent for two Nairobi based publications, The Kenya Weekly News and The Reporter as well as Billy Chibber, a reporter for Daily Nation. The government also closed Ssekanyolya, a pro-Buganda Kingdom newsletter that had been a thorn in the flesh of the colonial government. This was during the “Kabaka crisis”. In 1970s when Amin came to power, media was also vulnerable to the dictates by government resulting in the murder of several journalists such as Clement Kiggundu, editor of Munno among others.

The enactment of 1995 constitution, Article 29 provides for a right to freedom of expression and Article 41 provides for a right to access information in the hands of the state.

A number of laws that concern themselves with media and media freedoms have been enacted. I will opine and explore whether according to my school of thought these laws have promoted or deterred media freedoms. An analysis will also be made on whether these laws are not simply beautiful lines scribbled in the statutes or a blank cheque but whether on a practical examination of the status quo the laws have been implemented.

---

<sup>10</sup> Sewanyana Livingstone (ed), Freedom of Expression in Defence of Media Freedom in Uganda, Report for the period 1<sup>st</sup> June-30th November 2007



## 1.2 Statement of the Problem

Despite the increased level of media freedom in Uganda over the last decade, there is still calls for more action from government by journalists and media houses to let the media express its self freely<sup>11</sup> Even with constitutional provisions providing for a right to expression through press, media<sup>12</sup> and right to access of information in the hands of the state these rights have continuously been abused.

In 2014, 124 cases of violations against journalists by both state and non-state actors including the Uganda Police, the UPDF, the Judiciary, local government entities, individuals and employers of media practitioners were experienced.<sup>13</sup>

Mr. Morgen Pedersen the Danish Ambassador to Uganda said that Uganda was ranked 117<sup>th</sup> from 112<sup>th</sup> out 180 countries for violation against the journalists that is to say a total of 135 cases was reported in 2016, similarly 113 cases of violations and abuses were reported in 2017 here the police were the leading violators of the media freedoms accounting for 83 cases out of 113(73%) the Uganda Communications Commission (UCC) and the judiciary followed in distant second and third positions with six (5.3%) and four (3.5%) cases respectively. Police violations include, among others 45 arrests and detentions; 27 cases of assault and seven cases of malicious damage to journalists equipment, 11 cases of blocking of journalists from accessing new places, 10 cases were registered by the UCC. There were also two cases of switching off radio stations on orders of the UCC and breaking of media houses; 4 cases of threatening violence against journalists suspended from work on orders of UCC The judiciary is mainly accused of blocking journalists from accessing court sessions.<sup>14</sup> similar violations have been reported to date.

It is however important to note that there was a drastic reduction of attacks by the police in 2014 to 40 cases from 85 in 2013, a decline from 143 cases was reported in 2015. This clearly indicates that the force may be starting to understand the noble importance the media plays in the governance of a country<sup>15</sup> The onslaught of media freedom through attacking journalists and/or media practitioners has not only impacted negatively on the media fraternity but has had a slip-over effect on the progression towards strengthening the rule of law,

---

<sup>11</sup> Media Freedom: "Narrow Escape", *Red Pepper*, May 27, 2011, accessed August 13, 2011

<sup>12</sup> Article 29 of the Constitution of the Republic of Uganda 1995.

<sup>13</sup> Press Freedom Index Report 2014, page 11

<sup>14</sup> fdrauk@ug.nationmedia.com

democratization, and good governance. A crack down on the media therefore has continued to negate the progress towards public accountability, rule of law, combating of corruption, democracy and enjoyment of human rights.<sup>15</sup>

Despite the universal recognition of press freedoms, the press the world over continues to face serious challenges especially regarding the enjoyment of press freedoms such as securing the safety of journalists who are sometimes victims of arbitrary arrests and illegal detentions; torture; murder; disappearances; extrajudicial killings and rape.<sup>16</sup> I will also try to show from reports that the media continues to face challenges in its work in Uganda.

It can also be arguably said that there has been selective application of laws sometimes to the disadvantage of media houses and medium through which information is assessed. This is aptly put in the words of Daniel Kalinaki stating that; “social media impotence is more pronounced when the government chooses to pull the plug on social media whenever it feels threatened by citizen anger and is unable to mobilise sufficient intellectual bandwidth to provide a coherent counter argument. This has happened twice in 2016, and continuing.”<sup>17</sup>

Regulation of the media presents unique challenges. Guaranteeing media freedom and freedom of expression requires that the state refrain from undue interference and control of the media. Government has always argued that media and journalism practice, “is too risky a business to be left alone”. The states thus often seek to transform the media from watchdog to lapdog.<sup>18</sup>

### 1.3 Objective of the Study

MAIN OBJECTIVE: The study is to examine whether the media laws have promoted or rendered nugatory the media freedoms and democracy. In essence trying to dissect whether the media laws have lent a helping hand to the improvement of media freedoms or acted as blockage to the fruition of the same and the proportionate role in the growth of democracy.

The specific objectives are to:

- (a) Examine the role of media law in society.
- (b) Determine the extent to which media freedoms have been promoted

---

<sup>15</sup> Id,pg 12

<sup>16</sup> UHRC Statement on World Press Freedom Day: Ensuring the Safety of Journalists and Media Workers on 3<sup>rd</sup> May 2016

<sup>17</sup> Daniel Kalinaki; How social Media is transforming Uganda’s Political and Social Land Space

<sup>18</sup> Paul Kimumwe: Media Regulation and Practice in Uganda, a Journalist Handbook Page 15

- (c) Evaluate how the media and media freedoms have been supported by different organs of the state, to enable it influence the growth of a democratic society
- (d) Analyse the challenges faced by the media and possible solutions.

#### **1.4 Significance and justification of the study**

The significance of this study is to give an understanding of the contribution the media makes to society amidst the challenges it faces. It is to see that the constitutionally guaranteed right to media freedom is enhanced, promoted, respected.

This study is a call to all States, governments, civil society and communities to uphold the rights of the media and advocate for expression through media and press is enhanced.

It's also a call to those bodies and communities to develop strengthen, and support specific and concrete actions directed towards ending violation against media freedoms.

Beyond the ordinary value of information, democracy cannot thrive without free and independent media to provide checks and balances to the three arms of government.

#### **1.5 Hypothesis**

This study hypothesized that however much numerous laws have been put in place to ensure media protections compliance with these laws and fulfillment of these protections has left a lot to be desired.

Notwithstanding that media laws are enacted to regulate the media and media freedoms many a time they have been used to curtail enjoyment of the rights and freedoms.

The media can play a better role in a growing democracy like Uganda if the media laws are not applied discriminatively.

#### **1.6. Theoretical Framework**

Among other schools of legal thought, this paper is informed by sociological jurisprudence and social contract theory. Sociological jurisprudence propounds that the law should be used to solve society's challenges, and that legal scholars as social engineers should, through the legal spanner, remedy the challenges in respect of media freedoms and build an efficient legal and institutional framework for the onward increase of media freedoms.



According to Roscoe Pound, 'Law is social engineering which means a balance between the competing interests in society', in which applied science are used for resolving individual and societal problems<sup>19</sup>. He calls law a social engineering and that the aim of social engineering is to build as "efficient a structure of society as possible which requires the satisfaction of wants with minimal friction and waste"<sup>20</sup>. The business of the law, in Pound's view, therefore consists in satisfying as many interests as possible.<sup>21</sup>

It is thus important that media laws and policies are used considerably and complementarily so as to minimize the conflict between the interests of the media houses and the state apparatus. Emphasis should be on how to use these laws to promote media freedom so that the media is able to help to provide an avenue for problem solving in society.

Social contract arguments typically pose it that individuals have consented, either explicitly or tacitly to surrender some of their freedoms and submit to the authority of the ruler or magistrate (or to the decision of a majority), in exchange for protection of their remaining rights. Therefore on the part of the state, the media expects protection in the enjoyment of its rights and where this right is limited, it has to be within the confines of limitations accepted by in a democratic society.

### **1.7. Research Questions**

The study therefore seeks to answer the following questions:

- (a) What is the role of media in strengthening and deepening democracy.
- (b) Whether media freedoms have been respected/ promoted and challenges.
- (c) Whether different organs, people and society as a whole has been supportive to the media so as to influence the thriving of a democratic society.

### **1.8. SCOPE OF THE STUDY**

#### **1.8.1. Temporal (time-based) Scope**

For a holistic understanding of the roots and evolution of the work of media in influencing/ impacting on Uganda, this paper takes, as a pivotal point, the period between 1971 in the tyrannical regime of Idi Amin Dada spiraling to the promulgation of the 1995 constitution to date. This period saw the establishment of some of the first media houses, the censorship of

---

<sup>19</sup> S.R. Mayneni. (2007) JURISPRUDENCE (LEGAL THEORY) 2<sup>ND</sup> Ed S,P Gogia (Asia Law House) Hyd pg 511

<sup>20</sup> Raymond Wacks: Understanding Jurisprudence; 3<sup>rd</sup> Ed, Pg 163

<sup>21</sup> Ibid, Pg 165

the media/ press but also following the ushering in of a new constitution in 1995 advocating for media freedom particularly under Article 29 read together with Articles 2,20.

The period subsequent the 1995 Constitution has also seen enactment of different Acts of parliament not only enhancing and regulating the media in Uganda but also operationalizing provisions of the Constitution of the Republic of Uganda 1995.

### **1.8.2. Geographical Scope**

This paper takes Uganda as its case study. Reference will be made to a wealth of examples from all over the country to be able to get a proper picture of what the position is currently. Reference shall however be made to the international legal framework especially instruments Uganda has ratified and domesticated.

### **1.8.3. Subject/thematic scope**

The key focus of this paper will be to study the impact of media laws have had on media freedoms, legal framework governing media freedoms in Uganda and how greater protection through media laws can be ensured. To do so, this paper analysis the historical evolution of media in Uganda before proceeding to highlight the operations and challenges faced by the media. A way forward is suggested in a bid to enhance its efficiency.

## 1.9 Literature Review

### SUMMARY

The review is aimed at discussing how the independence of the media from interference from government organs, people can provide room for the contribution of the media to the development of society in different dimensions that is to say socially politically and economically.

It further examines the legal frame work on media freedoms in Uganda, that is international, regional and national level .it brings about the gaps that in laws and how the gaps have exploited to weaken the media industry and various institutions with the mandate to regulate media houses for example media council.

However, the goal of my review is to addresses the reader on the actual concerns media freedoms face and l challenges and possible solutions.

The review established a lacuna which created a necessity for the study.

Paul Kimumwe in his book: Media Regulation and Practice in Uganda, a Journalist Handbook notes that<sup>22</sup> “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 has ended up controlling instead of regulating 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 journalism in Uganda.” I share the school of thought of the author that indeed a series of laws have been enacted that seek to be applied in such a way that many a time curtails rather than advance the cause of media freedoms and subsequently hindering the growth of democracy in Uganda.

Sewanyana Livingstone’ Article Freedom of Expression in Defence of Media Freedom in Uganda, Report for the period 1<sup>st</sup> June-30<sup>th</sup> November 2007 showing glaring threats to media freedoms as journalists continue to be harassed and attacked by the very people who are supposed to protect them. Considering the situation in Uganda the analysis suits the situation.

According to the reports made by media houses,the rights of the journalists are infringed up to date. The article further critics the appointment process of members to the regulatory bodies

---

<sup>22</sup> Paul Kimumwe; Media Regulation and Practice in Uganda, a Journalist Handbook, Pg 9



as not being in position to meet the international standard.<sup>23</sup> The article further recommends a media council that comprises mainly of professionals and minority government participation.

However under Section 8 of the Press and Journalist Act it that establishes the media council will reveal that a number of professionals sit on the media council including senior journalists and members of the public. They include;

- a representative nominated by the Uganda Newspapers Editors and Proprietors Association
- four representatives of whom— two shall represent electronic media; and two shall represent the National Institute of Journalists of Uganda
- a representative nominated by the Uganda Newspapers Editors and Proprietors Association; one shall be nominated by the journalists
- a distinguished practicing lawyer nominated by the Uganda Law Society.

Therefore whereas the assertion is not completely destitute of merit it ignores the fact that the appointments are made by a minister which therefore means that the appointing authority may have control over how they exercise their work.

The role of the media in deepening democracy by Sheila S. Coronel: The author notes that the media shape public opinion, but they are in turn influenced and manipulated by different interest groups in society. The media can promote democracy by among other things, educating voters, protecting human rights, promoting tolerance among various social groups, and ensuring that governments are transparent and accountable.<sup>24</sup> The author further explains the constraints that hobble the media's ability to play a positive role in new democracies.<sup>25</sup> I agree with the author's school of thought, I will only add more illustrations of the role of media in a growing democracy. I will also discuss other avenues that can be explored to ensure greater protection so that the media effectively makes a contribution to thriving of democracy in Uganda.

Henry Lutaaya in his book. A moment of mourning for the state of media in Uganda Published on 2<sup>nd</sup> May 2016 reflects on a number of press freedom abuses citing that more than 100 journalists assaulted by Uganda police in 2015, a setback for peace, democracy in Uganda. He further notes that suppression of the media has been accompanied by horrendous

---

<sup>23</sup> On page 36 of the article

<sup>24</sup> Sheila S. Coronel; The role of the media in deepening democracy Pg 3

<sup>25</sup> Id

human rights abuses and notes that it should be in the interest of every Ugandan to safeguard media freedoms. The author however does not give possible avenues to help in enforcement of media/press freedoms. I shall in this paper elaborate of some of the avenues and possible solutions.

According to **Prof. Fredrick Juuko**,<sup>26</sup> he argues that circumstances where democracy is fragile they (press regulatory laws) can be turned into effective instruments of repression. They particularly easily lead themselves to administrative abuse. Case laws have been used since colonial era to harass the press and suppress the fighting for independence and are still applied in post-independence governments because they feel insecure.

The works of Juuko<sup>27</sup> and Makubuya<sup>28</sup> are instructive in analyzing the functions of the Media Council.

I will also discuss the state of media freedoms in Uganda, root causes of the violations and various challenges faced by the media as well as recommendations for the government and media houses to act upon, including reforms that could be adopted to improve the state of media freedoms in Uganda. A case in point, In the Media freedoms and rights for journalists in Uganda by Uganda Human Rights Commissions, there are reforms that can help boost the state of media freedom in Uganda for example improving on the conditions of work for media practitioners.

The state and media laws, regulatory bodies as well as the citizens should work together in order to promote the right of freedom of expression as well as a healthy democracy.

### **1.10 Relevance of media**

The role of the press as Fourth Estate and as a forum for public discussion and debate has been recognized. Today, despite the mass media's propensity for sleaze, sensationalism and superficiality, the notion of the media as watchdog, as guardian of the public interest, and as a conduit between governors and the governed remains deeply ingrained.

The media has on the whole brought to light violations of the law and rights of people. As such it can therefore be rightly asserted that the role of media has been a key milestone to commencement of discussion or forging a way forward to the respect of fundamental rights of

---

<sup>26</sup> Fredrick Juuko, *the Freedom of thought, opinion and expression* (1997)

<sup>27</sup> FW Juuko 'To ban or not to ban? A critique of the media council's ruling (2005) 11 East African Journal of Peace and Human Rights 172, 179

<sup>28</sup> AN Makubuya 'The vagina monologues' saga and free expression in Uganda' (2005) 11 East African Journal of Peace and Human Rights 161, 170.



people enshrined in the 1995 constitution of Uganda and other Acts of parliament. In a statement by Uganda Human Rights Commission (hereinafter UHRC), it lauds the media in the promotion and protection of human rights in Uganda by exposing human rights violations such as the right to life attributed mob justice, human sacrifice as well as right to property with the main focus on land issues. The media has also increasingly exposed human rights violations related to children, women and the elderly.<sup>29</sup>

Freedom of expression constitutes one of the essential foundations of such democratic society, one of the basic conditions for its progress and for the development of every man<sup>30</sup>

The essence of the media's existence is to impart knowledge to the public. Secondly, the country as a democratic society derives the benefit of promoting and maintaining democratic governance.<sup>31</sup>

The role of media cannot be overemphasized; it is always on the look out to ensure that citizens are informed even for matters happening behind closed doors or issues that citizens would have otherwise not known. Important to note however that is how well the media plays its role in ensuring an informed citizenry and participatory democracy has a correlation with its independence. The choice is left to us. I will later on in this paper further deliberate on the role of media.

This paper credits the commendable role media and media freedoms have played in the budding democracy of Uganda.

### **1.11. Challenges faced by the media and possible solutions**

Uganda Human Rights Commission in its press freedom day statement<sup>32</sup> notes that journalists in Uganda have faced some challenges as they exercise their right to seek, receive and impart information including reports of some journalists being subjected to inhuman and degrading treatment; arbitrary deprivation of property and unlawful arrests sometimes including instances of charges under laws that courts have declared to be inconsistent with the Constitution. This is evidenced by prosecutions like of Charles Onyango Obbo and Andrew Mwenda.

---

<sup>29</sup> UHRC Statement on World Press Freedom Day: Ensuring the Safety of Journalists and Media Workers on 3<sup>rd</sup> May 2016

<sup>30</sup> Handyside vs. United Kingdom, Judgment of 7 Dec. 1976, Series A no. 24

<sup>31</sup> Ibid

<sup>32</sup> Ibid

There have also been reports of journalists being denied access to news scenes and their equipment being confiscated, damaged or destroyed, as well as operating under poor working conditions with no safety and protection gear; lack of bullet proof kits health and life insurance and in some instances lack identity cards. Robert Ssempala, the Coordinator of HRNJ-Uganda notes<sup>33</sup> that “silencing journalists who cover riots has become a major objective of the police.”

UHRC has also noted with concern the growing incidence of low professionalism among media practitioners which has in some cases led to irresponsible, inaccurate and unbalanced media reports that have had the potential to excite and inflame rather than inform. The media should also always remember that media freedoms too come with duties and responsibilities which require them to practice responsible journalism at all times.

The media is hobbled by stringent laws, monopolistic ownership, and sometimes, the threat of brute force. I will further elucidate on this aspect in this paper.

Possible solutions can include the following;

Self-regulation: This is where the media is left to control its operations through its own established mechanisms. This model is the internationally recognized and most preferred means of print media regulation. The Declaration of principles on freedom of expression in Africa endorses media self-regulation declaring that effective self-regulation is the best system for promoting high standards in the media<sup>34</sup>

If the aforementioned is not welcomed then co-regulation is another possible way.

This is where both the state and the media co-control affairs of the media so that incase a situation arises the two bodies sit on around table to devise possible solutions.

Prosecution of state officials/ personnel that are involved in arbitrarily infringing of the rights of media houses where there is no justifiable cause to do so.

Use of the incentivized model of media regulation; In this model, while the regulation is also voluntary, statutory incentives are given to press media for adhering to the system. The press regulation in Ireland exemplifies this model. a track record of compliance becomes important in order for a publication to demonstrate its accountability and responsibility in court. The Defamation Act 2009 gives incentives for the making of apology. For example, in making an

---

<sup>33</sup> Henry Lutaaya; A moment of mourning for the state of media in Uganda, Published 2<sup>nd</sup> May 2016

<sup>34</sup> Paul Kimumwe; Media Regulation and Practice in Uganda, a Journalist Handbook Pg 17

award of damages it sets out that the court shall have regard to “offering or making any apology, correction.”<sup>35</sup>

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.

## **1.12 Methodology**

The researcher used both primary and secondary sources of data that is through desk-top, library and internet research. Use of published textbooks and journals was also a source of information and articles from newspaper of wide circulation shall be used. This method is chosen because it is convenient for a student, it is time saving and it is does not require many resources.

It involved legislative analysis and an analysis of actual enforcement/ adherence to protection of media freedoms which in turn has an effect on the extent to which democracy thrives in Uganda.

The data was analyzed through a comparative study of the research materials so as to seek to show the effect media laws have had on media freedoms in Uganda and the constitutional duty placed upon organs of government, people in protection of these freedoms.

### **1.12.1 Research Design**

This study primarily employed a qualitative analysis. Qualitative analysis was preferred over quantitative methods for the following reasons. In the first place, qualitative tools give provide data from an insider perspective, gives much attention to detail and in depth investigation of the subject under study.

Within the framework of this qualitative analysis, this study adopted a case study approach to research.

### **1.12.2 Data Collection**

The methods for data collection selected were based on the required data for each research question. Nonetheless, indulging in the impact of any aspect is a multi-faceted task. requiring

---

<sup>35</sup> Ibid, Pg 19

a combination of several forms of methodology. Thus, in each case, the most appropriate of these tools were adopted, as shown below;

Document review was employed in this study. This involved a legal analysis of primary and secondary material for example relevant laws, text books, newspapers, journals, and reports. The legislation, case law and other legal material of other countries were called in to aid this study. This further involved utilization of the library stock of books on media law. Thus, an analysis and appraisal of existing literature on media, and media law in general, was carried out. This research can aptly be described as 'desk research'.

Internet sources came in handy. Given the availability of the internet sources they were of great assistance. These included law websites, virtual libraries, and relevant blog posts came in handy. Furthermore, the wealth of information available online enabled a deeper discussion for this study.

Another data collection tool employed was that of semi-structured interviews. This added a human touch to the study and enabled the respondents to express themselves with ease. These discussions were very informative and gave the study a practical feel.

Finally, the study will also employ an emailed questionnaire as a tool for data collection.

### **1.12.3 Instruments for data collection**

The study employed open-format questionnaires to gather data. These give a respondent the opportunity to express his or her opinion in a free-flowing manner since they do not have any predetermined set of possible responses.

### **1.12.4. Data Analysis**

This was done according to identified key study parameters and content categorization in view of the research objectives. Information gathered was sorted in view of its relevance to the research objectives and questions.

### **1.12.5 Sampling Design**

This study employed a non-probability sampling design. Ideally, this involves the selection of elements based on assumptions regarding the population of interest, which forms the criteria for selection.

### **1.13. Limitations of the Study**

The statement that the success of a man is not where he stands in moments of comfort but also in difficulty bears a lot of merit. Whereas I diligently fought tooth and nail to see to it that this paper is fruitful, the process was not a bed of roses, the study was faced with limitations such as;

Difficulty in accessing people to interview. This is because the people i tried to get information are high profile people in the media industry and considering there busy schedules it proved quite challenging to get their time. However that notwithstanding the researcher fought tooth and nail to ensure that this research paper is a success.

### **1.14. Synopsis:**

The paper was be divided into four chapters.

Chapter one is an introduction, which sets out the background of the study. this is done by a narration of events in respect of media establishments ranging from the 1960s till date. The focus and objectives of the study, the significance of the study especially to Uganda, the hypothesis, the methodology of the research and the relevant literature on the topic is reviewed.

Chapter Two shall examine role of media in strengthening and deepening democracy. This chapter delves into an appreciation of the effect media on a budding democracy like Uganda in as far as offering a platform for discussion is concerned, playing a watch dog role, a voice to the voiceless among others as discussed in detail.

Chapter Three deals national and international legal framework for the protection of the protection of media rights. It dealt with steps taken through legislation at the domestic, regional and international levels to ensure greater protection. It will also reflect on the UN, AU, and Commonwealth responses to media laws, how the independence of the media / non-interference in its work will ably foster its effectiveness in ensuring development politically, socially, economically of Uganda as growing democracy . This will be involve an overview and an evaluation of the contents of the different Acts of parliament, international instruments Uganda has ratified or is a party to in relation to the basic principles developed under domestic and international law.

Chapter Four will summarize the study and state the challenges of the media industry, the findings and recommendations. The Chapter will discuss a way forward to the challenges that befall the media industry.



## CHAPTER TWO

### MEDIA AND MEDIA FREEDOMS AS A BED ROCK OF A GROWING DEMOCRACY; UNDERSTANDING THE ROLE OF MEDIA FREEDOMS ON MEDIA AND THE THRIVING OF DEMOCRACY IN UGANDA.

The media is the most powerful entity on earth. They have the power to make the innocent guilty and to make the guilty innocent, and that's power because they control the minds of the masses.....Malcolm X

Were it left to me to decide whether we should have a government without newspapers, or newspapers without government, I should not hesitate for a moment to prefer the latter..... Thomas Jefferson, 1787 [*After becoming president.*]

#### 2.1. Introduction

This Chapter examines the multi-dimensional linkages among the media, democracy, and good governance and the role of media as well as the relationship that exists between these concepts.

#### 2.2. Democracy is impossible without a free media.

Democracy is a system of government in which all people of a country can vote their representatives. Media came into existence around 1780 with the introduction of institutional publications. It has gone leaps and bounds, for instance, in Uganda; the 1995 constitution puts in place an electoral process where citizens vote for their representatives willingly.

During the 17th century, Enlightenment theorists had argued that publicity and openness provide the best protection against tyranny and the excesses of arbitrary rule.

In the early 1700s, the French political philosopher Montesquieu, raging against the secret accusations delivered by Palace courtiers to the French King, prescribed publicity as the cure for the abuse of power. English and American thinkers later in that century would agree with Montesquieu, recognizing the importance of the press in making officials aware of the public's discontents and allowing governments to rectify their errors.<sup>36</sup> To illustrate the media freedoms in a growing democracy, United Nations Economic Scientific and Cultural

---

<sup>36</sup> Stephen Holmes. "liberal constraints on private power?" in Judith Lichtenberg(ed), Democracy and the mass media :Cambridge university 1991 pg. 21-25.

Organisation(UNESCO) has decided to pay tribute to this critical role played by the media in promoting democracy and good governance by choosing 'Media and Good Governance' as the key theme for 2005's celebration. Through the Millennium Declaration, United Nations member states expressed their strong, unanimous and explicit support of democratic and participatory governance and recognised free and open media as one of the tools necessary to achieve this goal. The Millennium Declaration affirms that member states "will spare no effort to promote democracy and strengthen the rule of law," and goes on to resolve "to strengthen the capacity of all countries to implement the principles and practices of democracy and respect for human rights"<sup>37</sup>

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<sup>38</sup>. Participatory mechanisms, which are the 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.<sup>39</sup> The media have been able to assert their role in buttressing and deepening democracy.

Investigative reporting, which has made the media an effective and credible watchdog has boosted its credibility among the public.

Similarly, it has also helped accustom officials to an inquisitive press and helped build a culture of openness and disclosure that has made democratically elected governments more accountable. Training for journalists, manuals that arm reporters with research tools, and awards for investigative reporting have helped create a corps of independent investigative journalists in several new and restored democracies.<sup>40</sup>

### **2.3 Media's contribution to the growth of democracy.**

Media has a big role in contributing to the economic and political development of citizens in the country, it plays a crucial role in shaping a healthy democracy by making awareness of

---

<sup>37</sup> Media and good governance; published in 2005 by UNESCO

<sup>38</sup> Paul Kimumwe :media regulation and practice in Uganda, a journalist Handbook.pg 10,11

<sup>39</sup> Mendel.T(2011) public service Broadcasting :Acomparative legal survey (2<sup>nd</sup> ed) UNESCO

<sup>40</sup> Sheila S.Coronel:The role of the media in deepening democracy pg1

various social, political and economic activities happening in the world. Media is an important factor in promoting democracy and rule of law only if it is given the opportunity of freedom of expression and to deliver messages to the people without any interference.

According to Gerhard Maletzke; in his book, *Kommunikationswissenschaft im Überblick*, Pg. 45; noted that; mass communication should be understood as “the process by which information is imparted publicly (i.e., without a restricted or pre-defined audience), indirectly (i.e., involving spatial, temporal or spatiotemporal distance between the communication partners).” That is to say free press media.

### **2.3.1 The role of mass media in a democratic society.**

Social, economic and political life is impossible without the existence of the media. It includes all media that contains journalistic content. They are often recognized as the “fourth estate”, alongside the legislative, executive and judicial branches of government.

In a democratic system, media outlets perform vital functions in the society as discussed below:

Media houses contribute to economic development by covering economic issues, for example Uganda’s land and economic transformation in 2015 was a key benchmark in bringing about commercial agricultural transformation and urbanization, which resulted in the country’s economic change and growth in the recent past. They also create awareness on goods and services by guiding the public (consumers) on various issues that may be a disastrous to their lives and beneficial for consumption. This helps to bridge a gap between the manufacturers and end users. Other highlights from the media houses include but not limited to; job vacancies, cause lists, death announcements, sports, feature and research write-ups by professionals and technical experts.

**2.4. The following sections describe some of the ways in which media groups have lived up to the democratic ideal of the press as watchdog, public forum, catalyst of social reform, and builder of peace and consensus.**

### **2.4.1 Investigating the ills in society and agencies: Media as a public watch dog.**

The US Center for Investigative Reporting defines Investigative reports as; “Hard stories, hard to assemble and hard to tell. It involves numerous interviews to sort through leads, establish connections and elaborate sources, followed by writing and re-writing to bring about

clarity.”<sup>41</sup> For example the detention of the Ugandan journalist Solomon Serwanjja (NBS) and his BBC colleagues stoked a debate about the roles and ethics of investigative journalism. The African Center for Media Excellence research on media coverage of public affairs since 2013, shows a persistent decline in investigative and in-depth coverage, which media players blame on the lack of investment by news rooms that seem keener on guarding the business bottom-line and keeping hostile government officials, advertisers and individuals off their backs.

In the case of *Edward Ronald Sekyewa v NFA and others*<sup>42</sup>, noted that the refusal of the NFA executive to give a decision on Sekyewa’s application within the statutory period of 21 days was “wrong, improper and indeed not in line with adherence to Access to Information Act of 2005. The disclosure of the information, the Chief Magistrate Boniface Wamala added, “would reveal evidence of substantial wrong doing such as the failure to comply with established procurement procedures” and it would reveal any risk connected with the mismanagement of Uganda’s forests. In an interview with African Centre For Media Excellence (ACME), Sekyewa stated that, “victory in this case is not a personal triumph, but a triumph for all Ugandans. He further asserted that, it is a precedent-setting ruling that may go a long way in ensuring transparency and accountability in all government agencies.”<sup>43</sup>

Media can play an important public accountability role by monitoring and investigating the actions of those who are granted public trust and who may be tempted to abuse their office for private gain.<sup>44</sup> In the words of Charles Odongtho, a media personality, “the media acts as a form of checks and balances, some officials have been made answerable because of media coverage.”<sup>45</sup>

In their ‘watchdog’ role, media houses can promote government transparency, accountability, and public scrutiny of decision-makers by highlighting policy failures, maladministration, corruption and scandals in the corporate world.<sup>46</sup> Aggressive and independent journalism acts

---

<sup>41</sup> The media and curbing corruption, March 18 to May 27 2003 workshop Module for journalists in developing countries organized by the World Bank Institute

<sup>42</sup> Miscellaneous Cause No. 73 of 2014.

<sup>43</sup> Rachael Mugarura-Mutana: Journalist wins land mark access to information case February 2015

<sup>44</sup> Eigen, P. (1999). The Media and the Fight Against Corruption, Transparency International. Presented to the CELAP Conference, San Juan, Puerto Rico.

<sup>45</sup> Interview with Charles Odontho regarding media and it’s roles on 10<sup>th</sup> January 2017

<sup>46</sup> George A. Donohue, Philip Tichenor et al. 1995. ‘A Guard Dog Perspective on the Role of the Media.’ *Journal of Communication*. 45(2): 115-128.

as an indirect check on the sort of malpractice like corruption that would otherwise flourish in the absence of political interference.<sup>47</sup>

Anderson & Weymouth observed; the media world over have gained prominence as a major tool in fighting corruption. "An important function of the media and of journalists in particular, has been and remains the exposure of corruption in all its manifold forms and it is one that is crucial to the fair and effective working of democracy"<sup>48</sup>this can be done through different media channels such as topical radio and television talk shows, where the public is allowed to freely participate by calling in or physically appearing on the shows like; NBS' The Frontline Talk Show, NTV's Fourth Estate and Bukedde's Omuntu wa Bantu.

The role of the media is vital in generating a democratic culture that extends beyond the political system and becomes engrained in the public consciousness over time. Media is supplying the political information that voters base their decisions on. They identify problems in our society and serve as a medium for deliberation. They also serve as watchdogs that we rely on for uncovering errors and wrongdoings by the powers that be.<sup>49</sup>

It is through media that people become aware of so many aspects of life of which they are normally ignorant. Democracy is meaningless without a free, neutral and active media. Media is often referred to as the fourth branch of government because of the power they wield and the oversight function they exercise. The media's key role in democratic governance has been recognized since the late 17th century, and remains a fundamental principle of modern-day democratic theory and practice.

The media has been at the forefront of investigating election malpractice during elections, and abuse of public office by politicians among others. During the local government elections in 2016, it was reported that there was a delay in the delivery of polling materials in some areas in the countryside and as a result the Electoral Commission (EC) extended its apologies to the voters.

McQuail, observes that, Press independence is also a precondition of the exercise of the 'watchdog' role in exercising public vigilance in relation to those with most power, especially government and prominent traders. Free media, he continues, will be prepared, when

---

<sup>47</sup> Monica Nogara: Role of media in curbing corruption: the case of Uganda under President Yoweri.K.Museveni during "no party" system, Pg 2

<sup>48</sup> Anderson, Peter J., Ward, Geoff & Weymouth, Anthony (2007), The Changing World of Journalism in Anderson, Peter J. & Geoff, Ward (eds): The Future of Journalism in the Advanced Democracies. Ashgate

<sup>49</sup> Anuj Kumar; Role of Media in Democracy, Published on July 25<sup>th</sup> 2016.Pg 1

necessary, to offend the powerful, express controversial views and deviate from convention and from commonplace.

In order to prevent the abuses, which characterized the feudal era, journalists in democracy are charged with monitoring the exercise of power<sup>50</sup>. This is the watchdog role of the journalist, who in this context becomes part of what Edmund Burke called the Fourth Estate. In summary the essential elements of the Fourth Estate theory include;

- (i) The Press: is the main voice speaking up for the interests of the people as a whole, Newspapers and the media in general.
- (ii) Independence: from government and courage to speak out (freedom of speech), holding of public/political rallies.
- (iii) Accountability: the state and other holders of power to the people, by way of publicity and advocacy.
- (iv) Press Freedom: provides a reciprocal channel of communication between government and its citizens through expression of public opinion i.e. radio and television talk shows, social media platforms, television opinion polls.

All the above can be summarily compounded in Article 29 (1) of the 1995 Constitution of Uganda.

News items assessing the work and loopholes, weaknesses and even corruption in accountability institutions, especially government agencies, might lead to public pressure to reform these institutions. In the Daily Monitor, an article titled '*We will remain fair and accurate*'<sup>51</sup> opined that, among key principles of the newspaper's Editorial Policy include:

- (i) Publishing of information that should be in the public domain, on what goes on in society and to uncover and disclose matters that ought to be subjected to public debate.
- (ii) It is the duty of the press to protect individuals (whistle blowers) against injustices by the authorities that be.

It is important to note that, the media sometimes will blunder in the process of executing its responsibilities; this however, does not necessarily imply that it cannot have any good contribution to the development process of the country. Aptly put in the words of John Tusa, he notes that<sup>52</sup>, "to make a single mistake or even several, does not undermine the argument for independent journalism. It merely shows that the participant is human, not that what they

<sup>50</sup> McNair, B. (2009). Journalism and Democracy. In The handbook of journalism studies. Wahl-Jorgensen, Karin, & Hanitzsch, Thomas (Eds.) New York: Routledge.

<sup>51</sup> Published May 31<sup>st</sup> 2013

<sup>52</sup> Tusa, John. "Fourth Estate or Fifth Column." Index on Censorship 21, no. 7 (July/August 1992). Vazquez, Michael Colin. "An African Dilemma." Transition [Cambridge, MA] no. 75/76 (1997): 615.

are trying to do is invalid. It is the process of honest inquiry that matters, if honestly undertaken and maintained, it will produce a decent result, despite the errors and /or the moments of balance. The process is by far greater than the challenge which calls it into question.” Journalism does not need justification for its existence. Its service to society is justification in itself. Journalism cannot only help to distribute information but also counter hate-speech and create an environment of balanced opinions, and information equilibrium.<sup>53</sup>

#### **2.4.2 Media as a tool and forum for debate, dialogue and discussion.**

Freedom of the press is considered as the right to investigate and publish freely. But as Lord Denning said in *Schering Chemicals vs Falkman Ltd*<sup>54</sup> freedom of the press “covers not only the right of the press to impart information but also to receive it. The media serves as a conduit between governors and the governed and as an arena for public debate that leads to more intelligent policy and decision making.

Charles Odongtho a media personality asserts that, “in a system where the winner takes it all, the media provides a ground for fair play.”<sup>55</sup> that is to say it promotes the principles of fairness.

In the late 1990s, noticing their listeners’ penchant for having their voices on air, radio owners took public dialogue to a new level; they took their microphones to where the people congregate, broadcasting what came to be known as *Bimeeza* (discussion groups) broadcast live from public places such as pubs and restaurants, the *Bimeeza* often featured panellists and a moderator. These were banned in September 2009 as the Government faced street riots in a protracted dispute with the Buganda Kingdom, representing the largest tribe in this diverse country.<sup>56</sup> The *Bimeeza* had overtaken studio talk-shows and other formal ways of public dialogue like debates, programs where Ugandans get to question their leaders.

NTV for example hosts the people’s parliament. On this program Ugandans have an opportunity to debate and engage in constructive dialogue on matters affecting the country including but not limited to governance and politics.

NBS hosts the Frontline where people get to discuss affairs pertaining to the state.

---

<sup>53</sup> Koven, Ronald(2004) *An Antidote to Hate Speech*: journalism, pure and simple.

<sup>54</sup> 1981 2 W.L.R.848

<sup>55</sup> An interview on 10 january 2017 concerning the roles of media

<sup>56</sup> Country case study Uganda: support to media where media freedoms and rights constrained by BBC Media Action

Urban T.V organized the Uganda inter university debate in 2015 in which some of the topics were; whether government had done enough in the fight against corruption. This not only helped to inform the national student body but also the viewers about the efforts of their leaders. It can be rightly asserted that the media in so doing provided a platform for discussion on matters of democracy and good governance.

Michael Woira in a New Vision article titled *Uganda promotes democracy for all*<sup>57</sup> also opines that “Freedom of speech is, no doubt, the very foundation of every democratic society, for without free discussion, particularly on political issues, no public education or enlightenment, so essential for the proper functioning and execution of the processes of responsible government, is possible.” The media provides a platform that enables individuals to air out their opinions in the decision-making process vital in a democratic state and acting as platforms for Ugandans to showcase their knowledge on how to transform the country.

Ms. Margaret Sekaggya notes<sup>58</sup> that a knowledgeable society is an empowered community. To be informed, information must be available and easily accessible. Governments should facilitate processes that promote collection and easy access to information for all its citizens. A government which is open and responsive to its people will easily promote democratic growth whilst an ill-informed society is easily manipulated, has no respect for democratic values and is less conscious of human rights.

Access to information is essential to the health of democracy for at least two reasons. First, it ensures that citizens make responsible, informed choices rather than acting out of ignorance or misinformation. Second, information serves a “checking function” by ensuring that elected representatives uphold their oaths of office and carry out the wishes of those who elected them.<sup>59</sup> Through the media are able to know if the leaders are serving their mandate as they promised to. It can be said that when the media houses every year broadcast the presidential state of the nation address, it helps Ugandans know how far the president has gone in executing his mandate. Leaders are also invited for radio and t.v talk shows to give a detailed talk on the extent to which they have fulfilled their promises for example honourable Kyagulanyi alias Bobiwine was hosted on NBS to discuss his political journey.

---

<sup>57</sup> Friday January 05 2018; Writer deals with Media relations at Uganda Media Centre.

<sup>58</sup> Catherine Anite & James Nkuubi: Media Freedom In Uganda, an analysis of inequitable legal limitations. Published by Human Rights Network for Journalists – Uganda. Pg 6

<sup>59</sup> Role of media in a democracy :A strategic approach published by centre for governance and democracy.



It can therefore be asserted that 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 a democratic society. The very nature of democracy suggests that free and open communication, through a variety of channels, is necessary to foster critical practices found in democratic societies.

The importance of community media creates an environment for greater accountability. Charlie Beckett notes that when we talk about governance, the discussion quickly moves into investigative journalism. But often, all it takes is not journalism but simply opening up local spaces and allowing people to air their views and grievances.

#### **2.4.3 The Media as Peace and Consensus Builder**

The media can also help build peace and social consensus, without which democracy is threatened. It can provide warring groups mechanisms for mediation, representation and voice for people to settle their differences peacefully.

Unfortunately, the media has sometimes fanned the flames of discord by taking sides, reinforcing prejudices, muddling the facts and peddling half-truths. Additionally media can be used for propaganda purposes to incite hatred and to spread rumors and therefore artificially create tensions amongst people.<sup>60</sup>

Lack of information can at any stage of a conflict, make people desperate and easy to manipulate their ability to make decisions which foster economic growth, democratic structures and the positive outlook on the future, for this reason, the United Nations millennium declaration emphasized the need to ensure the freedom of media to perform their essential role and the right of the public to access information.<sup>61</sup>

Harrys Truman said that "you can never get all facts from one newspaper, unless you have all the facts, you cannot make proper judgments about what is going on."59hat is etc. this call upon for a citizen who is interested in getting information about anything to make enough

---

<sup>60</sup> Wolsfeld, Gadi(2001) Media and the Path to peace p8-10.

<sup>61</sup> United Nations millennium Declaration 2000

research before jumping to conclusions. The statement gives a platform for unbiased information.<sup>62</sup>

Defining and harnessing the media as a tool for reconciliation or mediation is particularly challenging in contexts where the media, and those who drive them, have had a role in exacerbating tension or promoting violence.<sup>63</sup> A measure of peace building can be enhanced journalism, peace journalists try to uncover causes behind a conflict and true goals of all participants while making sure to humanise all victims of the conflict. They make sure the reporting is balanced and also demonstrate how news can be easily manipulated. Part of the ethical guidelines for this kind of reporting is to bring out the people that use peaceful measures, speak out against war, violence and document the suffering together with the loss on all sides, possible solutions and trying to prevent further escalation of the conflict. Peace building media can employ the following strategies such as, conflict sensitive and peace journalism, peace promoting entertainment media, media regulations to prevent incitement of violence and peace promoting citizen media.

“Peace journalism,” is being promoted by various NGOs and this promotes reconciliation through careful reportage that gives voice to all sides of a conflict and resists explanation for violence in terms of innate enmities. Training and the establishment of mechanisms whereby journalists from opposite sides of conflict can interact with the other side, including other journalists representing divergent views, have helped propagate peace journalism.

A case in point is the UNESCO Nairobi Office which elaborated a toolkit for media reporting on peace, reconciliation and tolerance in Uganda that has been used to develop the local media's (print, radio and community media) respective capacity. The project illustrates the positive role that the traditional and new media can have in making the culture of peace a tangible reality in Northern Uganda. Reporters, editors and citizen journalists have attended a variety of journalism training modules on the development of a Culture of Peace, varying from peace journalism to the role of media in conflict resolutions/peace building and the use of ICTs in peace education.<sup>64</sup> Other more active media NGOs operating in Uganda today are: Panos Eastern Africa (PEA), the African Centre for Media Excellence (ACME), the Uganda Radio Network (URN), the Independent Media Council of Uganda (IMCU), Makerere

<sup>62</sup> Truman, Harry S. URL <http://www.sayings-quotes.co/hatty-truman-quotes>

<sup>63</sup> Monroe, E. Price; Media and Transitional Justice; Toward a systematic Approach

<sup>64</sup> Uganda: A Toolkit for Media Reporting on Peace, Reconciliation and Tolerance; <https://en.unesco.org/cultureofpeace/news/uganda->

University, Department of Journalism and Communication (DJC), the human Rights Network for Journalists-Uganda (HRNJ), the Uganda Journalists Association (UJA), and the Institute for War and Peace Reporting (IWPR), among others.

The HRNJ-U, for example, has distinguished itself by cataloguing attacks on press freedom with a frequency and promptness rarely seen before. In addition, civil society has tried to come together as a whole in times of major threats to freedoms to criticise perpetrators, especially state organs.

#### **2.4.4 Voice of the people**

In addition to being a channel for the political viewpoints, the media has to ensure that the voice of the public is heard. One of the democratic key functions of media is representing people to those in authority. In this respect, the journalists play a mediator role between the citizens and politician, and represents. Ideally, the media should provide a voice to those marginalized people and represent their views and interests in the public domain. For example in 2014 social media gave a new voice to women's issues in East Africa that is "my dress. My choice"

After having informed the people and participants in the debate, the media dispatch to the government the eventual public consensus that results from this debate. In this way, the government is supervised by the people. It can be rightly asserted that the media is the ear, the eye and the voice of the people. It speaks for the disadvantaged and a voice to the voiceless.

In so doing the media in a democratic institution may serve as a channel for the advocacy of political viewpoints. Political parties require an outlet for the articulation of their policies and programs to a mass audience, and thus the media must be open to them. Historically, until the rise of ideals of objectivity and professionalism, journalism mainly functioned as "advocacy journalism," a platform for the articulation of parties' policies and programs.

For example in an article "Our MPs are simply hungry for money, a concerned Ugandan Godfrey Olukya noted,<sup>65</sup>

"When I recently heard that our MPs on the parliamentary legal Affairs Committee handling the Age limit Bill wanted to go abroad to benchmark, I was amazed by our politicians lust for money. Surely why should we waste tax payers' money on an issue one can get from the

---

<sup>65</sup> Published in the Daily Monitor Tuesday, November 28, 2017

internet? In this modern era one does not need to travel to another country so as to know what's happening in that country." In so doing the media offered a platform for someone to air out their views in respect of the proposed plans of the MPs."

The growth of the civic model of advocacy journalism has been significant in promoting societal changes. Through contributing to raising awareness and providing information, and affecting public opinion, the press aims a mobilization strategy to affect the definition of "public problems" Thus, civic advocacy is the product of a growing consciousness among civic groups about the importance of the media in the construction of public problems, and the need to approach the press as a tactical ally. Hence, through public consciousness and influencing opinions, it takes step toward shaping the reality of society, not just influencing it.

However for the media to play such role effectively, it's independence is fundamental. The media cannot be a voice of the people if media personnel and media houses are constantly suppressed. In the technical publication,<sup>66</sup> USAID considers a media system free and independent if it moves "from one that is directed or even overtly controlled by government or private interests to one that is more open and has a degree of editorial independence that serves the public interests." In the service of democracy, a media system should "develop a range of diverse mediums and voices that are credible, and to create and strengthen a sector that promotes such outlets." Thus, according to USAID, a free and independent media sector should have editorial independence, financial viability, a plurality of voices, and serve the public interest.

#### **2.4.5 The role of the news media as civic forum**

Equally vital, in their civic forum role, the free press can strengthen the public sphere, by mediating between citizens and the state, facilitating debate about the major issues of the day, and informing the public about party leadership, political issues, and government actions.<sup>67</sup> If the channels of communication reflect the social and cultural pluralism within each society, in a fair and impartial balance, then multiple interests and voices are heard in public deliberation. On the other hand, if the airwaves and press overwhelmingly favor the government, this can drown out credible opponents. For example in an article "*Joy, Sadness as age limit Bill sails*

---

<sup>66</sup> USAID, *The Role of Media in Democracy: A Strategic Approach*. Washington: Center for Democracy and Governance, Bureau for Global Programs, Field Support and Research, Technical Publication Series. June 1999.

<sup>67</sup> Peter Dahlgren and Colin Sparks. 1995. *Communication and Citizenship*. London: Routledge; Peter Dahlgren. 1995. *Television and the Public Sphere*. London: Sage.



through,”<sup>68</sup> Solomon Arinaitwe discusses the environment after the Age limit Bill was passed by parliament. Such an article helps facilitate discussion on important current affairs going on the country and considering that the topic concerns governance, this helps the people make informed decisions.

By simply informing the public and presenting a variety of points of view media can promote public debate and enhance political and economic competition. Such competition might enhance accountability, open up alternatives to dealing with corrupt networks, and create incentives for political leaders to move against corruption. It might also encourage public participation and inform the debate by taking the lead in pressing for enhanced civil liberties such as freedom of expression. By disseminating knowledge about public decisions and procedures beyond a small elite group of decision-makers, media can also play a major role in undermining a precondition to corruption, which is the “shared knowledge” among a restricted circle of beneficiaries of corruption.<sup>69</sup>

Elections are a key democratic exercise, one where the media can have an impact. As societies become more modernized, media has become a key player in the electoral process which was not the case then. Politicians have used the media to propagate their ideas. A case in point is the first ever presidential debate organized in 2016. Ugandans had an opportunity to gauge the abilities of the aspirants. This was aired on stations like NBS and NTV. It could therefore be said that Ugandans were given a platform for dialogue. Politicians use the media to pass out their campaign propaganda so as to be able to garner mass support.

During campaigns, the media provides citizens with information to compare and evaluate the retrospective record, prospective policies, and leadership characteristics of parties and candidates, providing the essential conditions for informed voting choices.<sup>70</sup>

Still, the media in new democracies have contributed to public education on elections. Public-affairs programs on radio and television provide the depth, context and critical analysis on election processes. A good example being the adverts “*Honour your vote*” in the pre-2016 period run on different radio stations as well as T.V stations. This advert identified the

---

<sup>68</sup> Published in Daily Monitor, Thursday, December 21, 2017

<sup>69</sup> Ibid

<sup>70</sup> Arthur Lupia and Mathew D. McCubbins, 1998. *The Democratic Dilemma*. Cambridge: Cambridge University Press.

benefits of having the right leaders voted into power as the only hope to ensure effective provision of services.

In a Daily Monitor Article titled *Police should defend our democracy*<sup>71</sup> it was noted that, “Uganda has over the recent decades made commendable progress in as far as improving its human rights record and democracy is concerned. These achievements must be jealously protected even if those in power may feel some discomfort as a result of the lawful actions of some citizens. That is the true measure of a democracy.”

## **2.5 Negative contribution**

Conversely, media outlets can increase social divisions by abandoning their main functions and, instead, using their influence to reinforce state or economic powers and excluding critical voices from public discourse. In some extreme cases, the media can even be instrumentalised to incite violent conflicts. However the media can have a negative contribution or deter the growth of democracy, good governance if it's misused, dominated by state apparatus or certain agencies with peculiar goals.

### **2.5.1 Publication of false/ biased information.**

The Uganda Journalists Association Code of Professional Conduct (1996) states that journalists should at all times strive to separate their own opinions from factual news. Where personal opinions are expressed, the readers should be made to know this in no uncertain terms. Editorialisation which departs from the truth undermines the cardinal principles of journalism and subverts the confidence the public puts in journalists.

It has been said that the media, which could have played a crucial role in de-escalating the conflict, have been fuelling the conflict through their use of rumors and their dissemination of non-reliable information. On the other hand, it has been pointed out that the media coverage of the conflict in Northern Uganda has been limited. This could have been because the media were under instruction from the government not to cover events taking place there, or simply because they were not interested in covering matter relating to conflicts in the country.<sup>72</sup> As

---

<sup>71</sup> Published on Sunday October 22 2017

<sup>72</sup> Nathan Mnjama & Consolata Acayo: The Print Media and Conflict Resolution in Northern Uganda 2<sup>nd</sup> June 2004.

much as social media is being used in service delivery, there is negativity associated to it. Now and again users have misused the platforms inciting violence and promoting hate.<sup>73</sup>

In **Prosecutor v Ferdinand Nahimana, Jean –Bosco Barayangwiza, Hassan Ngeze**<sup>74</sup>, court noted that the unregulated enjoyment freedom of expression, press and speech had contributed to the Rwandan genocide in 1994.

The cost of television and newspaper advertising is huge and now accounts for a substantial chunk of campaign costs. Well-funded candidates often have a better chance of being voted into office simply because they can buy air time and newspaper space. In some countries, candidates also bribe journalists and editors who endorse their candidacies in various ways.<sup>75</sup> This ultimately does not offer a balanced platform to all aspirants.

Conclusively, freedom of the media is, no doubt, the very foundation of every democratic society, for without free discussion, particularly on political issues, no public education or enlightenment, so essential for the proper functioning and execution of the processes of responsible government and growth of democracy is possible.

## 2.6 Conclusion

The role of media in deepening democracy cannot be underestimated; it makes a fundamental contribution of providing a platform for people to air out their views in respect to democracy. However if misused can equally negatively affect the country by providing a fertile ground to increase antagonism amongst the people.

## CHAPTER THREE

### LEGAL FRAMEWORK FOR THE PROTECTION OF MEDIA FREEDOMS: INTERNATIONAL, REGIONAL AND DOMESTIC GUARANTEES

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law. (Preamble of the Universal Declaration of Human Rights)

<sup>73</sup> <https://utamu.ac.ug/newss/138-campus-news/1624-role-of-social-media-in-improving-service-delivery>. (Accessed on the 20<sup>th</sup> February 2018)

<sup>74</sup> ICTR-99-52-T

<sup>75</sup> Sheila S. Coronel; The role of the media in deepening democracy



### **3.0. Introduction**

Media law is a branch of law that consists of a system of legal norms that regulate activities of the media, examines the limits in which media houses and journalists are supposed to operate. For example broadcasting laws only apply to activities of broadcast media. General legal provisions are to be respected by the state .

This part includes conventions, resolutions, general comments, court decisions which are protective of freedom of the media/expression. Some of the conventions referred to have been ratified and domesticated by Uganda pursuant to Article 123 of the 1995 Constitution and the Ratification of the treaties Act Cap 204.

The media and media freedoms have many a time been and continue to be subject to abuse. With this background in mind, this chapter evaluates the protection of media and media freedoms nationally and international level through various instruments with the aim of identifying the relevant standards that states are required to abide by in respect to media. The gaps in operationalizing these instruments are also identified.

### **3.1. National Laws Governing Media in Uganda**

#### **3.1.1. The 1995 Constitution**

The Grand norm is the supreme law of the land and shall be a binding force on all authorities and all persons throughout Uganda and if any other law or custom is inconsistent with any of the provisions of the constitution, it shall prevail and any other law shall be void.<sup>76</sup>

The freedom of the media and expression is expressly provided for in the 1995 Uganda Constitution; Article 29(1) (a) states that:

“Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media” that is to say it is a constitutional right and it is supposed be respected by all government agencies and citizens at large.

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

“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

---

<sup>76</sup> Article 2 of the constitution.



person. The very Constitution puts in place various institutions to protect media rights. For example the courts of law, UHRC.

In the celebrated case of **Charles Onyango-Obbo and Anor v. Attorney General** <sup>77</sup>, the court emphasized that the primary duty of the constitution is to protect the right to freedom of expression and access to information rather than limiting its enjoyment.

The media is one of the ways through which Ugandans are able to participate in the active governance of their State since it provides a platform for public discussion.

Article 8A of the 1995 Constitution provides for national objectives that shall be relied on in interpreting the Constitution because they enshrine principles of national interest.

Uganda's history had been marred with media rights violations especially in the 1970s, the promulgation of the Constitution guaranteeing these rights was in a bid to do away with such a bad history filled with censoring of the press and it has to a greater extent made achievements being the supreme law of the land.

### **3.1.2 The Uganda Communications Act 2013**

This Act, came into force on 18 January 2013 and sought to consolidate and harmonize the Uganda Communications Act 2000 and the Electronic Media Act<sup>78</sup>, to dissolve the Uganda Communications Commission, Broadcasting Council and reconstitute them as one body known as the Uganda Communications Commission.

Unfortunately, this particular act made no efforts to address the irregularities contained in the said Acts (Uganda Communications Act and the Electronic Media Act) that it sought to harmonize. The entire exercise was about bundling the two bodies, UCC and Broadcasting Council, created by the respective act together to form one Commission.

The Commission is charged with regulating the communication industry, through issuing of radio, TV and telephone frequencies, licensing telephone operators, monitoring the use of frequencies and generally regulating the communication sector. The Commission was also granted powers over all modes of communication including postal, electronic and others as a

---

<sup>77</sup> Constitutional petition no 15 of 1997(2000)UGCC 4( 21 JULY 2000)

<sup>78</sup> The act has been annulled by the Uganda communications act 2013

regulatory and licensing body.<sup>79</sup> Sections 7, 9 (3), 11 (2), (3) & (4), 13, 14 (5), 16 (4)(d), 46 (2), 60 (5), 61(b), 63(2) & (4), 67(1)(f) & (2), 72(1) & (2) (c), of the Act enormously empower the Minister of Information and Communication Technology (ICT) to interfere with the operations of the Commission, contrary to Section 8 of the same law which provides that the Commission shall exercise its functions independently of any person or body. This is a reflection of double standards and that the Commission can be interfered with on which media houses to control. This greatly affects the operation of free media hence hindering the growth of media freedom in the country.

---

<sup>79</sup> Section 5 of the Uganda communications act 2013.

### 3.1.3 The Interception of Communications Act, 2010

The Act regulates communication is that entering Uganda through telecommunication, postal or any other related service or system. It also provides for the establishment of a monitoring centre and any other related matters connected therein. This is portrayed as a means of detecting and combating the coordination of international terrorism through telecommunications.<sup>80</sup>

The powers given to government security agencies for example the Uganda Police Force are further exemplified under this Act, to tap private conversations as part of wider efforts to combat terrorism; related offences in the country. The Act also makes it compulsory for all mobile phone subscribers in the country to register and verify their SIM cards for security purposes.<sup>81</sup> Despite the security measures taken to curb crime rates, the Act lacks adequate safeguards to ensure respect for a number of human rights, needless to mention, the right to freedom of expression.

In lieu of the above, the Act gives the government ample powers in surveillance and interception of electronic, telecommunications and postal communications between individuals, groups and organisations. It can also be argued that the broad and undefined basis for interception of communication accentuates the infringement on the provisions of Articles 27 and 40 of the constitution.<sup>82</sup> It is submitted that the "unbefitting" habit of disclosing the sources of information gotten renders the inability to reveal it in utmost good faith. This is because the law requires that permission from court is sought without which it is impossible to effect. In view of this, it is vivid that further heartache is caused to Article 41 of the constitution.<sup>83</sup> Not only the does the press have the task of imparting information and ideas but the public also has the right to receive them. This is intended to enable citizens to participate in the democratic process of the country in an informed instance.

---

<sup>80</sup> African Centre for Media Excellence, 2010 at Page 5

<sup>81</sup> Section 10 of the Interception of Communications Act, 2010

<sup>82</sup> Key challenges affecting media practitioners in Uganda by Mr. John Njoroge a Journalist of The daily monitor Newspaper, in the Consultative meeting on Media Freedoms and the Rights of Journalists, held on 22nd June, 2012 at Hotel Africana.

<sup>83</sup> Media freedoms and rights of journalists by Uganda human rights commission .

### **3.1.4. The Right of Access to Information Act 2005 and the Access to Information Regulations 2011**

This law is an offshoot of Article 41 (1) of the Constitution which provides for the right of every citizen of access to information in the possession of the State or any other organ or agency of the State.<sup>84</sup> 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.”<sup>85</sup>

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.

### **3.1.5 The Official Secrets Act Cap 302**

The act was established on 30 December 1964 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.

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.

For the media, it is one of the drawbacks to the gains the media has made in fighting for freedom of the media. it has been invoked by state officials to frustrate efforts to access government documents, many of which have no bearing to national security.

Furthermore it is backed up by sanctions for offences committed. 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

---

<sup>84</sup> Long title of the Access to Information Act.

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.

### 3.1.6 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."<sup>86</sup>

The Press and Journalist Act 1995 also establishes the National Institute of Journalists of Uganda (NIJU) whose objective is to establish and maintain professional standards for Journalists.<sup>22</sup> Requirements for full membership include that a journalist be "a holder of 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 "qualifications in Journalism or mass communication; and has practiced journalism for a 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.<sup>87</sup> 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.<sup>88</sup> 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.

---

<sup>86</sup> Uganda media development foundation "the state of media freedom in Uganda." 2006.pg15

<sup>87</sup> Long title of Press and Journalist Act

<sup>88</sup> Section 3 of the Press and Journalist Act Cap 1995.

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 of 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.<sup>89</sup>

### **3.1.7 The Uganda Broadcasting Corporation Act (2005)**

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. However, the purpose of the act does not specify the transformation in those terms.

Section 3(3) states thus; “The Corporation shall be wholly owned by the Government.”

Among its objectives, the Corporation is to “develop the broadcasting bodies into a public national broadcasting center of excellence, for the purpose of providing electronic media and consultancy services that educate and guide the public.” The extent to which the Corporation has achieved this particular objective - almost 9 years since its creation requires further investigation.

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.” The challenge with this function is that it undermines the core objective of the Corporation.

### **3.1.8 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 required<sup>90</sup> to register editors while TV and radio station owners are expected to register producers, with the Council. The Council is responsible for issuing certificates to journalists as well as

---

<sup>89</sup> Article 10(2010) memo on the Press and Journalist Amendment bill 2010

<sup>90</sup> Section 5 of the press and Journalist Act Cap 105

accreditation 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.<sup>91</sup>

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; promotes, 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.<sup>92</sup> However, disputes are often taken to Court as Government has not brought journalists before the committee. Hence, stakeholders may easily lose trust in the institution.

Professor Fredrick Jjuko asserts that<sup>93</sup>, 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 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 of 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.

---

<sup>91</sup> 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 should not be subjected to strict regulation likely to hinder effective enjoyment though standardization is appropriate

<sup>92</sup> Sections 30-33 of the Press and Journalist Act.

<sup>93</sup> *supra*

### **3.1.9 The Computer Misuse Act, 2011.**

The Computer Misuse Act restrains the access to information including that available in computers. This law may be perceived as interfering with the enjoyment of the rights and freedoms for journalists and other media practitioners. It is in this respect that the Act makes it an offence to supply any article which is considered to be "hazardous".<sup>94</sup> It is argued that the possibility of establishing the relevant information used in commission of the crime still remains far too low to ascertain. That is to say the act is a hindrance to the development of media freedom and press media.

### **3.1.10 The Copyright and Neighbouring Rights Act 2006**

The act deals with the core of the work of both originators as well as publishers of knowledge and information. This act came into force on the 4<sup>th</sup> 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 handcraft 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

---

<sup>94</sup> Section 17 of the Computer Misuse Act, 2011.



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 use

#### **3.1.11 The Anti-Terrorism Act 2002**

The Anti-Terrorism Act creates an offence of terrorism which, among others, can be committed through instigation. This is seen as an infringement on the right to freedom of expression because of the undefined scope of the word. It can also be seen that people are not free to express their opinion because of the fear of being earmarked as instigators. In effect, this Act is restrictive in respect to publications likely to be made by the press and journalists thereby promoting self-censorship by journalists and posing a threat to the freedom of expression because journalists are afraid to be tagged as terrorists

Section 9 of the act 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." It tries to prevent abuse in the use of media; the challenge would arise if it's used to punish innocent media personnel. This leaves loopholes that may be exploited by political operatives .A case in point, the Press Freedom Index report 2011 - Uganda, released by HRNJ- Uganda, indicates that violence meted against journalists has doubled from 58 cases in 2010 to 107 cases in 2011. Also, the international media report released by the Paris-based Reporters without Borders (RSF) showed that Uganda had dropped 43 positions in its press freedom 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.<sup>95</sup>

### **3.1.12 The Anti-pornographic Act**

The Act defines pornography under section 2 as; “any representation through publication, 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.

Sections 13 and 14 creates 7 offences of which 4 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) million<sup>96</sup> or imprisonment not exceeding 10 years or both.<sup>97</sup> 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 particular offence attracts a fine not exceeding Uganda shillings fifteen(15) millions about (about USD 6000.

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 anti-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.

### **3.1.13 The Penal Code Act, Cap 120 of 1950**

This is the most lethal weapon against media freedom in Uganda. The code establishes and defines offences related to sedition, promotion of sectarianism, criminal libel/

---

<sup>95</sup> Paul Kimumwe; Media Regulation and Practice in Uganda, a Journalist Handbook

<sup>96</sup> Section 3(1) of the anti-pornographic act

<sup>97</sup> Section 3(2) of the anti- pornographic act

Defamation and terrorism.

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.

The Act contains provisions on sedition and libel and sanctions for non-observance.

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 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”

Section 40 of the code provides for a jail sentence of up to five (5) years on conviction for this offence. years on conviction for this offence.

S.53 of the penal code criminalizes “defamation of foreign princes” by stating thus:

Any person who, 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 26<sup>th</sup> 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

The Act also restricts the publication of information that is prejudicial to national security<sup>98</sup> and also provides for the offence of civil defamation where a public official, who claims that they have been defamed, has to prove that the publication was intentionally or deliberately made to defame him or her<sup>99</sup>.

This was evident in the constitutional petition of Charles OnyangoObbo and Andrew that Slander is only treated as a tort.

**Mujuni Mwenda v. Attorney General.**<sup>100</sup> Constitutional petition arose from a criminal case that had been brought against Andrew Mwenda in the Chief Magistrates Court on charges of sedition contrary to Sections 39 and 50 of the Penal Code Act Cap 120 respectively. This was after the Andrew Mwenda had allegedly made statements on the death of the then Vice President of Sudan on a live talk show on KFM radio station. The statements that Mwenda had made were perceived by the Government to have been intentionally made to create hatred and disaffection to the President of Uganda and the Government. The constitutional petition sought declarations to nullify the offences of sedition and promoting sectarianism that had been preferred against him.

S.180(1) of the Penal Code Act defines a defamatory matter as, matter likely to injure the reputation of any person by exposing that person to hatred, contempt or ridicule or likely to damage any person in his or her profession by an injury to his or her reputation.” On the other hand, slander is essentially a defamatory statement in a short-lived form, especially the spoken word. We need to note here that libel can actually be prosecuted both as a crime and as tort, while

In other words, a defamatory statement has the effect of lowering the reputation of the affected person in the eyes of the right-thinking members of society. In **Francis Lukooya Mukoome & another v The Editor in Chief Bukedde News paper & 2 others CIVIL SUIT NO.351 OF 2007**, JusticeYokoram Bamwine, writes that;

“Defamation is something more than an insult or derogatory comment. It is not capable of exact definition. How far a person is affected by unkind words will depend not just on the words used, but also on the people who must then judge him. That is why communication to the plaintiff alone will not suffice. (It) is an injury to one's reputation and reputation is what other people think about a man and not what a man thinks about himself.”<sup>2</sup>

---

<sup>98</sup> Section 37 Penal Code Act.

<sup>99</sup> Sections 39 and 40 supra

<sup>100</sup> Constitutional Petition No. 12 of 2005 & No. 3 of 2006

In law every person is entitled to his good name and to the esteem in which he is held by others. It does not matter whether the 'person' is a natural or artificial one e.g. a company.

Such a person has a right to claim that his reputation shall not be sullied by defamatory statements made about him to a third person without lawful justification.”

Justice Bamwine in his judgement in *A.K Oils & Fats (U) Ltd V Bidco Uganda Ltd* (HCT-00-CV-CS-0715-2005 )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.

That the statement was defamatory in nature; i.e. the statement has capacity to harm the person's reputation in the eyes of right thinking members of society. A statement can be defamatory on its “face” (e.g., labeling someone “corrupt”, or “adulterous” or it can imply a defamatory meaning. Thus, a statement that is, on its face, not defamatory is nonetheless actionable if the defamatory implication or innuendo becomes reasonably apparent with the addition of other facts.

Context is vital in determining whether a statement is defamatory; A statement standing alone may be rendered non-defamatory when considered in the larger context; conversely, an otherwise innocuous statement may be construed to be defamatory in light of the surrounding statements<sup>101</sup>

That the statement referred to the claimant and identified him or her, directly or indirectly, and That the statement was published, i.e. communicated, to a third party.

However, in *Ntabgoba Vs Editor New Vision* (2001-2005) 2 HCB 209, Justice Gideon Tinyinondi confirms that insituations where the words complained of are defamatory in their ordinary and natural meaning the Plaintiff need prove nothing more than their Publication.<sup>102</sup>

There are two forms of defamation - libel and slander Libel; refers to a defamatory statement of a permanent nature - such as written, pictures, art, etc.,

S.179 of the Uganda penal code states that, “any person who, by print, writing, painting, effigy or by any means otherwise that solely gestures, spoken words or other sounds,, unlawfully

---

<sup>101</sup> robert. c. (2004) a little libel, a lot of trouble; defamation and related issues in higher education

<sup>102</sup> quoted in j.w. kwesiga's judgement in *chaina Movat & Another v Kyarimpa* CIVIL APPEAL NO. 42 OF 2008

publishes any defamatory matter concerning another person, with intent to defame that person, commits the misdemeanor turned libel”

In defamation suits, the burden of proof shifts to the defendant to plead his innocence using any of the following defences that the statement was a matter of truth/fact (or justification), that the statement was actually a fair comment on a matter of public interest, or that it was made on a privileged occasion.

### **Defenses against defamation**

There are three defenses to defamation: Truth; fair comment or privilege.

#### **Truth (or Justification)**

As discussed earlier, one of the characteristics needed for a defamatory statement to be actionable, is that it must be false. Therefore, if the said statement is a fact then there can be no action for defamation.

According to section 182 of the penal code,

“Any publication of a defamatory matter concerning a person is unlawful within the meaning of this Chapter, **UNLESS** (a) the matter is true and it was for the benefit that it should be published.”

The burden of proof is therefore on the defendant to prove that the statement made was true, rather than on the claimant to prove that it was false. Once the defendant proves that the defamatory statement was true, the purpose or motive with which it was published becomes irrelevant.

Justice Byamugisha (as she then was) In **BLAZE BABIGUMIRA VS HANNS BESIGYE** HCCS NO 744 OF 1992 (un reported) held, inter alia, that the Defence of Justification means that the Defendant is contending that the words complained of were true. The burden of is on the Defendant to prove that in fact these words were true.<sup>103</sup>

Once this has been proved, it is then up to the plaintiff to challenge the truthfulness of the defendant's assertions.

In **Francis Lukooya Mukoome & another v The Editor in Chief Bukedde News paper & 2**

---

<sup>103</sup> Quoted in J.W. Kwesiga's Judgement in **Chaina Movat & Another v Kyarimpa** CIVIL APPEAL NO. 42 OF 2008

others CIVIL SUIT NO.351 OF 2007, Justice Yokoram Bamwine, writes that;

“... when a party adduces evidence sufficient to raise a presumption that what he is asserting is true, he is said to shift the burden of proof, that is, his allegation is presumed to be true, unless his opponent adduces evidence that rebuts the presumption.”

### **Fair comment**

Fair comment as a defence in defamation suits is designed to protect statements of opinion on matters of public concern and ensures that the public can express themselves freely on matters that affect their livelihoods.

The defence only applies to comments made on matters of public interest, such as comments on works of literature, music, art, plays, radio and television; and the activities of public figures. A publication made ‘maliciously’ (spitefully, or with ill-will or recklessness as to whether it was true or false) will destroy the defence of fair comment<sup>104</sup>.

In *Francis Lukooya Mukoome & another v The Editor in Chief Bukedde News paper & 2 others CIVIL SUIT NO.351 OF 2007*, Justice Yokoram Bamwine, writes that; (Fair comment) is a defence to an action for defamation that the statement made was fair comment on a matter of public interest. The facts on which the comment is based must be true and the comment must be fair. Any honest expression of opinion, however exaggerated, can be fair comment but remarks inspired by personal spite and mere abuse are not. (however), the judge decides whether or not the matter is one of public interest.

A four-point test for fair comment has been developed to provide some guidelines, thus the statement in questions must have been: a) an opinion;

b) relating to an action;

c) not made against an individual;

d) it relates to a matter of public interest<sup>105</sup>.

### **Privilege**

As a form of defence to defamation suits, privilege recognizes the importance of freedom of expression in certain situations regardless of how false or malicious the defamatory statement is, it cannot be actionable.

---

<sup>104</sup> Robert. C. (2004) A LITTLE LIBEL, A LOT OF TROUBLE: DEFAMATION AND RELATED ISSUES IN HIGHER EDUCATION

<sup>105</sup> Obonyo, L; Nyamboga, E (2011) Journalists and the Rule of Law: The Kenyan Section of the International Commission of Jurists: Nairobi- Kenya

There are two types of privileges: absolute privilege and qualified privilege.

Under the doctrine of absolute privilege, it is generally accepted that proper functioning of government and promotion of freedom of expression and democracy, certain officials and citizens must be completely protected from suits of defamation.

According to section 183(1) of the penal code, “The publication of defamatory matter is absolutely privileged, and no person in any circumstances be liable to punishment under this code in respect of such publication, in any of the following cases-

- If the matter is published by the President, the Government or Parliament;
- If the matter is published in Parliament by the Government or by any member of that Parliament or by the Speaker;
- If the matter is published by order of the President or the Government;
- If the matter is published concerning a person subject to military, naval or air force discipline for the time being and reduces to his or her conduct as a person subject to such discipline, and is published by some person having authority over him or her in respect of such conduct and to some person having authority over him or her in respect of such conduct;

Additionally, section 183(2) notes that,

“where a publication is absolutely privileged, it is immaterial for the purposes of this chapter where the matter is true or false and whether it is or is not known or believed to be false and whether it is or is not published in good faith but nothing in this section shall exempt a person from any liability to punishment under any other chapter of this code or under any other written law in force in Uganda.”

On the other hand, qualified privileges, that the immunity from defamation suits is conditional and must thus not be abused. Abuse typically occurs where the defendant had no reason to make the statement to the recipient, or if he or she made the statement, it was out of

S.185 of the penal code emphasizes that; “a publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of section 184 if it is made to appear either-

That the matter was untrue and that he or she did not believe it to be true;

That the matter was untrue and that he or she published it without having taken reasonable care to ascertain whether it was true or false; or

That in publishing the matter, he or she acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise than was reasonably necessary for the



interest of the public or for the protection of the private right or interest in respect of which he or she claims to be privilege.

### **3.2. International Obligations.**

Uganda is a party to some International treaties and Conventions and these create binding obligations on Uganda to respect. The Constitution permits parliament to make laws for the ratification of treaties.<sup>106</sup> Some of treaties, Conventions, Declarations are discussed hereunder:

#### **3.2.1. The Universal Declaration of Human Rights and the media freedoms.**

It was adopted unanimously by the General Assembly on 10 December 1948, the Universal Declaration is the most important elaboration of the human rights obligations set forth in the United Nations Charter. While at the time of adoption it was widely viewed as a statement of principles, it has acquired increasing legal significance over the decades.<sup>107</sup>

The Universal Declaration on human rights is the cornerstone of modern international human rights law<sup>108</sup> Therefore to have a proper understanding of the history of the development of media and media freedoms will commence with the UDHR.

As stated by Chief Justice Muhammad Haleem of Pakistan: The result is that the Universal Declaration is now widely acclaimed as a Magna Carta of humankind, to be complied with by all actors in the world arena. What began as mere common aspiration is now hailed both as an authoritative interpretation of the human rights provisions of the UN Charter and as established customary law constituting the heart of a global bill of rights<sup>109</sup>

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. Impliedly the UDHR protects the media and media freedoms as it advocates for freedom to express views through the media.

---

<sup>106</sup> Article 123 of the Constitution of the Republic of Uganda; Also refer to Ratification of Treaties Act Cap 201.

<sup>107</sup> Frances D'Souza, Article 19 Freedom of Expression Handbook: International and Comparative law, standards and procedures

<sup>108</sup> WA Selabas The Universal Declaration of Human Rights: The travaux préparatoires, volume 1, October 1946 to November 1947 (2013) xxxvii; L. Cortula 'Property Rights, negotiating power and foreign investment: An international and comparative law study of Africa' (2009) 87 Unpublished PhD thesis, University of Edinburgh.

<sup>109</sup> "The Domestic Application of International Human Rights Norms", in Developing Human Rights Jurisprudence: The Domestic Application of International Human Rights Norms, Report of a Judicial Colloquium in Bangalore (Commonwealth Secretariat, Sept. 1988), 97.

In the Preamble of the UDHR this piece of legislation acknowledges that the motivation behind its enactment was recognition that disregard and contempt of peoples' rights has resulted in barbarous acts therefore the need for protection this legislation being one of the means.

### 3.2.2. The Covenants, Resolutions and General comments.

The aim of the framers of the Universal Declaration was that it would culminate in a binding human rights treaty that imposes obligations on member states. The Contents of the Universal Declaration were eventually transformed into binding human rights treaties like the International Covenant on Civil and Political Rights (ICCPR)<sup>110</sup>

Article 19(2) ICCPR all of which Uganda as country has ratified in 1995 and accepted with full signature states<sup>111</sup>: states that, "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"<sup>112</sup>

Uganda ratified this Convention and based on the principle of performance of treaty obligations in good faith,<sup>113</sup> Uganda is bound to respect its obligations under this Convention. However there have not been proper mechanisms of enforcement in the face of violation of these obligations.

**General Comment No. 34**, UN Human Rights Committee, 12 September 2011, arguably constitutes an authoritative interpretation of the freedoms of opinion and expression guaranteed by Article 19 of the International Covenant on Civil and Political Rights, which is binding on more than 165 countries. **Remark 13**<sup>114</sup> provides that a free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society.<sup>115</sup> The Covenant embraces a right whereby the media may receive

---

<sup>110</sup> International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171

<sup>111</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, acceded to by Uganda June 21, 1995, art. 19.

<sup>112</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49

<sup>113</sup> Article 26 Vienna Convention of Law of Treaties

<sup>114</sup> General Comment 34

<sup>115</sup> Communication No. 1128/2002, Marques v. Angola, Views adopted on 29 March 2005.

information on the basis of which it can carry out its function.<sup>116</sup> The free 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 and to inform public opinion.<sup>117</sup> The public also has a corresponding right to receive media output.<sup>118</sup>

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 a position to engage the responsibility of the State party.<sup>119</sup> Such responsibility may also be incurred by a State party under some circumstances in respect of acts of semi-State entities.<sup>120</sup> The obligation also requires States parties to ensure that persons are protected from any acts by private persons or entities that would impair the enjoyment of the freedoms of opinion and expression to the extent that these Covenant rights are amenable to application between private persons or entities.<sup>121</sup>

Remark 14<sup>122</sup>, as a means to protect the rights of media users, including members of ethnic and linguistic minorities, to receive a wide range of information and ideas, States parties should take particular care to encourage an independent and diverse media. In Uganda currently, there exists diverse media including but not limited to newspaper, radio stations. The information is disseminated in different languages. Cases in point are Bukedde newspaper which is predominantly in Luganda, Rupiny newspaper in Langi. This ensures that information is disseminated to provide for different groups.

### **3.2.3. The right to media/ expression as customary international law.**

Among the recognized sources of international law is 'international custom, as evidence of general practice [usus] accepted as law [opinio juris]'<sup>123</sup>. To qualify as custom the rule need

<sup>116</sup> Communication No. 633/95, *Gauthier v. Canada*.

<sup>117</sup> Committee's general comment No. 25 (1996) on article 25 (Participation in public affairs and the right to vote), para. 25, Official Records of the General Assembly, Fifty-first Session, Supplement No. 40, vol. I (A/51/40 (Vol. I)), annex V.

<sup>118</sup> Communication No. 1334/2004, *Mavlonov and Sa'di v. Uzbekistan*.

<sup>119</sup> Committee's general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, para. 4, Official Records of the General Assembly, Fiftyninth Session, Supplement No. 40, vol. I (A/59/40 (Vol. I)), annex III.

<sup>120</sup> See Communication No. 61/1979, *Hertzberg et al. v. Finland*, Views adopted on 2 April 1982.

<sup>121</sup> General comment No. 31, para. 8; See communication No. 633/1995, *Gauthier v. Canada*, Views adopted on 7 April 1999.

<sup>122</sup> General comment No. 34

<sup>123</sup> Statute of the International Court of Justice, Article 38(1)(b)

not be universally accepted – ‘general’ or ‘widespread acceptance’ is sufficient.<sup>124</sup> State practice is deemed satisfied where there is ‘constant and uniform usage’<sup>125</sup>. Evidence of state practice can be found in national legislation, decisions of national courts, and government policy statements amongst others. In the words of Article 38(1)(b) of the Statute of the International Court of Justice (ICJ), the rule must be ‘accepted as law’ by the states concerned. *Opinio juris* is difficult to prove and has thus consequently been argued by some scholars that it should be presumed from the general practice of states.<sup>126</sup> One may note resolutions in the General Assembly, comments made by governments on drafts produced by the International Law Commission (ILC), decisions of the international judicial institutions, decisions of national courts, treaties and the general practice of international organisations<sup>127</sup>

In Uganda for example, there are court decisions, proclamations that point to the protection of the rights of the media and the 1995 Constitution provides for protection of media rights and ratified Conventions that offer protection to the same. This points to state practice of protection of media rights and there exists a sense of legal obligation to follow the laws that grant protection to media rights.

#### 3.2.4. General assembly debates and Resolutions

Condemning in the strongest possible terms the terrorist attack on the French magazine Charlie Hebdo in Paris on 7 January 2015, the Parliamentary Assembly recognised the importance of media freedom for democracy. The media create the public space for the dissemination of information and the expression of opinions. Media freedom therefore constitutes an important index for democracy, political freedoms and the rule of law in a country or region. Any attack on the media and journalists is an attack on a democratic society.

Recalling the judgment of the European Court of Human Rights in the case of *Ahmet Yildirim v. Turkey* (18 December 2012), the Assembly concurs that the right to Internet access is considered to be inherent in the right to freedom of expression and information, as expressed in Resolution 1987 (2014) on the right to Internet access. Therefore, the Assembly considers the generalised blocking by public authorities of websites or web services as a serious

<sup>124</sup> Fisheries Jurisdiction Case (United Kingdom v Iceland) 1974 ICJ Reports 3 23-26.

<sup>125</sup> Asylum Case (Columbia v Peru) 1950 ICJ Reports 266

<sup>126</sup> Brownlie Principles of Public International Law .Oxford University Press Pg 8 : Judge Tanaka, dissenting opinion in the North Continental Shelf Cases 1969 ICJ Reports 176.

<sup>127</sup> Malcolm Shaw, International Law 6<sup>th</sup> Edition. Published in the United States of America by Cambridge University Press, New York, pg 82

violation of media freedom, which deprives a high and indiscriminate number of Internet users of their right to Internet access.<sup>128</sup> The Assembly welcomes the fact that Turkey has introduced legal measures to restrict the possibilities for blocking specific Internet content.

**United Nations General Assembly Resolution A/RES/68/262** of 27 March 2014, declared illegal the annexation of the Crimean Peninsula by the Russian Federation, Oleg Sentsov should be transferred by the Russian authorities to the appropriate law-enforcement authorities of Ukraine without further delay. The systematic harassment of the free and independent media in annexed Crimea, including the recent raid on the ATR television station, cannot be tolerated in Europe.

The resolutions point to a glaring truth that traverses Uganda that sometimes the confines of regulation of the press based on national security have not been clearly defined and therefore the regulation has been used as an avenue to curtail media rights considering that the parameters of regulation remain a little undefined in some respects.

### **3.2.5. 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.<sup>129</sup> This shows the importance the world as a whole attaches to the media.

### **3.2.6. Regional Level**

From the regional perspectives, the laws protecting media freedom are also important and these will be discussed hereunder. I will state the provisions and later on proceed to give my independent analysis of these provisions.

#### **3.2.6.1. The African Charter on Human and Peoples' Rights**

The Assembly of Heads of State and Government of the Organization of African Unity adopted the African Charter on Human and Peoples' Rights in 1981 and it entered into force in 1986. As of January 1993, 49 of the 51 OAU member states were parties to the Charter.

The African Commission on Human and Peoples' Rights, established to promote compliance with the Charter, has been functioning only since 1987. Because of the short time in which

---

<sup>128</sup> Assembly debate on 29 January 2015 (7th and 8th Sittings) (see Doc. I3664, report of the Committee on Culture, Science, Education and Media, rapporteur: Mr Gvozden Srećko Flego). Text adopted by the Assembly on 29 January 2015 (8th Sitting). See also Recommendation 2062 (2015).

<sup>129</sup> <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/about-world-press-freedom-day/>

the Charter has been in force and the low number of cases considered by the Commission, there is little indication of how the Charter will be applied in practice.

Article 9 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.” However, in order “to elaborate and expound on the nature, content and extent of the right provided for under Article 9”, the African Commission on Human and Peoples' Rights in its 32<sup>nd</sup> Ordinary Session in October 2002, adopted the Declaration of Principles on Freedom of Expression in Africa, and recommended to the African States to guarantee the freedom thus –*Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or 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.*”

Whereas some of these conventions make no explicit reference to media, the media is one of the ways through which people express themselves. Through the media people either impart or receive ideas. To exclude media as a way of mode of expression would be an over simplification of what media entails.

#### **3.2.6.2. The African Charter on Democracy, Elections and Governance (2007)<sup>130</sup>**

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”

Article 17(3) provides that 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.

---

<sup>130</sup> Article 1, 2, 17 adopted by the Eighth Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia, 30 January 2007



### 3.2.6.3. The Windhoek Declaration on Promoting an Independent and Pluralistic African Press

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.

Ugandan authorities regularly state that broadcasts are “inciting the public to commit violence” as the rationale for why suspensions and closures are necessary. The tension between the right to free expression and information on the one hand, and national security on the other, has been the subject of much inquiry by courts, international bodies, and scholars. A group of experts in international law, national security, and human rights issued the Johannesburg Principles on National Security, Freedom of Expression and Access to Information on October 1, 1995.

Over time, these Principles have come to be widely recognized as an authoritative interpretation of the relationship between these rights and interests, reflecting the growing body of international legal opinion and emerging customary international law on the subject. The principles set out guidelines on restrictions on free speech, including the principle that governments must use the least restrictive means possible in prohibiting speech that is contrary to legitimate national security interests. According to the principles, national security interests do not include “protecting a government from embarrassment or exposure of wrongdoing.”

Some restrictions on the media such as criminalizing incitement to violence—are permitted under international law in the context of protecting national security, but such restrictions must meet several high hurdles. First, restrictions must be prescribed by law, and they must be accessible, clear, narrowly drawn, and subject to judicial scrutiny. Second, the restriction must have both the genuine purpose and the demonstrable effect of protecting national security. Third, the restriction must apply only where the expression poses a serious threat, is the least restrictive means available, and is compatible with democratic principles.

Various human rights bodies and courts around the world have determined that protection of freedom of media must include tolerance from public officials regarding open criticism. As the African Commission stated, “People who assume highly visible public roles must



necessarily face a higher degree of criticism than private citizens; otherwise public debate may be stifled altogether.”

Other regional instruments protecting media freedoms include; Protocol on managing information and communication 2000 of which Uganda is a member and the 2001 African Charter on broadcasting adopted by media practitioners and human rights organizations at the UNESCO conference to celebrate 10 years of Windhoek declarations.<sup>131</sup> Lastly, the Johannesburg Principles on National Security, Freedom of Expression and Access to Information, Freedom of Expression and Access to Information, (U.N. Doc. E/CN.4/1996/39, 1996).<sup>132</sup> The provisions in the various conventions or laws are geared at ensuring greater protection of media freedoms. However enforcement of the beautiful lines and provisions embedded in these conventions is what leaves a lot to be desired. Sometimes it has been alleged that there is selective application of these provisions.

### **3.3 Limitations in place on Media Freedoms.**

#### **3.3.1 National limitations.**

Justice Mulenga in Charles Onyango Obbo case<sup>133</sup> noted that the co-existence in the same constitution, of protection and limitation of the rights, necessarily generates two competing interests. On the one hand, there is the interest to uphold and protect the rights guaranteed by the Constitution. On the other hand, there is the interest to keep the enjoyment of the individual rights in check, on social considerations, which are also set out in the Constitution. Where there is conflict between the two interests, the court resolves it having regard to the different objectives of the Constitution.

Article 43 of the 1995 Constitution states 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 or the public interest. Furthermore Article 43(2)(c) requires that public interest under this article shall not permit 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.

---

<sup>131</sup> According to Lugambi (2010), UNESCO's Windhoek Declaration, like other non-treaty documents, has moral authority by representing a broad consensus of the international community on the detailed interpretation of the Universal Declaration and other relevant standards as they relate to the press in Africa

<sup>132</sup> It sets out standards for the protection of freedom of expression in the context of national security laws. They were adopted on October 1, 1995, by a group of experts in international law, national security, and human rights convened by ARTICLE 19.

<sup>133</sup> Constitutional Appeal No. 2 of 2002

Charles Onyango Obbo case relying on *Mark Gova & Another vs. Minister of Home Affairs & Another*<sup>134</sup> the Supreme Court of Zimbabwe formulated the following summary of criteria, with which I agree, for justification of law imposing limitation on guaranteed rights

- The legislative objective which the limitation is designed to promote must be sufficiently important to warrant overriding a fundamental right;
- The measures designed to meet the objective must be rationally connected to it and not arbitrary, unfair or based on irrational considerations;
- The means used to impair the right or freedom must be no more than necessary to accomplish the objective.

Therefore for any limitation on media freedoms to suffice it has to meet these criteria, this is a safeguard against arbitrary limitation of media freedoms. Time and again there have been limitations on media freedoms, the million dollar question however remains whether they fall in the ambit of Constitutional provisions and the criteria lay down.

### 3.3.2 International limitations

The international Conventions earlier on stated not only guarantee the rights but place limitations within which the rights are to be enjoyed. Therefore one cannot simply enjoy rights but abusing the rights of others. Some of the limitations are discussed hereunder.

Article 19 of the ICCPR lay out a number of purposes for which freedom of media/ expression may be limited:

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, or of public health or morals.

The ICCPR requires that any proposed restriction must be “necessary,” This stresses the presumption that the limitation of a right is an option of last resort and must always be proportionate to the aim pursued. “Necessary” is a stronger standard than merely “reasonable” or “desirable,” although the restriction need not be “indispensable. Therefore the limitations should not be abused by governments to stifle the media freedoms.

---

<sup>134</sup> S.C. 36/2000; Civil Application No. 156/99

Even though the Government's purpose be legitimate and substantial, that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.<sup>135</sup>

Smith writes that the restriction of freedom of expression itself should not mean putting the right into jeopardy but this should be prescribed by the law.<sup>136</sup> He argues that classifying information as a security concern is discretionary to a particular state and there is always little that the international treaties bodies can do apart from providing supervisory role over the exercise of state discretion.<sup>137</sup>

### **3.3.3 Court's attitude towards protection of Media Freedoms.**

Hereunder I delve into a discussion of courts' attitude nationally and internationally towards media protection through media laws and generally accepted best practices. The importance of media and media freedoms is discussed in series of decided cases but I enlist just a handful of some of them as follow:

**Charles Onyango Obo & and Andrew Mwenda V Attorney General**<sup>138</sup> 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 Ocean Newsletter, and published under the headline 'Kabila paid Uganda in gold, say report'.

Mulenga JSC noted that protection of the fundamental human rights is a primary objective of every democratic constitution, and as such is an essential characteristic of democracy. In particular, protection of the right to freedom of expression/media is of great significance to democracy. It is the bedrock of democratic governance. Meaningful participation of the governed in their governance, which is the hallmark of democracy, is only assured through optimal exercise of the freedom of expression.

Courts have observed that the right of freedom of expression and other media does not fall within the non-derogable rights enshrined in article 44 of the Constitution, and, in the light of article 43, it can be restricted in public interest.

---

<sup>135</sup> Shelton v. Tucker, 364 US 479, 488 (1960).

<sup>136</sup> Textbook on International Human Rights (New York: Oxford University Press, Pg 295.

<sup>137</sup> Ibid. Pg 298

<sup>138</sup> Constitutional Appeal No. 2 of 2002

In **Joachim Buwembo & 3 others Vs Attorney General**,<sup>139</sup> 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.

In **Andrew Mwenda and Anor V Attorney General**<sup>140</sup> Andrew Mujuni Mwenda, a journalist, under Constitutional petition N0.12/2005 went to Court seeking declarations of 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 African Media Institution (U) Ltd on its own and in public interest petitioned this Court seeking declarations for 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 of the Articles 29(1) (a) and 43(2) (c) of the Constitution and declared them null and void.

**Francis Tumwekwasize and 20rs V Attorney General IICMC No. 36 of 2009.**

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 Bamwine 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 of 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 act of denying them access amounted to a breach of their freedom as journalists to inform the public as to the sanitary condition of the Stadium at the time.

This decision of court points to the position that journalists must be protected rather than harassed.

---

<sup>139</sup> Constitutional reference N0. 1/2008

<sup>140</sup> Consolidated Constitutional Petitions No.12 of 2005 and No. 3 of 2006

### **3.3.4 Case law at International Scene.**

Courts have made decisions in favour of promotion of media freedoms emphasizing that any society should respect media rights. Hereunder I delve into court's attitude towards media rights on the International level.

#### **Union of India & others V Jagjivan Ram (1990) LRC (Const) 424-427.**

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 of 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.

#### **Handyside v United Kingdom [1976] ECHR 5 (7 December 1976):**

Court noted that freedom of expression (wherein freedom of media is enshrined) constitutes one of the essential 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 offend shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no "democratic society".

#### **Castells v. Spain, Judgment of 23 April 1992, Series A no. 236**

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 a democratic society.

#### **Edmonton Journal v. Alberta (Attorney General), [1989] 2 S.C.R. 1326: 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. It is only through the press that most individuals can really learn of what is occurring in the courts. The members of the public, as

"listeners" or "readers", have a right to receive information pertaining to public institutions, in particular the courts.

The Courts on the whole have tried to protect media freedoms by making decisions in favour of media house where there has been a clear abuse of their rights. This acts as a restraint to abuse of media freedoms.

### 3.5. Bodies charged with oversight regulation of the Media

The Press and Journalists Act, provides for the establishment oversight statutory media bodies; the **Media Council**, the **National Institute of Journalists of Uganda (NIJU)** and the Disciplinary Committee, which are mandated to regulate media practice in Uganda, including the registration and licensing of journalists. The functions of the Council include regulating the conduct and ethical standards of journalists, exercising disciplinary control over journalists, arbitrating disputes among the public, the State, and the media, among others.<sup>141</sup>

The powers like exercise disciplinary controls are wide and lack clear parameters therefore could be subject to abuse.

On the other hand, the National Institute of Journalists of Uganda, whose affairs are administered by an Executive Committee, is tasked with maintaining professionalism among journalists, supporting and advising on training and educational initiatives, as well as promoting research and responsible journalism. On its part, the Disciplinary Committee established under Section 30 has the powers to suspend the practicing certificate of a journalist found guilty during its hearing as well as compel the media house to pay compensation to the aggrieved person.

The other body is the **Uganda Communications Commission (UCC)**. It is established under the Uganda Communications Act 2013. Its functions include;<sup>142</sup> to monitor, inspect, license and regulate communications services; (c) to allocate and license the use of the radio frequency spectrum, to establish and run frequency and other monitoring stations; (l) to receive and investigate complaints relating to communications services and to take necessary action upon them. For example UCC suspended ABS Television license over what it termed as "repeated breach of minimum broadcasting standards."<sup>143</sup>

---

<sup>141</sup> Section 9 of Press and Journalist Act 1995

<sup>142</sup> Article 5 UCC Act

<sup>143</sup> Ibrahim Manzil's Daily Monitor Article "UCC suspends ABS television license over offensive programmes" Published on Wednesday September 6<sup>th</sup> 2017.



### **3.6. Conclusion**

All in all, this chapter has shown that Uganda a fairly comprehensive law and policy law regime governing the operation of media. This is evidenced by the comprehensive media laws which are the bedrock of media regulation in Uganda. It is undeniable that the parameters of regulation have sometimes been questioned but nevertheless the media laws have registered achievements in regulation of the media industry.

However, more could still be done. There is an urgent need to address the legal flaws in the sector so as to make Uganda regional and internationally compliant and to stimulate the further growth of the media industry. It is this urgent need that has inspired the next chapter of this paper, as it delves into possible adjustments that could be made to better the media policies.



## CHAPTER FOUR

### CHALLENGES, FINDINGS, RECOMMENDATIONS.

Even perfection has room for improvement- Ty Warner.

The biggest room in the world is the room for improvement-Helmut Schmidt.

There is always space for improvement no matter how long you have been in the business-  
Oscar De La Hoya.

#### 4.0. Introduction.

Uganda has made significant progress in media freedom and freedom of expression However, there are instances of intolerance to media practitioners by the state. The challenges that face the media industry in a bid to execute its work are as hereunder discussed;

#### 4.1 Challenges Impacting On the Enjoyment Of Media Freedom

The intimidation of journalists and media owners by the state and powerful individuals including business tycoons has been on the rise and has been matched to the recent spike in public demonstrations. A case in point in May 2013, police raided Uganda's leading independent newspaper and disabled the printing press after it had published about a letter about the purported plot to stifle allegations that Ugandan President is grooming his son for power. This was reported by a senior editor James Akena.<sup>144</sup>

This intimidation of journalists and media owners gravely affects the independence of the media practitioners in the conduct of their work and reduces their enjoyment of the freedom of expression. Also, editorial independence is at times interfered with by the state and also by media owners who would like to maintain receipt of government contracts. In Karamoja region, FDC Campaign messages were aired on Nena FM owned by RDC of Moroto, a retired media practitioner. He subscribes to the ruling party and because of this, he ordered his radio station to stop the advert for FDC campaigns<sup>145</sup>

In Lira district, the Voice of Lango owned by the NRM leaning Member of Parliament for

---

<sup>144</sup> <https://www.hrw.org/threats/freedom>

<sup>145</sup> IIRW, (2010) Report on Uganda: A Media Minefield, and Increased Threats to Freedom of Expression in Uganda, USA (online) available at <http://www.hrw.org/en/node/90062>.

Dokolo County and former Youth Minister Hon. Okot Ogong Felix had to apologize to the State House for hosting Uganda People's Congress Presidential Candidate Ambassador Dr.Olara Otunu<sup>146</sup>

Furthermore, Violence against journalists, media workers and human rights defenders is very common. Various tactics of intimidation and harassment are used against media practitioners in Uganda. They include regular police summons, interrogations, and raids to media houses, threats by Police, Resident District Commissioners and other security personnel.

The Walk to work Protest saw more journalists assaulted, intimidated and in some cases their equipment destroyed. Jimmy Adriko a resigned photo journalist of new vision said that destruction of their property mostly happens during public demonstration hence affecting the efficiency of their work.<sup>147</sup>

Unfair distribution of working opportunities by the Government. Media outlets with a pro-government inclination were said to receive the larger share of government contracts while independent-minded media outlets received less. Whereas more media outlets in print, radio and broadcast media continue to enjoy open play in the market, more and more professional journalists are leaving mainstream journalism for greener pastures in Public Relations, corporate communications and research turnover.

Another challenge that was noted was the impact of the restrictive legal frame work on the enjoyment of media freedoms and freedom of expression. As was depicted in chapter three, Uganda has some weak and stern laws that do not offer adequate protection to media practitioners. These laws infringe on the space and scope of practicing journalism in Uganda despite the constitutional guarantees as reflected in Article 29 of the Uganda Constitution. Some of these restrictive laws include inter alia; Access to information Act, the Press and Journalist Act<sup>148</sup>.

---

<sup>146</sup> IIRNJ-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](http://www.ifex.org/uganda/2011/05/05/press_index_report_april_2011.pdf). (Accessed on 19.03.2012)

<sup>147</sup> An interview on 19 June 2019

<sup>148</sup> Supra

**Criminal charges** against journalists in retaliation for critical speech 'are increasingly common in Uganda, though in the rare instances when a case goes before a judge, courts have often protected journalists from the full repressive potential of this tactic.

Since 2005, close to thirty journalists working at Kampala-based print publications have received a barrage of well-publicized police summonses. Some concluded in criminal charges that are still pending. At least 10 radio journalists and talk show panelists have also been charged with crimes. All are out on bail, and none have ever been convicted of any crime. Some faced multiple charges from multiple incidents. On 16 October 2017, *Daily Monitor* Executive Editor, Charles Odoobo Bichachi and Red Pepper Deputy News Editor Kintu Richard were quizzed for over three hours each. They were both charged with 'Offensive Communication/ Libel' and a General Inquiries File was opened.<sup>149</sup> Other examples include Stanley Ndawula and Robert Ndawula who appeared before Grade one Magistrate Beatrice Khainza and denied the charges. They are alleged to have on on September 29, 2017 published false news alleging that the General had resorted to killing his own officers as a way of covering his crime.<sup>150</sup>

The Ugandan 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 the law and practice other forms of repression Charles Odongtho a media personality noted in his submission during the interview.

**Inadequate research and background check.** Charles Odongtho a media personality noted that some journalists make news reporting that lacks proper research to back up their assumptions and opinions.<sup>151</sup> This has had a great effect on the quality of news reported. He further noted that this is also explained by lack of training, few centralized institutions, little or no capacity and opportunity to train.

**Out-moded policies:** Many media organizations do not have policies in place on journalists' safety at all, or their policies are old fashioned and do not make real commitments. In addition, while some media organizations have security policies that include specific best practices for women journalists, many fail to include risks with unique gendered components.

---

<sup>149</sup> <https://www.ifex.org/uganda/2017/10/19/age-limit-stories/>

<sup>150</sup> <https://www.independent.co.ug/journalists-charged-defamation-case-kayihura/>

<sup>151</sup> Interview on 19<sup>th</sup> June 2019

**Inadequate funds:** The media industry is very expensive most especially photo journalism. This is because on a daily basis media personnel have to be funded to go to the field to get information, it involves purchase of work equipment like cameras and other equipment necessary to collect information. However because some of the media personnel receive funding from people the quality of news reported has been left at the mercy of the funders.

**Lack of training:** There are not only few centralized training institutions but also minimal capacity/opportunity to train. Media houses have sometimes resorted to hiring untrained people because they can easily hire and fire them on top of giving them low pay. Media owners have learnt that when they employ a person with less qualification, such a person sees it as a favour. He may not demand for higher pay because he sees he has nowhere to go. He may also not demand for better work environment because he sees it as a favour to work in the company. All he will do is get any kind of news, and take the little pay. This however in the long run affects the quality of work done. The aforementioned challenges inspire the later segment of my research paper to give recommendations.

#### **4.2. Findings from the Field Work Study**

My findings include the following:

The Grand norm is well streamlined with good clauses that are aligned along the international legislation, however; the challenge is the implementation of the law in practice. The action of the security organizations, the media regulatory bodies and the government at large has reduced freedom of expression and media in practice. State apparatus attempts to ban or restrict freedom of expression through the introduction of many media sub laws and the use of security agencies has instead ended up with great impact on journalists who have fallen victims of such security torture and intimidations.

There is some interference from state agencies. Jon Elliott, Africa advocacy director at Human Rights Watch observed that "The Ugandan government has been limiting free expression/media under the dubious guise of keeping public order and security," "This must stop. One of the cornerstones of free speech is the right to criticize those in positions of power."<sup>152</sup> However this study revealed that financial disability compromises the independence of the media. Some media personnel make biased stories for fear of being

---

<sup>152</sup> Human Rights Watch Report, Uganda: Journalists under threat-End Intimidation of Rural Media and Amend Repressive Laws Before 2011 Elections. Published on 2<sup>nd</sup> May 2010.



denied money to further their business. The quality of news is therefore affected because to some journalists the aim is how to survive as opposed to the truthfulness of the stories.

Self-censorship among media professionals in Uganda has persisted at different levels and is attributed to different reasons; fear of persecution and arrest, political pressure (in which case the media decide to abstain from reporting certain issues that are politically sensitive), fear of losing a job when the story does not comply with the employer's editorial policy or business interests<sup>153</sup> that is to say a radio presenter in Hoima district said that “the media today in Uganda is more like public relations reporting, if you stick to the real issues you may not remain in the profession, you will be in danger of losing your job”.

In practice some media outlets have been forced by politicians and government to stop publishing certain stories. Journalists who are critical in reporting about the government get intimidated, harassed, threatened and investigated, many have been charged in courts with unclear crimes and charges.<sup>154</sup> Cases in point include on 15th February 2018; The Resident District Commissioner (RDC) of Gulu District in Northern Uganda Capt. Santos Okot Lapolo on 13th February 2018 recommended the closure of Radio Maria, a Catholic owned media house on allegations that it was causing disunity among the people. Chowoo Willy was charged of criminal defamation.<sup>155</sup> On 23 August 2015, Madinah Nalwanga and Patrick Tumwesigye of the *Vision Group*, and Benon Tugumisirize and Ronald Nahabwe of *Red Pepper* were charged with criminal defamation before Buganda Road Chief Magistrate, Lillian Bucyana.<sup>156</sup>

Non-state actors also engage in attacks on journalists. In January, Vision Group photojournalist Mubiru Kakebe was stabbed in the hand by a woman who demanded that he delete a photo he had taken; he died two months later, apparently of a related infection. In March, a court sentenced private security guard Aziz Kemba to a four-year prison term for assaulting Red Pepper journalist Solomon Hamala as he covered protests by market traders in January. In April, a group of teachers in Mpigi attacked Bukedde TV journalist Andrew Mugonza as he covered the aftermath of a fire at their school; police soon came to his aid.

<sup>153</sup> IREX.(2008) Media Sustainability Index (MSI)–Uganda 2008. (online) available at: [http://www.irex.org/system/files/2-Africa\\_08\\_uganda.pdf](http://www.irex.org/system/files/2-Africa_08_uganda.pdf).

<sup>154</sup> Dennis Odongo: Human Rights and media in Uganda: A critical Analysis of Mass Media Freedom. Pg 24

<sup>155</sup> <https://hrnjuganda.org/?tag=criminal-defamation>

<sup>156</sup> [https://www.ifex.org/uganda/2015/10/14/criminal\\_defamation/](https://www.ifex.org/uganda/2015/10/14/criminal_defamation/)

Also in April, officers rescued Ismail Ddamba of Bukedde newspaper from an assault by motorcycle-taxi drivers who accused him of being a police spy.<sup>157</sup>

A number of Ugandan journalists also require training. In the face of rapid changing media environment, media houses need to embrace professional training as a core requirement of the job. Poor research techniques and lack of investigative skills are the frequent reasons why our journalists gloss over issues that is to say most especially in the field of photojournalism.

Another crucial point is the growing influence of advertisers on media content, thereby threatening media independence. There appears to be a conflict between profit making and truth telling. This has led to a loss of public trust as journalists are also viewed as being motivated by profits and personal gain.<sup>158</sup>

Many journalists/ media personnel are still ignorant about the laws that affect. Whereas the laws are written in the books, many have not acquainted themselves with the laws that affect them. This affects them in a way that they do not know the consequences of their actions as per the law.

The limitations imposed by some of the restrictive laws on press freedom in Uganda have overtime been declared inconsistent with the Constitution. For example Section 50 of the Penal Code Act on publication of false news was declared by Court in Charles Onyango Obbo and Anor V Attorney General<sup>159</sup> and Andrew Mujuni Mwenda and Anor v Attorney General<sup>160</sup> wherein Court declared Sections 39 (1)(a) and 40(i)(a) of the Penal Code Act on the offence of the offence of sedition and seditious intention.

The Ugandan public plays a bystander role and does not support journalists in the fight against corruption and other malpractices. Little if any action is taken by the general public to give a shoulder for the media to lean on in situations where the media has faced the wrath of security agencies and other state apparatus.

---

<sup>157</sup> Freedom House; Freedom of the Press

<sup>158</sup> Felix Osike: New Vision Wednesday, February 28<sup>th</sup> 2018, Press Freedom: What are the real challenges to Ugandan media

<sup>159</sup> Constitutional Petition No. 15 of 1997; Also see Constitutional Appeal No. 2 of 2002.

<sup>160</sup> Consolidated petition No.12 of 2005 and No. 3 of 2006.

Conclusively, the duty of the media practitioners is to provide citizens with the information they need to be free and self-governing. Journalists cannot perform this duty if there are regulatory frameworks suffocating media freedom.

#### 4.3. Recommendations

From this study, and basing on the objectives and findings, the followings form part of my recommendations that need to be adopted and implemented to realize free practice of media in Uganda and in any democratic state.

The media can make full use of their potential to contribute to the consolidation of democracy if their rights are protected. Moreover they need to have the requisite skills for the kind of textured and in-depth reporting that new democracies require. Because the media are powerful, there should also be mechanisms to ensure they are held accountable to the public and that ethical and professional standards are upheld. Media independence is guaranteed if media organizations are financially viable, free from the intervention of media owners and operate in a competitive media environment.<sup>161</sup> The media's power is enhanced if they have broad reach in, and support from, society. Democracy suffers if large segments of society are inaccessible to the media and therefore excluded from the arena of public debate.

Uganda has witnessed a high rate of growth of a vibrant and dynamic media industry covering divergent interests and views, also supported by of enabling laws to protect the freedom of expression and safety of journalists; however improvements can still be made.

Various initiatives can create an enabling environment that allows the media to be an effective agent for deepening democracy and which strengthen the media as a democratic institution include the following;

**Financial empowerment:** There is need to empower media personnel financially. This is because some journalists are easily swayed to make biased reporting in exchange for money. Aptly put in the words of Charles Odongtho a media personality<sup>162</sup>, "Some stories made by the journalists are biased because of the fear to disappoint some persons that extend financial advancements. The primary consideration to some of the media personnel shifts from having genuine stories to compromised stories published."

---

<sup>161</sup> Sheila S. Coronel: The role of the media in deepening democracy Pg 19

<sup>162</sup> Interview on 19<sup>th</sup> June 2019



This can be through establishment of SACCOs and self-help projects to raise funds. The public can also make a contribution through buying newspapers off the stands so that media houses are able to pay bills and finance good journalism.

**Increased participation of regional, international and civil society organisations (CSOs).**

The international bodies like UN, African Union, Amnesty International, Donor Agencies and CSOs should join in advocating and campaigning for fair media law and task Ugandan government to recognize that freedom of expression are paramount for any democratic society and more specifically for the citizens of Uganda. Constitutional and Supreme Courts should be an option used by the CSOs and media advocacy organizations to challenge media draconian laws. A comprehensive media law reforms therefore should be done with the constitutional guidelines and experiences from other Commonwealth countries should guide such reforms.

**Government contribution;** There is need for the government to respect Article 29 (1) (a), Article 20 (2) of the constitution of Republic of Uganda, UDHR Article 19, and ICCPR Article 19 plus other regional laws by allowing opposition to freely express their views without much censorship and interference from the government security agents like police and army. This means, the voices of the Uganda's opposition politicians should not be excluded from the Uganda political, economic and social development process by compromising their freedom of expressions during vital political stages like during campaigns for political offices.

Furthermore, the Government of Uganda should strictly observe its obligation to respect, and promote the enjoyment of media freedoms. This includes refraining from and restraining its actors from the harassment, illegal arrest and detention of media practitioners, as well as the issuance of threats against media houses<sup>163</sup>.

Government institutions such as the Ministry of Information and National Guidance should come out clearly and support to media practitioners especially by standardising the media practice, and devising means of strengthening an independent media in Uganda backed by independent regulatory bodies.

There is a need for government to facilitate its citizen's realisation of the enjoyment of media freedoms, article 4 provides for promotion of public awareness of people's rights in the grand

---

<sup>163</sup> An interview on 19<sup>th</sup> June 2019

norm.. Freedom of expression and media freedoms are for all and not for a select few. In light of this, citizens should be able to freely access and impart information without any interference as long as it does not infringe on public interest and matters of national security, among other things. Further, government should specify the nature of information that may not be accessed by citizens. This clarity would ensure that public officials do not deny citizens information when approached.

Similarly, it should guarantee security for media practitioners while in the course of duty and take responsibility for the arbitrary actions of its actors. More so wherever the media is exercising the right to cover events for public's attention, most especially during public demonstrations.

Government institutions mandated to supervise the media industry should execute their mandate in a free and just manner, and not to be seen as a prohibitive arm of the state to free expression. This could be done by, among other things; availing media houses a fair hearing where allegations have been tabled against them. for example the human rights commission envisaged in article 52 of the Grand norm.

Action by the authorities to limit the spread of harmful or illegal content through the use of new technologies should be carefully designed to ensure that any measures taken do not inhibit the enormous positive potential of these technologies. Thus government should balance between defending the freedom of expression and information and ensuring protection from abuses like spread of harmful propaganda

Parliament should repeal laws that erode away the enjoyment of media freedoms, specifically those that were declared unconstitutional by the Constitutional Court. For example there is need to repeal the laws on sedition which was declared unconstitutional in Andrew Mwenda's case.<sup>164</sup> Further, there is need for a comprehensive revision and amendment of media laws to ensure that they are human rights based and that they adhere to international human rights standards.

---

<sup>164</sup> Andrew Mujuni Mwenda & Anor versus Attorney General Consolidated Constitutional Petitions No's 12 of 2005 & NO. 3 of 2006

Further, government should undertake prompt effective and impartial investigation into any allegations made by journalists including complaints of harassment and torture and take action against those implicated. This would contribute to the building of confidence between the state and media practitioners. In an effort to increase confidence in the media personnel to freely carry out their work, security agencies to bring to book their personnel that violate rights of journalists and to make public disciplinary actions taken against them. Government officials, particularly the president and the ministers of information and security, should publicly condemn threats to the media and insist that local officials tolerate independent reporting in local languages.

### **Media practitioners**

Media practitioners in Uganda need to uphold the core values of journalism so as to ensure there is a balanced reporting and also avoid disobedience of legal procedures. This would bring about mutual respect between the state and media practitioners as well as the achievement of a balanced and fair reporting, self-regulatory and accountable media. a case in point media practitioners who did perform their duties as required by the law were punished by the UCC.

Media practitioners should be encouraged to form and join effective media and professional organizations that can advocate for the realization of media freedoms, as well as mobilise for the representation of journalists facing charges in courts of law.

Media practitioners need to be appreciated for the work that they do towards the development of the country. for example be awarded with certificates ,gifts this boosts their morale to work.

### **Media houses,**

There is need for media houses to ensure continuous training for their journalists. The trainings should target various fields which affect rights and obligations arising from media freedoms. The fields can address good reporting, legal and professional accesses to information and use as well investigative journalism. This way, journalist would be trained on various aspects of journalism and related topics. Consequently, the core values of journalism could be instilled in journalism as well as the need for accurate reporting.

Media houses ought to provide appropriate facilitation to their staff such as protective mechanisms during operations in unsafe places or conditions, but also to use more accurate

and confiscated means of collecting information while in the field so to secure their information before it may be lost, destroyed, spoiled and or their gadgets unfairly confiscated.

There destroyed property should be replaced.

Media houses ought to avail legal services and other support for their employees in instances where cases have been lodged against them. This should, however, be applied in instances where media practitioners are deemed to have abided by the core values of journalism. Media houses should avail formal contracts to their fulltime employees as required under Section 25 of the Employment Act of 2006. This being a standard requirement, an employment contract issued to practitioners would give them some of job security thereby encouraging them to report responsibly.

Media houses put in place safety and protection mechanisms for journalists assigned to cover riotous or dangerous scenes and provide them with health and insurance schemes, there is need for journalists themselves to take primary responsibility for their safety by avoiding situations in which they are caught in the line of fire. There is also a need to improve working conditions by providing safety and protection gear, bullet proof kits health and life insurance.

**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 had the potential to excite and inflame rather than inform.<sup>165</sup> The media should also always remember that media freedoms too come with duties and responsibilities which require them to practice responsible journalism at all times. Journalists have to be weaned away from reliance on press releases, press conferences and information ministries. They must learn how to write with depth and insight and also be adept in a variety of fields. Whereas some training centres have been established for example Wizarts foundation P.O. Box 9023 Kampala Plot 1 Kimera road Ntinda, there is need to establish more training centres.

Engage media owners/managers to develop and embrace initiatives that enhance journalists' skills and knowledge such as peer learning, in-house training and presentations on topical issues. This could be through breakfast meetings, and individual media house visits to engage with the top management.

---

<sup>165</sup> UHRC Statement on World Press Freedom Day 3<sup>rd</sup> May 2016: Ensuring the safety of Journalists and Media workers



In the words of Charles Odongtho a media practitioner, “there is need to set up training institutions or expand school of mass communication at Makerere University, faculty of mass communication at Uganda Christian University.”<sup>166</sup>

Different stakeholders should play an active role in the enhancement of the enjoyment of media freedoms and the safety of journalists in Uganda. The duty to ensure protection of media freedoms should not only be left to government but also the public as a whole. The public can for example make proclamations condemning the actions of state apparatus violating media rights. There can be civic action, which can include public protests, boycotts, lobbying legislators, taking legal action or voting in elections, can be undertaken by an individual or a group of people to address issues of public concern. the public should be involved and play a participatory role through consultative processes in the revision of laws. This would ensure that the revised laws would be all inclusive and cater for the interests of all stakeholders.

**Democratising Access.** The media can be effective only if they are accessible to a wide section of the population. Otherwise, they only exacerbate the marginalisation of social sectors that have access neither to the media nor to the centres of wealth and power. Efforts to democratise access include subsidising community and local media, especially in poor and remote areas or in places where groups, such as indigenous peoples, have traditionally been at the margins of social life.<sup>167</sup>

**Setting up a minimum wage.** For some time now there has been a discussion of setting up a minimum wage in Uganda but no success has been registered in this respect. The idea only still remains a proposal. Setting up a minimum wage will lessen the problem of compromise based on the need to make money.

The security agencies should restrain from violating the rights of journalists as they perform the daily work of coverage. Instead they should create a free environment where journalists and other media practitioners are able to carry out the work without any form of harassments, intimidations and threats. This means strict guidelines should be developed by both the Ministry of Internal Affairs in collaboration with the Inspector General of Police, and

---

<sup>166</sup> Interview on 19<sup>th</sup> June 2019

<sup>167</sup> Sheila S. Coronel; The role of the media in deepening democracy. Pg 22

Directors of both Internal and External Security Organizations of Uganda on how to protect journalists especially during riots and demonstrations.

#### **4.4 Conclusion**

The study looked at our roots in respect of media rights and freedoms looking back from the 1960, and 1970 to date showing current realities in the media industry. it further looked at the symbiotic relationship that exists between the media and the growth of democracy showing that the two need each other, as well as the legal framework both international and national legislations regarding its impact on media freedom.



## BIBLIOGRAPHY

### Textbooks

Ian Brownlie, Principles of Public International Law, Oxford University Press, 7<sup>th</sup> Edition, Pg 8.

Malcolm Shaw, International Law Published in the United States of America by Cambridge University Press, New York 6<sup>th</sup> Edition, Pg 82.

Paul Kimumwe; Media Regulation and Practice in Uganda, a Journalist Handbook, Published by Clear Mark Publishers, Pg 9,17,19.

Raymond Wacks; Understanding Jurisprudence; an introduction to legal theory, Oxford University Press, 3<sup>rd</sup> Edition, Pg 165.

S.R. Mayneni. (2007) Jurisprudence (legal theory) 2<sup>ND</sup> Ed S,P Gogia (Asia Law House).  
Textbook on International Human Rights (New York: Oxford University Press,

Media Freedom and Rights of journalists by Uganda Humans Rights Commission pg13,pg 26,pg 44

### ARTICLES/JOURNALS

Anuj Kumar; Role of Media in Democracy, Published on July 25<sup>th</sup> 2016

Anderson, Peter J., Ward, Geoff & Weymouth, Anthony (2007), The Changing World of Journalism in Anderson, Peter J. & Geoff, Ward (eds): The Future of Journalism in the Advanced Democracies. Ashgate.

AN Makubuya ‘ The vagina monologues’ saga and free expression in Uganda’ (2005)11 East African Journal of Peace and Human Rights

Arthur Lupia and Mathew D. McCubbins. 1998. The Democratic Dilemma. Cambridge: Cambridge University Press.

Busakorn Suriyasarn, “ Internet & National development” Thai media &telecommunications, May 1998.

Country Case study Uganda; Support to media where media freedoms and rights are constrained by BBC Media Action.

Callamard, Agnes. Expert Meeting of the Links Between Articles 19 and 20 of the ICCPR: Freedom of expression of Advocacy of religious hatred that constitutes incitement to Discrimination, Hostility and Violence UN HCHR, October 2-3, 2008, Geneva.

Catherine Anite & James Nkuubi; Media Freedom In Uganda, an analysis of inequitable legal limitations, Published by Human Rights Network for Journalists – Uganda.

Charlie Beckett & Laura Kyrke Smith; Development, Governance, Media; The role of Media in Building an African Society.

Daniel Kalinaki; How social Media is transforming Uganda's Political and Social Land Space.

Dennis Odongo; Human Rights and media in Uganda; A critical Analysis of Mass Media Freedom.

Eigen, P. (1999), The Media and the Fight Against Corruption, Transparency International, Presented to the CELAP Conference, San Juan, Puerto Rico.

F.G. Fowler and H.W. Fowler, eds. The New Pocket Oxford Dictionary, Oxford, 2001, edn.

Frances D'Souza, Article 19 Freedom of Expression Handbook; International and Comparative law, standards and procedures.

FW Juuko 'To ban or not to ban? A critique of the media council's ruling (2005) 11 East African Journal of Peace and Human Right.

Freedom of expression and information situation in Uganda October 2011-July 2012, a civil society perspective.

George A. Donohue, Philip Tichenor et al. 1995. 'A Guard Dog Perspective on the Role of the Media.' Journal of Communication. 45(2): 115-128.

Henry Lutaaya; A moment of mourning for the state of media in Uganda, Published 2<sup>nd</sup> May 2016.

Human Rights Watch Report, Uganda: Journalists under threat-End Intimidation of Rural Media and Amend Repressive Laws Before 2011 Elections. Published on 2<sup>nd</sup> May 2010.

Koven, Ronald (2004) an attitude to Hate speech ,journalism, pure and simple

McNair, B. (2009), Journalism and Democracy. In The handbook of journalism studies. Wahl-Jorgensen, Karin, & Hanitzsch, Thomas (Eds.) New York: Routledge.

McQuail, Denis (2000), McQuail's Mass Communication Theory, London: Sage Publications, Pg 40; Cited by Afshin Ismaeli; The role of media in developing democracy in Kurdistan; A study of Rudaw Journalists' Perspectives, Notions and Attitudes, Pg 24.

Mendel. T (2011) Public Service Broadcasting: A Comparative Legal Survey(2nd Ed); UNESCO.

Monica Nogara: Role of media in curbing corruption: the case of Uganda under President Yoweri.K.Museveni during "no party" system.

Monroe.E.P rice Media and Transitional Justice ;Towards a systematic approach

Nathan Mnjama & Consolata Acayo: The Print Media and Conflict Resolution in Northern Uganda 2<sup>nd</sup> June 2004.

Obongo .L. Nyambog E (2011) journalist and rule of law ,The Kenya Section of the International Commission of jurists ,Nairobi -Kenya.

Peter Dahlgren and Colin Sparks. 1995. Communication and Citizenship. London: Routledge; Peter Dahlgren. 1995. Television and the Public Sphere. London: Sage.

Robert c, a little libel, a lot of trouble defamation and related issues in higher education

Rachael Mugarura-Mutana: Journalist wins landmark access to information case February 2015

Sewanyana Livingstone (ed), Freedom of Expression in Defence of Media Freedom in Uganda, Report for the period 1<sup>st</sup> June-30th November 2007.

Role of media in a democracy; A strategic approach published by Centre for governance and democracy

Sheila S. Coronel; The role of the media in deepening democracy.

Stephen Holmes, "Liberal constraints on private power?" in Judith Lichtenberg (ed), Democracy and the Mass Media," Cambridge: Cambridge University Press, 1991.

Wolsfeld Gadi, Media and the path to peace 2004

Tusa, John. "Fourth Estate or Fifth Column." Index on Censorship 21, no. 7 (July/August 1992). Vazquez, Michael Colin. "An African Dilemma." Transition [Cambridge, MA] no. 75/76 (1997): 615.

UIIRC Statement on World Press Freedom Day: Ensuring the Safety of Journalists and Media Workers on 3<sup>rd</sup> May 2016

Uganda Media Development Foundation, "The state of media freedom in Uganda 2006

USAID, The Role of Media in Democracy: A Strategic Approach. Washington: Center for Democracy and Governance, Bureau for Global Programs, Field Support and Research, Technical Publication Series, June 1999.

General Assembly Resolutions

Eighth Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia, 30 January 2007



## **DICTIONARIES**

Oxford Advanced Learners Dictionary, 7<sup>th</sup> Edition.

### **Newspaper Article**

Felix Osike's New Vision Article: Press Freedom: What are the real challenges to Ugandan media, Published on Wednesday, February 28<sup>th</sup> 2018.

Godfrey Olukya 's Daily Monitor Article 'Our MPs are simply hungry for money, Published on Tuesday, November 28, 2017.

Solomon Arinaitwe's Daily Monitor 'Joy, Sadness as age limit Bill sails through' Thursday Published on , December 21,2017.

Red Pepper, May 27, 2011, accessed August 13, 2011; "Media Freedom: "Narrow Escape."

Michael Woira New vision Article 'Uganda promotes democracy for all' Friday Published on January 05 2018.

New paper Article ,Daily monitor we remain fair and accurate published on 31 May 2013 by John Ssemkula

Our MPs are simply hungry for money, article published in Daily Monitor,on November 28 2017

Daily Monitor Article titled Police should defend our democracy Published on Sunday October 22 2017

### **Electronic documents.**

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

<http://ugbusiness.com/2333/sales-of-english-dailies-decline-as-bukedde-picks-up-in-q3>.(Accessed on the 20<sup>th</sup> February 2018)

IREX,(2008) Media Sustainability Index (MSI)–Uganda 2008, (online) available at: [http://www.irex.org/system/files/2-Africa\\_08\\_uganda.pdf](http://www.irex.org/system/files/2-Africa_08_uganda.pdf).

‘Good Journalism doesn’t happen in a vacuum; it needs your support’ September 28<sup>th</sup> 2016; Also to be found on <https://acme-ug.org/2016/09/28/good-journalism-doesnt-happen-in-a-vacuum-it-needs-your-support>. (Accessed on the 16<sup>th</sup> January 2018)

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](http://www.ifex.org/uganda/2011/05/05/press_index_report_april_2011.pdf). (Accessed on the 17<sup>th</sup> January 2018.)

Freedom House, (2010) Freedom of the Press 2010 – Uganda, 5 October 2010, (online) available at: <http://www.unhcr.org/refworld/docid/4cab061ac.html>.

HIRW (2010) Report on Uganda; A Media Minefield, and Increased Threats to Freedom of Expression in Uganda, USA (online) available at <http://www.hrw.org/en/node/90062>.

Lugalambi, G.W( 23rd March, 2010) ‘Amendments to press law will kill journalism’ The New Vision Uganda leading Daily Newspaper, (online) available at <http://www.newvision.co.ug/D/8/459/713867>.

Uganda: A Toolkit for Media Reporting on Peace, Reconciliation and Tolerance; <https://en.unesco.org/cultureofpeace/news/uganda->

Toby Mendel, Public Service Broadcasting: A Comparative Legal Survey, UNESCO, Asia Pacific Institute for Broadcasting Development (Paris: UNESCO, 2000) [http://www.unesco.org/webworld/publications/mendel/inter\\_standards.html](http://www.unesco.org/webworld/publications/mendel/inter_standards.html).

Truman, Harry S.URL [http://www.saying-quotes-co/harry Truman quotes](http://www.saying-quotes-co/harry-Truman-quotes).

<https://hrnjuganda.org/?tag=criminal-defamation>.

[https://www.ec.or.ug-latest news Electrol Commission –press release](https://www.ec.or.ug-latest-news/Electrol-Commission-press-release).



<https://acme-ug-org-2015/12/09>.

<https://www.ifex.org/uganda/2017/10/19/age-limit-stories/> (Accessed on the 1<sup>st</sup> March 2018)

### **Decisions**

Andrew Mwenda and Anor V Attorney General Consolidated Constitutional Petitions No.12 of 2005 and No. 3 of 2006.

Charles Onyango Obbo and Anor vs. Attorney General Constitutional Appeal No. 2 of 2002.

Christopher Mtikila v Attorney General Civil case No. 5 of 1993.

Joachim Buwembo & 3 others Vs Attorney General Constitutional reference NO. 1/2008.

Schering Chemical v Falkman Ltd 1981

Mujuni Mwenda v Attorney General constitutional petition No.12 2005.

Francis Lukooya Mukoone and anor v Editor in chief, Bukkede News paper and 2 others civil suit NO.351 of 2007

Chaina Movat and another v Kyarimpa Civil Appeal (42 of 2008) Judge Kwesiga's Judgement.

Blaze Barigumira v Hanns Besigye ICC NO 744 of 1992

Ronald Edward Sekyewa t/a hub for investigative journalists V National Forestry Authority. Miscellaneous Cause No. 73 of 2014.

### **Regional/ International decisions**

Asylum Case (Columbia v Peru) 1950 ICJ Reports 266.

Castells v. Spain, Judgment of 23 April 1992, Series A no. 236.

Fisheries Jurisdiction Case (United Kingdom v Iceland) 1974 ICJ Reports 3 23-26.

Gauthier v. Canada Communication No. 633/95

Gova & Another vs. Minister of Home Affairs & Another S.C. 36/2000: Civil Application  
No. 156/99.

Handyside v. United Kingdom, Judgment of 7 Dec. 1976, Series A no. 24.

Hertzberg et al. v. Finland Communication No. 61/1979

Jagjivan Ram (1990) LRC (Const) 424-427.

Mavlonov and Sa'di v. Uzbekistan Communication No. 1334/2004.