

**AN APPRAISAL ON THE RIGHTS OF FREEDOM OF EXPRESSION AND  
ASSOCIATION IN UGANDA. A REVIEW OF ARTICLE 29 OF THE 1995  
CONSTITUTION AND OTHER EXISTING LAWS.**

**BY**

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**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL  
FULFILLMENT OF THE REQUIREMENT FOR THE  
AWARD OF BACHELORS DEGREE OF LAWS  
AT KAMPALA INTERNATIONAL  
UNIVERSITY**

**JUNE, 2016**

## DECLARATION

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

Date:.....

*ae*

**NAFUNA PHIONA**

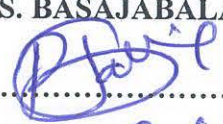
## **APPROVAL**

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

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24.06.16

## **DEDICATION**

I dedicate this work to my parents Ms. Byakika Nesta and Mr. Magirigi Emmanuel who have done everything in their means to support me during the Course.

I also dedicate this work to all the people in Uganda and Africa at large. It is my hope and prayer that this research will sensitize them on their rights and encourage them to fight for their rights of freedom of expression and association which enhance democracy.

## **ACKNOWLEDGEMENT**

First and foremost I thank God for providing me with this opportunity to live and for making me what I am today.

My special gratitude goes to my supervisor Ms. Basajabalaba Jalia for correcting and guiding me, thanks for your patience and understanding, words alone can't express my sincere appreciation. Special appreciation also goes to all the lecturers in the Faculty of Law for imparting professionalism in me through the four years.

I also acknowledge my parents Ms. Byakika Nesta and Mr. Magirigi Emmanuel for their great contribution in my academic career as well as my aunts Byakika Pamela, Byakika Eseza and Byakika Doreen who have supported me financially and morally.

To my dear classmates and friends, it was more than a reward pursuing my studies with you. You are such a gem in this achievement, especially Lwebuga Christopher David and Peter Ernest.

Finally, I greatly appreciate all my informants for their great contribution towards the accomplishment of this work.

**May God bless you all**

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## LIST OF ACRONYMS

SRB	-	State Research Bureau
SPLM	-	Sudan People's Liberation Movement
UDHR	-	Universal Declaration of Human Rights
UPDF	-	Uganda People's Defense Forces
FDC	-	Forum for Democratic Change
NGO	-	Non Governmental Organisation
UHRC	-	Uganda Human Rights Commission

## **LIST OF STATUTES**

### **International instruments**

African Charter on Human and People's Rights

International Convention on Civil and Political Rights

International Covenant on Economic, Social and Cultural Rights.

Universal Declaration of Human Rights

### **Domestic legislation**

Constitution of the Republic of Uganda, 1995

Computer Misuse Act, 2011, Act No.2 of 2011

Labour Unions Act, 2006

Non Government Organisation Bill, No.10 of 2015

Political Parties and Organisation Act, 2005

Public Order Management Act, 2013, Act No.9 of 2013

The Electronic Media Act Cap 104

The Penal Code Act Cap. 120

The Press and Journalist Act Cap.105

The Uganda Communications Act, 2013, Act No.1 Of 2013

## ABSTRACT

*The study apprised the rights of freedom of expression and association in Uganda. A review of article 29 of 1995 constitution of Uganda. It was carried out with specific aims of identifying the major causes of violation of rights of freedom of expression and association under article 29 of 1995 constitution; appraising the extent to which rights of freedom of expression and association have been enjoyed and recommended a way of how restraint law should liberalized examine the constitution an other existing laws, remedies available to the person whose rights have been violated ; challenges towards observance of the rights of freedom of expression and association.*

*Literature was reviewed on the existing facts and what other researchers have said. Qualitative research was the most relied on.*

*The information collected was organized according to chapters in order to make a meaningful presentation, conclusion and recommendation. The study discussed the challenges to the rights and concluded that laws that regulate the rights of expression and association are in most cases manipulated in favor of government.*

*The study recommended that there should be a system of checks and balances which should include adequate limitation of state power in curtaining free expression and association in Uganda government should facilitate enjoyment of the rights; patriotism should be encouraged it is from this that the researcher suggested that government needs to operationalise the law without discrimination to any party.*

## CHAPTER ONE

### GENERAL OVERVIEW

#### 1.0 Introduction

The topic under study was an appraisal on the rights to freedom of expression and association in Uganda, a review of article 29 of the constitution and other existing laws.

The Constitution provides for the protection of freedom of conscience, expression, movement, religion, assembly and association<sup>1</sup>. This study was based on the rights of freedom of expression which includes speech, press and other media and freedom of association which includes to form associations including trade unions, political and other civic organizations in Uganda. The study set out to appraise the rights in review of article 29 of 1995 constitution and other existing laws.

This chapter covers the background of the study, statement of the problem, purpose, objectives, research questions, scope, methodology, significance and literature review of the study.

#### 1.1 Background of the study.

Freedom of expression, assembly and association are part of the constituent elements necessary for the establishment of democratic societies<sup>2</sup>.

In considering the development of individual right to freedom of expression and association in Uganda, we must consider the nature of societies we have had. The extent and number of democratic rights and freedoms are affected by the political systems, the level of economic and cultural development in addition to other national traditions and this depends on the political maturity of the masses that is their capacity to recognize their own interest. The people must have a sense of what things are right and what are wrong and how they understand the relationship between members and institutions and between members themselves.

In Uganda we have three phases of development which include pre-colonial, colonialism and post colonialism era. Each of these has had its political, social and economic structures.

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<sup>1</sup> Article 29 of 1995 Constitution of Uganda

<sup>2</sup> Best Practice, published on January 1, 2003

### **1.1.1 Freedom of expression and association in pre-colonial era**

The advent of British imperialism towards the end of the 19<sup>th</sup> century found different societies that differed in a number of ways. Some were advanced culturally and politically for example Buganda. Other societies like karamoja had rudimentary systems. Some like Buganda, Bunyoro and Ankole had feudal governments<sup>3</sup>. These societies could not exist peacefully without law to govern their lives and they existed some accepted norms of behavior, similar in most cases these were illustrated in rituals, taboos, customs etc<sup>4</sup>.

Legal systems existed in pre-colonial societies and there was some measure of human rights. Rights were recognized and protected<sup>5</sup>. Freedom of expression and association was subject to socio-economic formation. The purpose and extent of the freedom in the pre-colonial era can be explained in terms of variations in the traditions or history of various communities. Each individual had his rights and obligations in society. The format that freedom of expression and association took in those societies may not necessarily be the same as we have today. It was expressed through stories, proverbs, rituals etc. Association was in form of education and cultural enrichment which included dancing especially for marriage ceremonies. The Bagisu had initiation ceremonies to manhood which involved circumcision. Among the Baganda, the birth of twins was a great occasion marked by rites and taboos. Beer drinking among men was common where men discussed and exchanged views while women engaged in educative sessions which concerned most about marriage. All these constituted freedom of expression and association<sup>6</sup>.

Freedom of expression was exercised in public meetings and judicial processes. Cases were discussed in the presence of every one and any one could ask questions and express their opinions.

However freedom of expression in pre-colonial era had some limitation eg in many cases there was lack of democracy even in judicial proceedings, the kings had absolute power and his word was the law and in most cases final. In most societies speaking unfounded words was sanctioned and would amount to modern defamation. In Buganda the offender was fined a calabash of beer, a goat or chicken.

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<sup>3</sup> Nakhaima B.S Anthony: freedom of expression in Uganda

<sup>4</sup> Mushanga M: Crime and deviance introduction to criminology in East Africa

<sup>5</sup> The challenges of the mass media in the 1990s. MUK 20<sup>th</sup> july, 1991s

<sup>6</sup> Heydon Law and justice in Buganda London 1960

The penetration of western intrusion in its early years brought with it changes that were to affect free expression and association as it considerably constituted a threat to the political status of the ruling authority. This is evidenced in the killing of the Uganda martyrs by Kabaka Mwanga.

The turning point however came with the colonization of Uganda by the British imperialists. Many indigenous laws and customs were eroded with the establishment of British legal systems hence ushering in a new form of expression and association which was dictated by the colonialists.

### **1.1.2 Freedom of expression during colonialism**

By its very nature, colonialism is not compatible with freedom and democracy because it is common with exploitation which was accompanied with oppression hence the rights evident with respect to freedom of association and expression<sup>7</sup>. Trade union activities were limited e.g. in 1940s, anyone who was seen in the vicinity of the place of the meeting of the Bataka Union, that person was presumed to either be coming or going to the meeting and therefore was punished.

The colonial systems were set up by the British government mostly for the promotion of British interests. The participation of the Ugandans in designing the policies that affected them internally was effectively negated by the colonial rule. In effect common law was introduced without any reserve despite its inapplicability to Africa societies. In *Nyali V. A.G*<sup>8</sup> It was said of common law that, it cannot be applied in foreign lands without considerable qualification. Just as the English Oak, you cannot transplant common law to the African continent and expect it to retain the tough character which it has in England, it will flourish indeed but it needs careful tending. The people must have a law which they respect. Common law cannot fulfill a role without considerable qualification. However in Uganda, common law was applied without subjecting it to existing circumstances.

The colonial administration crushed any kind of activity that would result in political agitation eg free speech. Therefore the law of sedition, libel purposely aimed at suppression of nationalism and people's crave for independence.

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<sup>7</sup> Tamale Balaba: Press freedom and the law in Uganda today

<sup>8</sup> (1957)ALL ER 696

In *R V. Yowasi Pallo and Others*<sup>9</sup>. It was held that there can be no doubt that sedition is an offence and punishable by any government that has ever existed. This reveals that the law was used to ensure the necessary compliance for effective exploitation. This was a limit to the right of freedom of expression and association.

Freedom of speech and press were limited through deportations and criminal codes like The Deportation and Removal Ordinances which were narrowly construed to control African political expression. The changes made after enactment of the Penal Code Act, cap 120, detention prescription and time limit Decree no.15/1971 and Decree no.3/1973 all had similar intentions and their intention was to limit freedom of expression and association.

Freedom of information or ideas was interfered with by the patrons of colonial education as education was used to obscure racism and to turn out a particular breed of collaborators. Enrollment in schools was not open to everyone. However with the increasing political awakening and mass literacy, the print media became very significant especially in the 1950s. when the struggle for political independence was at its height in 1953, the Uganda National Congress introduced "Uganda Eyogera" and others like "Emanya Esaze" . The number of published papers rose from eleven(11) to forty seven(47).

However many of the papers were banned accordingly and their editors convicted of sedition and imprisonment. The limitation was based on the provisions of the Post and Communications Act, the taping system which was at the state research bureau (RSB) office<sup>10</sup>. The limitation continues up to now through section 37<sup>11</sup> states that it is an offence to publish information prejudicial to national security.

Therefore the British laws and directives could not enhance right of freedom of expression and association.

### **1.1.3 Freedom of expression and association in post independence Uganda**

The Uganda constitutions of 1962, 1966, 1967 and 1995 have provided a bill of rights. This seemingly implies the recognition of the individual rights of freedom of expression and association. However the realization of the rights have been frustrated especially by the state

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<sup>9</sup> (1922) 3 ULR 98

<sup>10</sup> Mushanga M: crime and deviance introduction to criminology in east Africa. Kenya lit bureau

<sup>11</sup> The penal Code Act 120 (laws of Uganda)



itself. The 1962 constitution<sup>12</sup> provided for the freedom of expression which includes freedom to hold opinions and receive ideas and information without interference. The Constitution<sup>13</sup> provides for the right of freedom of expression and association.

The prevalence of human rights depends upon the economic as well as social level of society, lack of adequate economic standards for example unemployment; poverty is instrumental in limiting freedom of expression and association. The high rate of illiteracy in the country has undermined the people's ability to understand their inalienable rights.

There has also been a struggle for power as a result of frustrated Ugandans during the wind of change and absence of political legitimacy which has made unpopular leaders to resort to brutal, strict censorship and banning of political parties among others in enforcing their rule. As a result, political instability repeatedly surfaces. In essence leaders sustain themselves in power by curbing the masses' freedom of expression and association among other rights.

The role of the state and law in curbing freedom of expression and association cannot go without mention. The neo colonial state should be looked at as nothing but an instrument of the ruling class in oppressing the masses through the law and courts. An analysis of post independence regimes reveals that all of them have more or less encouraged limitation of freedom of expression and association as they have all cherished the neo colonial domination.

The 1966 crisis left Buganda in an indefinite state of emergency in which ministers were detained under the Deportation Act to be replaced with the Public Order and security Act<sup>14</sup>. It affected anyone who had conducted himself in a manner prejudicial to peace and good order in Uganda. In essence peace and good order are aimed at protection of state and leaders in order to ensure their continued leadership by limiting the individual's democratic rights and freedoms. It has been said of the legislation that "This serves to scare the would be participants in public debate and other affairs, promoting a culture of silence that is anti democracy"<sup>15</sup>

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<sup>12</sup> Article 26(1) of the 1962 constitution of the republic of Uganda

<sup>13</sup> Article 29 of the 1995 Constitution of the republic of Uganda

<sup>14</sup> Act 20 of 1967.

<sup>15</sup> Khiddu Makubuya; The legal framework for democracy in Uganda. Mawazo vol.6. no. 1 1985 p.17

In 1966, Obote Milton abolished the multi party system and deposed of the president making himself the president of Uganda. This violated the freedom of association through violating the right of forming political parties. Obote even restricted freedom of expression even in parliament. He introduced the 1967 pigeon constitution in the constituent assembly on a day's notice without allowing the members prior notice to read it. Parliament had no right to express their views.

The pigeon hole was however challenged unsuccessfully in the case of *Exparte Matovu*<sup>16</sup>. G.W Kanyeihamba said that "The members of cabinet gave away to what Obote and his close advisers wanted done"<sup>17</sup>.

In 1971 when Iddi Amin came into power, he maintained the abolishment of political parties, there were no trade union activities because they were a threat to the economy. He killed journalists and nationalized newspapers which Obote did on his return as president including detaining journalists<sup>18</sup>. All this was an abuse of freedom of expression and association.

Iddi Amin ran his government based on only oral orders in person, Decrees or over the phone or radio. There were no newspaper records against him, anyone who expressed his views against Amin got imprisoned or murdered. All of this violated the right of freedom of expression and association.

On 29<sup>th</sup> January 1986, Museveni Yoweri Kaguta came into power through a coup de tat. He abolished all political party activities and there was only the movement system, this violated the freedom to form political parties. However with the promulgation of the 1995 constitution, article 29 provides for the rights of freedom of expression and association. However freedom of association is limited by article 269<sup>19</sup> which is the cause of controversy between the movement and multiparty supporters. The 2000 Referendum opened up the right of political association in that any one is allowed to join and form a political party of their choice. In *Dr Paul Ssemwogerere and Ors V. A.G*<sup>20</sup> court held that the freedoms to assemble and associate do not only concern the right to form a political party but also the right of such a party once formed to

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<sup>16</sup> (1966) E.A 514

<sup>17</sup> Kanyeihamba G. W Constitutional law and government in Uganda: E.A publishing house 1975p.452

<sup>18</sup> The Press and Political Repression in Uganda: Back to the future

<sup>19</sup> 1995 constitution of the republic of Uganda

<sup>20</sup> Constitutional petition no.5/2002

carry on its political activities freely. However even after court pronouncing itself, governments' tolerance to freedom of expression and association is limited.

Dr. Kizza Besigye has on several occasions been arrested for expressing his rights for example since the 2016 general elections; he has been under house arrest for more than a month. This is because of his campaign for defiance against the government. His right of freedom of expression and association has on many occasions been crushed by the violent Uganda police in disguise of enforcing the Public Order Management Act, 2013. All his peaceful attempted rallies have ended up with sometimes people being killed.

However there is freedom of expression evidenced through the increasing number of vibrant newspapers, radio stations and television channels although the above are regulated by Uganda Communications Commission which has on many occasions violated the right of expression. During the 2016 elections, it switched off social media platforms hence violating the freedom of expression.

In 2002, 2014 Daily monitor, Redpepper and KFM were shut down for expressing their views against government. In 2014 it was about Sejusa's comments about government and in 2005 was due to allowing speculation and broadcast about John Garang's plane crash who was leader of SPLM of Sudan<sup>21</sup>.

Laws like the Public Order management Act, 2013 have worsened the enforcement of the rights. Other laws like the Uganda Communications Act, The press and Journalist Act, 105 and international instruments like Universal declaration Of Human Rights etc also provide for freedom of expression and association. Despite the constitution and other existing laws providing for the rights, their enforcement remains limited.

## **1.2 Statement of the problem**

Despite the constitution and other existing laws providing the rights of freedom of expression and association, their access still remains a distant reality in Uganda. The problem under the study therefore was the practical application of the rights provided under art 29(1) (e) and (a)<sup>22</sup>

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<sup>21</sup> Daily monitor (Kampala) by Grace Masiko 11<sup>th</sup> Aug 2005 pg 2

<sup>22</sup> 1995 constitution of the republic of Uganda

and other existing laws and how the state and courts have observed them and to some extent responsible for violating them.

### **1.3 Objectives of the study**

#### **1.3.1 General objectives of the study**

The major objective of the study was to apprise the rights of freedom of expression and association in Uganda in review of art 29 of 1995 constitution and other existing laws.

#### **1.3.2 Specific objectives of the study**

To identify the major causes of violation of rights of freedom of expression and association as enshrined under art 29 of 1995 constitution and other existing laws and recommend how the rights can be exercised.

To appraise the extent to which rights of freedom of expression and association have been enjoyed and recommend a way of how restraint law should be liberalized and only resorted to during times of national emergence.

To examine the constitution and other existing laws, remedies available to a person whose rights of freedom of expression and association have been violated and identify the possible measures to be taken in order to promote the rights of freedom of expression and association.

To identify the major challenges towards observance of the rights of freedom of expression and association and recommend a very conducive economic and political environment since they determine the above rights.

### **1.4 Research questions**

What are the major causes of violation of rights of freedom of expression and association in Uganda?

What extent have the rights of freedom of expression and association been enjoyed in Uganda and recommend a way of how restraint law should be liberalized?

Examination of constitution and other existing laws, remedies for violation and what are the possible measures taken in order to promote the rights?

What are the challenges towards observance of the rights and what are the recommendations

## **1.5 Scope of the study**

### **1.5.1 Content scope**

The study basically covered the appraisal of the rights of freedom of expression and association in review of article 29<sup>23</sup> and other existing laws.

### **1.5.2 Geographical scope**

The study was based in Uganda especially in Kampala because it's the area the researcher is more familiar with.

### **1.5.3 Time scope**

The research was conducted between the month of March to June 2016.

## **1.6 Significance of the study**

The study helps in creating awareness to the people about rights of freedom of expression and association which includes freedom of press, other, media, and join associations, political and civil organization.

The study helps future legislators make laws that uphold the rights of freedom of expression and association.

The study contributes to the improvement and observance of human rights of freedom of expressions and association.

The study contributes to the improvement and observance of human rights in Uganda.

For the researcher, the study is to contribute towards the award of bachelors of laws degree at Kampala International University.

The beneficiaries of the study will be students, lawyers, policy makers, researchers and international community at large.

## **1.7 Justifications**

Although the constitution and other existing laws guarantee the rights of freedom of expression and association, enforcing it is inadequate. People are seriously beaten and wounded as they

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<sup>23</sup> 1995 constitution of the republic of Uganda

express their opinions especially against the government and associations like political parties especially opposition members are arrested because of expressing the short comings through demonstrations e.g. poor health. Since 2011, police has continuously arrested opposition members of government and detained and tortured them under the guise of enforcing the Public Order management Act for example Dr. Kizza Besigye. In *Muwanga Kivumbi V. A.G.* Constitutional court held that let people exercise their rights of freedom of association and expression and that police should provide them with security.

## **1.8 Research methodology**

### **1.8.1 Research design**

The study was undertaken to apprise the rights of freedom of expression and association with specific regard to 1995 constitution and other existing laws.

### **1.8.2 Procedure**

The study employed both qualitative and quantitative methods of data collection. Quantitative was based on randomly and purposively selected sample and interview. However I relied more on qualitative method since most of the findings were from statutes, law books, library, text books, web based resources etc.

### **1.8.3 Target population**

The target population consisted mainly of people within the political and labour field in Uganda especially in Kampala because that's where the researcher is more familiar with.

### **1.8.4 Research instruments**

In depth interview guides were designed and administered to different people in both the political and labour field.

### **1.8.5 Data analysis**

#### **1.8.5.1 Editing**

The interview guides were edited for accuracy, consistence of information before leaving the field.

### **1.8.5.2 Coding**

Close ended questions, pre-coded answers from semi structured interviews were given a coding frame.

## **1.9 Definitions**

### **1.9.1 Freedom of association**

Is the right to join or leave groups of a person's own choosing and for the group to take collective action to pursue the interests of members. In *Dr James Rwanyarare & 9 ors V. A.G*<sup>24</sup> court held that freedom of association does not only concern the right to form a political party but also guarantee the right of such a party once formed to carry on its political activities freely.

### **1.9.2 Civic organization**

It is an organization comprised of people who join together to provide a service or services to their community<sup>25</sup>.

### **1.9.3 Freedom of expression**

Supreme Court of Uganda has defined freedom of expression as extending to holiday receiving and imparting all forms of opinions, ideas and information. It is provided under art 29 of 1995 constitution, article 19 of Universal Declaration of Human Rights and other existing laws.

### **1.9.4 Freedom of press**

It is the right to publish whatever one may please and to be protected against any responsibility for so doing except so far as such publication unless the publication is a public offence or falsehood and affect the standing reputation of pecuniary interests of individuals<sup>26</sup>.

### **1.9.5 Freedom of speech**

It is premised on the realization of the human individual personality, the market place of ideas and the related human intrinsic propensity to inquire debate and develop knowledge. Concepts of freedom of speech can be found in early documents<sup>27</sup>.

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<sup>24</sup> Constitutional petition no.7/2002

<sup>25</sup> National Objectives and directive principles of state policy, 1995 Constitution of Uganda

<sup>26</sup> The Press and Journalist Act 105

<sup>27</sup> England's Bill Of Rights 1968

### **1.9.6 Political organization**

It means any free organization or association of persons the objects of which include the influencing of the political process or sponsoring a political agenda, whether or not it also seeks to sponsor or offer a platform to a candidate for election to political office or participate in the governance at any level<sup>28</sup>.

### **1.9.7 Trade/labour unions**

It means any organization of employees created by employees for the purpose of representing the rights and interest of employees<sup>29</sup>.

### **1.10 Literature review**

Article 29<sup>30</sup> and other existing laws in Uganda provide that everyone is entitled to the rights of freedom of expression and association. However the above has been violated especially by the Uganda police especially against opposition leaders for example in 2011 during the walk to work demonstrations, Dr. Kizza Besigye was sprayed in his face with pepper spray yet he was expressing his dissatisfaction towards the high inflation that was then there.

For the three consecutive previous years, the human rights reports have listed the Uganda police as the highest violation of human rights. The US department of state report 2008 underscores the general human rights environment in Uganda. The report notes that the government's human rights record remain poor although there have been improvements recently for example freedom of expression of the media especially social media where people criticize the government. In the human rights report 2015, Uganda police was ranked the most violator of human rights including rights of freedom of expression and association for example the detention of MP Muhammed Nsereko in December 2012 during the oil reports saga when he expressed that the government was responsible for the death of MP Cerina Nebanda. Nsereko was detained for more than the required forty eight hours stipulated by the law.

The literature review basically focus on how the rights of freedom of expression and association have been observed as granted under the 1995 constitution and other existing laws and how they have been violated since colonialism up to date in Uganda.

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<sup>28</sup> Section 2 Political Parties and Organisation Act 2005

<sup>29</sup> Section 2 Labour Unions Act 2006

<sup>30</sup> 1995 Constitution of Uganda



During the past decade, the military has been at the centre of several legal controversies especially as regards provision of the military law and the working of its courts. This was evident in the Tinyefuza( now Sejusa) saga in 1997 to the military execution in Kotido in 2002<sup>31</sup>.

In Joseph Tumushabe V. A.G<sup>32</sup> a petition was filed on behalf of over 25 officers and men of the UPDF seeking a declaration that the act of the general court martial in keeping custody of the petitioners for a period exceeding 360 days without entering their application for bail was contravening of the constitution. A declaration was sought to the effect that articles 23(6)(2), 21(1) and 23 (6)(a)<sup>33</sup> were contravened by the provisions of the military law.

It is reported by the “US Department of State Human Rights”<sup>34</sup> that on September 16<sup>th</sup> Uganda People’s Defence Force(UPDF) soldiers Martin Menya and Edward Pyenkya tortured to death the local council chairman of Lokitalebo village during a cordon and search operation in Kotido, Karamoja region. However the Kotido 3<sup>rd</sup> division court martial sentenced each of them to 12 years of imprisonment and dismissed them from the army with disgrace. The report also noted that the court martial sentenced lieutenant Richard Watumu to 14 years imprisonment for ordering the torture and dismissed him from the army. Therefore many a times its state agencies like the army and police that violate the rights of freedom of expression and association.

Views of human rights in general are wide and varied. Some of them dwell on the nature and character of human rights in general, others explore as to why human rights have not been realized to a full extent while others examine the role of the state and law in the curtailment of these rights and freedoms. A close look reveals that all these views are based on inter-relationship between the rights and freedoms of the individual on one hand and his duties to the society or state, this has occupied the thoughts of many scholars and politicians.

Bourgeoisie scholars have justified the idea of human rights and freedom and have demonstrated that the state is called upon to protect these rights to promote the welfare of individuals. They state that human rights should be limited for the sake of the common good for example Julius Nyerere once stated that man’s existence in society involves an inevitable conflict of his own

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<sup>31</sup> Tinyefuza V. A.G Constitutional Appeal No.1/2002

<sup>32</sup> Constitutional Petition no.6/2004

<sup>33</sup> 1995 constitution of Uganda

<sup>34</sup> Human rights practice in Uganda

desires and every individual needs freedom to pursue his own interests and inclinations but as soon as the individual becomes a member of society, he must sacrifice in the interest of society some of his private freedom he possesses which may include freedom of expression and association. By this he implies that these freedoms should be exercised as long as public interests are not put at stake.

Rights are not absolute as enshrined under article 43<sup>35</sup> and the individual must be restrained when his violating other people's rights. Every person has a right to express what they think for example through media, speech and also associate through political party activities like rallies, labour unions, civic organizations. However if he incites the public, he must be restrained. However sometimes the state works out of the law in restraining people's activities for example in 2014, Civil organization groups started a peaceful campaign named the "Black Monday" where they were to march peacefully on the streets of Kampala protesting the deteriorating economic and political environment of Uganda. Police on many occasions crushed there demonstrations even when they were peaceful. In *Onyango Obbo and Anor V. A.G*<sup>36</sup> S.50 of Penal Code Act was challenged after the appellants had been charged for publishing a story alleging that Uganda had been paid in gold to topple the Congo government. The provision was struck out for limiting the right of freedom of expression.

The Press and Journalist Act Cap105 was largely enacted to foster freedom of expression by providing for a regulatory framework for the press and media as well as the practice of the profession of journalism. In *Dr Paul Ssemwogerere and 5 Ors V. A.G*<sup>37</sup>. Apart from seeking cognizance of the movement as a political organization. Constitutional court held that the Political Party law placed severe restraint on the activities of political parties that it rendered political parties inactive and inoperative.

It has been stated that the respect for human rights are depicted by bourgeoisie ideologists as values supposedly protected by bourgeoisie state in the interests of all members of society. The aim here is to create moral prestige for the bourgeoisie state. After all as contradiction of

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<sup>35</sup> 1995 constitution of Uganda

<sup>36</sup> Supreme court Appeal no.21/2002

<sup>37</sup> Constitutional Petition no.5/2002

capitalist society deepen; it becomes particularly important for the bourgeoisie to manipulate public opinion skillfully.

From the above view therefore, it is illusory to expect freedom of expression and association to prevail in a society dominated by the capitalist interests except in so far as its expedient in enhancing exploitation by allowing concessions of truncated bourgeoisie rights and freedoms.

The attempted exercise of freedom of association has fallen victim of teargas throwing by police and other paramilitary groups for example a peaceful seminar organized by the Uganda Young Democrats (UYD) and the Foundation for African Development (FAD) in Tororo was violently dispersed by the police<sup>38</sup>: The NRM grows paranoid, stops FAD seminar, 19 June 1998.

The government has allowed freedom of expression in certain instances for example In December 2005, Dr. Besigye Kizza was quoted saying, “be firm the days of despotic regime are numbered”<sup>39</sup>. He repeatedly expressed himself during the recent 2015 campaign period calling on a defiance campaign and inciting people to defy police illegal instructions. With such a statement, one would not go away with it in Iddi Amin’s despotic regime.

At the heart of every incident that concerns the rights and obligations of individual lies a conflict sometimes muted and sometimes evident between competing interests<sup>40</sup>. That freedom of expression is thus against the security of the state as the right to privacy is against the rights of the vigilant press. That in expressing the state will of the dominant minority, law becomes the major force hindering freedom of expression as it is used to protect, strengthen and develop social relations profitable and expedient for the dominant class to oust and curb relations contradicting its will<sup>41</sup>.

The literature review therefore focuses on what other writers and researchers have said on the rights of freedom of expression and association as explained above.

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<sup>38</sup> Ssemwogerere P, Press statement

<sup>39</sup> Daily monitor 8<sup>th</sup> Dec. 2005 pg 1

<sup>40</sup> Harry Street: Freedom, the individual and the law penguin books, Australia 1963

<sup>41</sup> Jane Sayer: op cit pg 151s

### **1.11 Chapterisation**

Chapter one provides the introduction to the study by laying out the background, the problem statement, objectives for the study, significance of the study, methodology, research questions that will guide the collection of data and literature review. Chapter two examines the legal framework governing the rights of freedom of expression and association at all levels. The third chapter discusses the major means and forms of freedom of expression and association. Chapter four presents the challenges of freedom of expression and association in Uganda. The last chapter five provides conclusion, recommendations and suggestion resulting from the research.

## CHAPTER TWO

### THE LEGAL FRAME WORK GOVERNING THE RIGHTS OF FREEDOM OF EXPRESSION AND ASSOCIATION AT ALL LEVELS.

#### 2.0 Introduction

This chapter illustrates the legal framework governing the rights of freedom of expression and association on both the international and national platform. Although these rights have not fully been realized in Uganda they are recognized both internationally and domestically through different legal framework.

#### 2.1 The international and regional context

A number of initial bodies have been created to monitor human rights issues including violations of the rights of freedom of expression and association .some will receive applications if domestic remedies have been exhausted or do not exist.

Some of these bodies are not formally binding hence they cannot force a state to take a particular action.

However a decision by an initial body is authoritative, unequivocal and embarrassing making it difficult for a state to deny or ignore the issue.

In the face of the growing abuse of human rights, social movements and civil society organizations have come up with different mechanisms to challenge the abuse of rights of freedom of expression and association UHRC, eight annual reports to parliament, 2005, p.162<sup>42</sup>.

However the rights have limits Oloka-Onyango, J, Telling jokes<sup>43</sup> and upsetting the government; reflections on dhikuula, the Tinyefuza syndrome and the limits of free expression under ten years of National Resistance Movement (NRM)

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<sup>42</sup> UHRC eight annual report to parliament, 2005,p,162

<sup>43</sup> Olaka -onyango J. telling Jokes and upsetting

### **2.1.1 Universal declaration of human rights**

It was adopted in 1948 by general assembly of United Nations.

Article 19<sup>44</sup> states that everyone has the right to freedom of opinion and expression. This relates to freedom to hold opinions without interference, ideas through any media and regardless of frontiers. Article 20<sup>45</sup> Everyone has a right to freedom of peaceful assembly and association. Article 20(2)<sup>46</sup> no one may be compelled to join an association.

Therefore global movement and institutions have been set up to monitor and implement human rights worldwide<sup>47</sup>.

### **2.1.2 International Convention on Civil and Political Rights (ICCPR)**

Every one shall have the right to hold opinions without interference part III<sup>48</sup>.

Everyone shall have the right to freedom of expression which includes freedom to seek, receive and impact information and ideas of all kinds regardless of frontiers<sup>49</sup>. However it's subject to restriction<sup>50</sup>.

The right of freedom of association protects the right of all persons to group together voluntarily for a common goal and form and join an association e.g. non-governmental organization, political organization, trade union etc<sup>51</sup>.

Therefore state parties should sustain people of rules of freedom of association and expression equally without discrimination against opposition persons to the government as is common seen in Uganda.

Where appropriate, state should sensitize the population on how to exercise their rights of freedom of expression and association without breach in the law.

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<sup>44</sup> Article 19

<sup>45</sup> Article 20

<sup>46</sup> Article 20 (2)

<sup>47</sup> Beekman David and Arthur Simon (1999) grace at he table. Ending hunger in god's world, new York paulist press, at p 251

<sup>48</sup> Article 19 (1)

<sup>49</sup> Article 19 (2)

<sup>50</sup> Article 19 (3)

<sup>51</sup> Article 22 (3)

### **2.1.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)**

The covenant was adopted by the United Nations General Assembly in 1966 and came into force in 1976. It was purposely adopted to win state parties to direct their effort towards promoting the recognition of economic, social and cultural rights which include freedom of expression and association. It was ratified in Uganda in January 1987.

Everyone has the right to form trade unions of his choice for promotion of their economic and social interests article<sup>52</sup>

Nothing shall authorize armed forces or police of the state to take legislative measures which would prejudice the right<sup>53</sup>.

However the right can be limited for interest of public safety and security.

### **2.1.4 African Charter on Human and People's Rights (ACHPR)**

It was adopted in 1981 and enforced on 21/10/1986. It was adopted on the initiative of the organization of African unity (OAU).

Every individual has a right to receive information article<sup>54</sup> to express and disseminate his opinions within the law<sup>55</sup>.

Every individual shall have the right to free association provided that he abides by the law<sup>56</sup>. No one will be compelled to join an association<sup>57</sup>.

The competent authority should not override constitutional provision and international standards which include freedom of expression and association<sup>58</sup>.

For every right there is a remedy.

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<sup>52</sup> Article 8 (1)

<sup>53</sup> Article 8 (2)

<sup>54</sup> Article 9 (1)

<sup>55</sup> Article 9 (2)

<sup>56</sup> Article 10 (1)

<sup>57</sup> Article 10 (2)

<sup>58</sup> ACHPR resolutions 5(x) 1992 on the right of freedom of association

The rights are to be enforced through the following ways; Municipal and national courts. States have different legal systems however the states should create laws and institutions in any way it sees fit. The state should not persecute and harass journalists and opposition politicizations who publish statements article of the government. Twinomugisha, bk “how free is the media in Uganda? (1998) 4(2) *Aguast Africa.j. peace and rights* 170, 171-6<sup>59</sup> the international level. A number of initial bodies have been created to monitor rights including violations of the right of freedom of expression and association. The decision of the body should be enforced and executed on the state that ratified the charter.

## **2.2 The domestic context**

For the rights of freedom of expression and association to be realized, a legal framework should exist. The relevant laws deal with freedom of speech, press and other media, freedom to form and join associations or unions including trade unions, political and other civic organizations.

### **2.2.1 The 1995 Constitution of Uganda as amended**

Every person shall have a right to freedom of speech and expression which includes freedom of press and other media article 29 (1)<sup>60</sup> (a). freedom of association which shall include freedom to form and join associations or unions including trade unions , political and other civil organizations article 29 (1) (e)<sup>61</sup>.

Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civil organizations article 38 (2)<sup>62</sup> 1995 constitution.

The right and freedoms shall be respected, upheld and promoted by all organs and agencies of government and by all persons article 20 (2)<sup>63</sup>

However no person shall prejudice fundamental rights and freedoms of others or public interest article 43 1995 constitution

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<sup>59</sup> Twinomugisha, BK how free is the media in Uganda? 1998 4(2) *east Africa .j. peace and rights* 170, 171-6

<sup>60</sup> Article 29 (1)(a)

<sup>61</sup> Article 29 (1) (e)

<sup>62</sup> Article 38(2)(e)

<sup>63</sup> Article 20 (2)



### **2.2.2 The Penal Code Act, Cap 120**

Whenever the minister considers in the public interests, he may in his discretion prohibit by statutory order, the importation of all publications or any of them section 34 (1)<sup>64</sup>

Any person who imports, publishes the importation of which has been prohibited under section 34 commits an offence section 35 (1)<sup>65</sup> therefore this law limits the rights of freedom of expression.

Any person who by print writing, painting or by any means otherwise than solely by gesture, spoken words or other sounds unlawfully publishes any defamatory matter concerning another person commits a misdemeanor or termed as libel section 179 Penal Code Act, 120<sup>66</sup>.

Where publication is absolutely privileged, it is immaterial for the purpose of this chapter whether the matter is true or false and whether it is not published in good faith but nothing shall exempt a person from liability to a person from any liability to punishment under any other chapter of this section 183 (2)<sup>67</sup> Penal code act 120. The vagina monologues saga and free expression in Uganda exploring the limits (2005)<sup>68</sup> 11(2) East Africa. J peace and hrgts.

From the above therefore, it is clear that the right of freedom of expression and the protection accorded under this law is to a specific kind of people or the government body or agents.

### **2.2.3 Computer Misuse Act, 2011**

Except for purposes of this act or any presentation for an offence, a person who has access to any electronic data, record, book etc shall not disclose to any other than that for which he or she obtained<sup>69</sup>. This limits freedom of expression.

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<sup>64</sup> Section 34 (1)

<sup>65</sup> Section 35 (1)

<sup>66</sup> 179 penal code act, 120

<sup>67</sup> Section 183 (2)

<sup>68</sup> Exploring the limits (2005)

<sup>69</sup> Computer Misuse Act, 2011

#### **2.2.4 Public Order Management Act, 2013**

An organizer of a public meeting shall give notice in writing signed by the organizer or his agent to the authorized officer of his intention to hold a public meeting<sup>70</sup>. <sup>71</sup>However an officer while preventing the public gathering will have regarded 2<sup>nd</sup> rights and freedoms of the persons Therefore freedom of association whether labor or political is limited since one has to seek permission from the police officer.

#### **2.2.5 The Press And Journalist Act, Cap 105.**

A proprietor and editor of a mass media is under a duty to ensure that what is published is not contrary to public morally and is responsibly reported within a social context section 6 therefore expression is limited to public morality. Upon what meant doth this is our democracy feed?" asks Herber Brucker a newspaper editor noted. Burns and Peltason government by the people 8<sup>th</sup> edition prentice hall inc. new jersey p. 150<sup>72</sup>. Leaders like Museveni acknowledge to personally benefit from a free press<sup>73</sup>.

#### **2.2.6 The Electronic Media Act, Cap 104**

First schedule<sup>74</sup> prohibits broadcast of programs that are contrary to public morality, promote a culture of violence and ethical prejudice among the public and are not in compliance with existing laws and are not district, on 26<sup>th</sup> may Dr. kizza Besigye was put off air while appearing on a talk show on radio kitti on the instruction of the Resident District Commissioner<sup>75</sup>.

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<sup>70</sup> Section 5(1)

<sup>71</sup> Section 8(3)

<sup>72</sup> Burns and peltason government by the people 8<sup>th</sup> edition prentice hall inc new jersey .p. 150.

<sup>73</sup> Yoweri Museveni, Sowing the mustard seed: The struggle for freedom and democracy in Uganda (London: Macmillan, 1997)16

<sup>74</sup> First schedule

<sup>75</sup> New vision 28<sup>th</sup>/05/07

### **2.2.7 Labour Unions Act, 2006.**

It is created by employees for the employees for the purpose of representing the rights and interest of employees section 2 labour unions act, 2006<sup>76</sup>

Therefore laborers are allowed to associate to enforce rights.

### **2.2.8 The Political Parties and Organizations Act, 2005**

A political party may be founded in Uganda

Section 3 Political Parties and organization Act 2005<sup>77</sup>. The freedoms to assemble and associate do not only concern the right to form a political party but also guarantee the right of such a party once formed to carry on its political activities freely Dr Paul Ssemwogerere and 5 ors V A.G const petition no.5/2002<sup>78</sup>.

However a member of police force, UPDF, traditional leader is not allowed to express themselves through a political party or associate themselves with politics section 16 Political Parties and Organization Act 2005<sup>79</sup>.

### **2.2.9 The Non Government Organizations Bill, 2015**

It seeks to provide a conducive and enabling environment for the NGO sector which produces advocating for freedom of expression and association

The NGO bill no. 10 of 2015, memorandum and principles of the bill no.1<sup>80</sup>.

However there is a global trend of regressive legislation and general civic space as per report entitled Defending civil society, second edition, June 2012<sup>81</sup>.

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<sup>76</sup> Section 2 labour unions act, 2006

<sup>77</sup> Section 3 political parties and organization act, 2005.

<sup>78</sup> Const. petition no.5/2002.

<sup>79</sup> Section 16 Political parties and Organization Act ,2005

<sup>80</sup> The NGO bill no. 10 of 2015

<sup>81</sup> Defending civil society, second edition, June 2012

## **Conclusion**

Uganda has both international and domestic legal framework providing and regulating the rights of freedom of expression and association. In spite the notable strides that the legal framework takes to promote the rights, some of these provisions are problematic and regressive towards the promotion of the rights.

## CHAPTER THREE

### MAJOR MEANS AND FORMS OF FREEDOM OF EXPRESSION AND ASSOCIATION.

#### 3.0 Introduction

Examination is made to appraise the extent to which the forms of expression and association are promoted and abused in Uganda. This is influenced by the political social and economic situation.

#### 3.1 The press and other media

Freedom of expression extends to the press and media a process that occurred long prior to the 1995 constitution. This has been evident in the mushrooming of privately owned radio and television stations and news papers. The enactment of The Press and Journalists Act 105 was largely to foster freedom of expression proceeding for a regulatory framework for the press and media as well as the practice of journalism. Press and Journalist Act, 105 – Preamble<sup>82</sup>.

Every person shall have right to freedom of expression which shall include freedom of press and other media Article 29(1) (a) 1995 constitution<sup>83</sup>. Facts are brought into the minds of its citizens by press, radio and supplementary media of press, radio and supplementary media of information Burns and Peltason government by the people 8<sup>th</sup> edition practice hall inc. New Jersey P. 150<sup>84</sup>.

In spite of the liberalized media and press, the exercise and enjoyment of freedom of expression has since 1995 remarked hampered by a number of laws. No one shall prejudice the fundamental or other human rights and freedom of others or the public inters article 43(1) 1995 constitution<sup>85</sup> in that regard, although the government repealed key restrictive law of the colonial period, it retained the penal law provisions on among others publication of false news, libel, defamation etc. any person who prints, publishes reproduces commits an offence and is liable to

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<sup>82</sup> Press and Journalist Act, cap 105-preamble

<sup>83</sup> Article 29 (1) (a) 1995 constitution.

<sup>84</sup> Burns and peltason: government by the people 8<sup>th</sup> edition prentice hall luc. New jersery .p. 150

<sup>85</sup> Article 43 (1) 1995 constitution

imprisonment section 40 penal code act 120<sup>86</sup>. Nearly every year for the last ten years the government has found reason to quarrel with the Daily monitor newspaper. It has sought court injunctions to stop publication on contents of some documents<sup>87</sup>.

Although the press and journalists Act repealed repression laws, it nonetheless sought to provide for supervision and control of the profession of journalism. The practicing certificate of journalism can be suspended by media council up to six months if a journalist is guilty of professional misconduct section 28(3)

The press and Journalist Act, 105<sup>88</sup>: The administrative measures of restricting freedom of press include economic blockades, censorship and search and seizure which is done more by government and media council. In 2002 the monitor independent news paper was shut down temporarily<sup>89</sup> 2005, a privately owned radio station KFM was temporarily closed for allowing speculation on its broadcast about the plane crash of John Garang the leader of SPLM , Daily Monitor by Masitko, 11<sup>th</sup> Aug 2005 page 2<sup>90</sup> with red pepper and monitor publications were shut allegedly having a letter from Sejusa.

Every one shall have freedom of expression which shall include to seek, receive, import information either orally or any other media of their choice Article 19 of International Covenant on Civil and Political rights<sup>91</sup>. Therefore the right is recognized by international instruments however its limited if it is against public interest Article 20 ICCPR<sup>92</sup>. A cantankerous press, an obstinate press must be suffered by those in authority in order to preserve the even greater values for freedom of expression Nkalubo Mugerwa: The Act of Uganda on the press transition 1971<sup>93</sup>.

The biggest setback for press freedom since 1995 has primarily related to the use of the penal provisions on sedition and publication of false news by government to harass and persecute

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<sup>86</sup> Section 40 penal code act,120.

<sup>87</sup> Uganda: 2004 World Press Freedom Review

<sup>88</sup> The press and journalists act 105

<sup>89</sup> In 2002 the monitor independent news paper was shut down temporarily.

<sup>90</sup> Daily Monitor By Masiko 11 Aug 2005 Pg 2

<sup>91</sup> Article 19 of international covenant on civil and political rights.

<sup>92</sup> Article 20 ICCPR

<sup>93</sup> Nkalubo mugerwa the act of uganda on the press transition 1971

journalists, presenters and opposition politicians Twinomugisha, BK, “How free is the media in Uganda (1998)<sup>94</sup>. This hardening in the governments’ attitude towards the media has been synonymous with the movement’s essentially monolithic character and increased intolerance to alternative views and opinions that differed from the established dialogue. This is evident in the furore over Tinyenfunza’s testimony before a parliamentary committee in 1996 Oloka-Onyango, J, “ Telling jokes and upsetting the Government: Reflections on Dhikula” the Tinyenfunza syndrome and the limits of free expression under ten years of NRM<sup>95</sup>. It is also evident in the common harassment of opposition leaders especially Kizza Besigye who was several times arrested towards the 2016 elections and detained under house arrest for over 30 days.

Ultimately the increased intolerance of government towards negative press has been manifested in all manner of arrests, interrogations and often abandoned prosecutions of journalists, reporters and presenters such as Haruna Kanabi’s “Rwanda as 40<sup>th</sup> district of Uganda” story in December 1995 for which together with Njiku he was prosecuted and convicted of publication of seditious material Uganda V Haruna Kanabi and Anor Crim Case No U997/1995<sup>96</sup>. The Congo gold story for which Onyango Obbo and Mwenda were charged with publication of false news in September 1997 Uganda V Onyango – Obbo & Anor Crim case No. U2636/1997<sup>97</sup>.

The intolerance to press and media reporting has been reflected in other pieces of legislation for example The Anti-terrorism Act 2002 it’s an offence to publish and disseminate news or materials that promote terrorism and the person who does the same is to suffer death without the option of imprisonment section 9 (1)<sup>98</sup>. Publish is not defined and causes difficulty for example in January 2004, upon allegedly finding telephone contacts of two journalists upon the body of a commander in the LRA , the army promptly accused the two journalists of being rebel

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<sup>94</sup> Twinomugisha BK how free is the media in uganda (1998)

<sup>95</sup> Olaka onyango j telling jokes and upsetting the government reflections on dhukula the tinyefuza syndrome and the limits of free expression under ten years of NRM.

<sup>96</sup> Crim case No U1997/1995

<sup>97</sup> Crim case no u 2636/1997

<sup>98</sup> Section 9(1)

collaborators and they were to answer the law. Uganda<sup>99</sup> Journalists react angrily to accusations of being rebel collaborators , 30<sup>th</sup> Jan 2004 IRIN, Uganda<sup>100</sup>.

Crucially the anti- terrorism law can be the basis for an unjustified intrusion and limitation upon exercise of freedom of expression Semuju, IN, "Terrorism law spells doom for press freedom in Uganda" (2002) Vol. V, No.1 your rights 19.<sup>101</sup>

The use of censorship is evident in the media councils banning of the "vagina monologues' play in February 2005 . This was the council bowing down to pressure from government to ban the staging of the play primary on account of its title and content. In the matter of a play "The vagina monologues' ruling of the media council, 16 Feb., 2005 PP. 2-6<sup>102</sup>.

The suppression of media and press freedom has been accentuated by the lack of judicial activism on the part of courts Makubuya, AN, "The Vagina monologues" saga and free expression in Uganda<sup>103</sup>.

However court has sometimes promoted the right. Supreme court unanimously found that the law severely restricted the exercise of the freedom of expression and the press and declared provisions on false news unconstitutional Onyango Obbo & Anor V A.G const. Appeal No. 2/2000<sup>104</sup>. In the wake of the supreme court decision, the lower courts took cue in upholding the freedom of expression. In Uganda V Frank Nyakairu and 2 ors, Crim case No. 1600/2002<sup>105</sup>. The accused were charged with publication of information prejudicial to security. The trial magistrate examined the ingredients of the charge. The penal law provision was declared to provide for a speculative offence , thus the charges were dismissed.

Even after the supreme court ruling government still violates freedom of expression through other means. In Kitgum district, on 26<sup>th</sup> may Dr Besigye was put off air while appearing on a

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<sup>99</sup> Uganda

<sup>100</sup> IRNI uganda

<sup>101</sup> Semuju IN uganda law spells doom for press freedom in uganda (2002) vol V No 1 your rights 19

<sup>102</sup> In the matter of a play the vagina monologues rulling of the media council 16 feb 2005 pp 2-6

<sup>103</sup> Makubuya AN the vagina monologues saga and free expression in uganda

<sup>104</sup> Const appeal No. 2/2000

<sup>105</sup> Crim case no 1600/2000



radio talk show on radio kitti allegedly on the institution of the Resident District Commissioner  
New Vision 28/05/2007<sup>106</sup>

Therefore there is interference with the press and media in Uganda through unjustified restrictions of media and press freedom which do not argue well with the principle and practice of democracy.

### 3.2 Speech and Opinions

It is only through uncensored expression of opinion that grants a representative government elections, separation of power are meaningless unless each person has the right to speak and judge himself. Mills on liberty published in 1859 argued that an opinion only carries intrinsic value to the owner of that opinion thus silencing the expression of that opinion is an injustice to basic human right<sup>107</sup>.

Every person has a right of freedom of speech and belief article 29 (1) (a) 1995 constitution<sup>108</sup>. Freedom of expression entails the right to hold opinion without interference and the rights to impart , seek and receive information and ideas regardless of form, content or source article 19 International Covenant on Civil and political rights<sup>109</sup>. However the right is limited is its in the interest of public security.

In order for individuals to fully realize their right to freedom of expression, individuals and media outlets must be able to function freely without unreasonable governmental interference even in the case of government owned media outlets.

Everyone has the freedom to hold opinions without interference through any media and regardless of frontiers article 19 The Universal Declaration of Human Rights<sup>110</sup>. During the past regimes, the country experienced high levels of dictatorship where opinions were not tolerated if

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<sup>106</sup> New vision 28/05/2007

<sup>107</sup> Challenges on freedom of expression , Assembly and Association in Africa-Sarah Bireete December 9,2014

<sup>108</sup> Article 29(1) (a) 1995 constitution

<sup>109</sup> Article 19 international covenant on civil and political rights

<sup>110</sup> Article 19 the universal declaration of human rights

they were against the government. During obote regime, Mayanja was implicated in an article which he wrote that tribal consideration were responsible for holding up judicial appointments and offices. As a result, editor of transition Rajat Noegy and Mayanja were arrested and charged with treason. The magazine ceased publication<sup>111</sup>.

However with the 1995, there has been improvement of expression. Dr. Besigye was quoted saying "Be firm the day of despotic regime are numbered" Hilary Kirya and Maurice Okele New vision 1<sup>st</sup> December 2005<sup>112</sup>. Besigye together with other opposition members have continuously hurled insults to government and have in many cases not been charged because they have freedom of speech and opinion.

In conclusion, here there is persistent economic, political and social crisis, increased political repression among others as is for the case of Uganda, there cannot thrive the right of free speech and opinion.

### 3.3 Freedom of thought

It is also called the freedom of conscience of an individual to consider a fact, viewpoints. Every person shall have freedom of thoughts, conscience and belief which shall include academic freedom article 29(1) (b) 1995 constitution<sup>113</sup>

Justice B Cardozo observed that the freedom of thought is the matrix , the indispensable condition of nearly every other form of freedom Palko V Connecticut (137) us Supreme Court<sup>114</sup>.

In the run up to the referendum in 2000, one Kyeyune was charged before a magistrate with offences under the referendum law for his act in mutilating the movement Bus poster, the court held that the accused had been exercising his freedom of conscience under article 29(1) 1995 constitution. Mugaga, H, Movement poster man in Jail The monitor, 16<sup>th</sup> May 2000<sup>115</sup>

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<sup>111</sup> Mayanja and Consolidated Printers V. Uganada Crim. Case no.7995 of 1968

<sup>112</sup> Hillary kirya and Maurice okele New vision 1<sup>st</sup> December 2005

<sup>113</sup> Article 29 (1) (b) 1995 constitution

<sup>114</sup> Palko v connecticut (137) us supreme court

<sup>115</sup> Mugaga h movement poster man in jail the monitor 16<sup>th</sup> may 2000

### 3.4 Freedom to form Political Parties

It is part of freedom of association and is one of the cornerstone upon which the very existence of democratic society rests. Freedom of expression is also manifested through political parties European Convention on Human Rights article 11<sup>116</sup>. In Uganda, association was suppressed before the 1995 constitution, however prior to 1995 constitution , so called “gentleman’s agreement” to suspend political party activities infavor of non- partisan broad based government of movement which would give way to severe restrictions upon the freedoms of association . The movement political system was institutionalized by law and later given a kiss of life by the seriously flawed referendum in 2000 Mugaju J & J Oloka-Onyango (Eds), No party Democracy in Uganda<sup>117</sup>.

There was concern over the true nature and character of the movement, so conveniently characterized as a “political party” under the constitution by government constraining political space Human Rights watch hostile democracy. The movement system and political repression in Uganda, New york , October 1999. However courts have enforced freedom of political parties, the right to form a political party guarantees the right of such a party once formed to carry on its political activities freely. Dr Paul Ssemwogerere and 5 ors V A.G const. petition No. 5/2002<sup>118</sup>.

However activities of political parties have been restricted through the public order management Act, 2013. The IGP shall have the power to regulate the conduct of all public meetings and assemblies. This is a re-enactment of S.32(3) of the Police Act which was outlawed constitutional petition No5/2005. Article 92 of constitution prohibits passage of legislation to alter the decision or judgment of any court as held in Muwanga Kivumbi V A.G.

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<sup>116</sup> European convention on human rights article 11

<sup>117</sup> Mugaju j joloka-onyango (eds) no-party democracy in uganda

<sup>118</sup> Const petition no.5/2002

### 3.5 Trade Unions

The right to freedom of association protects the right of all persons to group together voluntarily for a common goal to form and join an association which may include a trade union. Article 8 International Covenant on Economic , Social and cultural rights<sup>119</sup>.

However no individual has a right to join an association if members expel him article 20 Universal Declaration of Human Rights<sup>120</sup> however in relation to trade unions, if the decision has adverse employment consequences, any such decision must not be unreasonable, International Labour Organisation Convention No. 87<sup>121</sup>.

Employees shall have the right to organize themselves in any labour union and may assist in the running of the union, bargain collectively on withdraw and take industrial action section 3 Labour unions Act 2006<sup>122</sup>. However trade union activities will be limited if they are against public interest.

All members of the declaration have an obligation to promote and realize freedom of association and the effective recognition of the right to collective bargaining The 1998 ILO declaration on Fundamental Principles and Rights at work

### 3.6 Civil Society Organizations

This also involves the right to participate in the affairs of government article 38 1995 constitution<sup>123</sup>. It involves the right to engage in the conduct of public affairs to check on the excesses of government.

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<sup>119</sup> Article 8 international convention on economic, social and cultural rights

<sup>120</sup> Article 20 universal declaration of human rights

<sup>121</sup> International labour organization convention no. 87

<sup>122</sup> Section 3 labour unions act 2006

<sup>123</sup> Article 38 1995 constitution

In Conclusion therefore, whereas there is a legal framework providing for freedom of expression and association in Uganda, there is limited enforcement as the laws that grant the rights are the same laws that are manipulated by government to frustrate the rights.

## CHAPTER FOUR

### CHALLENGES IN THE ENFORCEMENT OF THE RIGHTS OF FREEDOM OF EXPRESSION AND ASSOCIATION IN UGANDA

This chapter discusses the challenges in enforcement of the rights of freedom of expression and association. It looks at the instruments and mechanisms that the state employs to control the rights of freedom of expression and association.

#### 4.0 Introduction

Laws are not a neutral category of social control but a class instrument and benefit in the hands of the dominant classes<sup>124</sup>. The purpose of law is to protect, strengthen and develop social relations profitable and expedient for the dominant class to oust and curb relations contradicting its well.

The following are the challenges in enforcing freedom of expression and association in Uganda.

#### 4.1 The rights are limited only to the extent of demonstrably justifiable society<sup>125</sup>.

However justifiable is only at the mercy of police who in most cases limit opposition activities without justification<sup>126</sup>.

Any person who wages war against the Republic of Uganda or unlawfully causes or attempts to cause death of the president commits an offence called treason and shall suffer death<sup>127</sup>. Police has on several occasions charged government opponents of sedition. Police searched FDC offices over treason to establish if the FDC printers were used to print defiance campaign material<sup>128</sup>. This clearly controls freedom of expression which is a challenge to freedom of expression and association.

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<sup>124</sup> Karl Marx, *Preference to a critique of political economy*, Moscow publishers 1980p.362.

<sup>125</sup> Article 43 1995 Constitution of Uganda.

<sup>126</sup> Sarah Bireete-challenges of freedom of speech, *Assembly and Association in Africa*, 9 December 2014

<sup>127</sup> Section 23 The Penal Code Act,120

<sup>128</sup> 11 June, 2016 Daily Monitor

## 4.2 Defamation

Defamatory matter is a matter likely to injure the reputation of any person by exposing that person to hatred, ridicule or likely to damage their reputation<sup>129</sup>. This has to be in the esteem of right thinking members of society<sup>130</sup>. A person publishes a libel if he causes the print, writing etc which is written and in permanent form<sup>131</sup>.

However where a statement is oral i.e spoken, it becomes slander defamation<sup>132</sup>. The second defendant made statements that meant that the plaintiff was corrupt and dishonest. Court held in favour of the plaintiff and plaintiff was awarded claims. Police raided Uganda's leading Independent Newspaper and disabled its printing press after it published a letter about a purported plot to stifle allegations that Uganda president Yoweri is grooming his son for power, a senior editor said<sup>133</sup>.

Therefore defamation controls freedom of speech and therefore a challenge to people who want to express their views. Mill argued that truth drives out falsity, therefore free expression of ideas true or false should not be feared<sup>134</sup>.

## 4.3 Sedition

This offence basically serves to protect the state which state has evoked to delimit the individual's right to freedom of expression<sup>135</sup>. It was held that the fact of publication and not the attitude of the publisher is the evil the law is directed. In such a case genuine participants in political affairs are incapacitated if whatever they publish is against the interests of the state.<sup>136</sup>

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<sup>129</sup> Section 180 Penal Code Act, 120

<sup>130</sup> Slim V. Stretch

<sup>131</sup> Section 181 Penal Code Act, 120

<sup>132</sup> Twinomujuni V. A.G and Anor

<sup>133</sup> January 11, 2016 "Keep the people uninformed"

<sup>134</sup> Mills on Libert, published in 1859

<sup>135</sup> Section 39 Penal Code Act, 120

<sup>136</sup> Masembe and anor V. R (1948) 6 ULR 195

#### **4.4 Courts of Justice**

This is through contempt of court. This sanctions any act which lessens the authority of the state. During 2016 presidential elections petition, supreme court threatened any person who was to publish or talk about the petition. Government has on several occasions used court to abuse the rights of expression and association. During the 2016 budget reading, president Museveni was quoted to have said that he has no powers to free Besigye but has powers to arrest him<sup>137</sup>.

#### **4.5 Publication of false news**

It controls speech through providing that the minister responsible may upon occurrence of any public emergency or in the public interest bring the Act into operation by proclamation or may suspend the operation of any newspaper<sup>138</sup>.

This is a challenge to free media expression as its expression is only limited to the views of the incumbent.

#### **4.6 Holding illegal public gathering.**

An organizer of a public meeting shall give notice to the authorized officer to be able to carry out a public meeting<sup>139</sup>. However the law is unevenly implemented for example in the run-up to the 2016 general elections there were numerous accusations of partisan policing where police prevented opposition gatherings while protecting activities of the incumbent. Opposition were arrested on several occasions including the candidates Mbabazi Amama and Kizza Besigye<sup>140</sup>.

Therefore first requesting for permission to hold a public gathering is a challenge since permission is only granted mostly to the incumbent side. Through an ex parte judgment in the constitutional court, media coverage on opposition defiance activities were banned<sup>141</sup>. However government has abandoned a case against FDC defiance activities without giving reason. This

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<sup>137</sup> 11 June, 2016 Daily Monitor

<sup>138</sup> The Press and journalist Act

<sup>139</sup> Section 5, Public order Management Act, 2013

<sup>140</sup> Human Rights Watch; World Report 2016

<sup>141</sup> Daily Monitor, 6 May 2016



means the party is free to resume its proclaimed weekly prayers and holding peaceful demonstrations<sup>142</sup>

Inspector General of Police shall have the power to regulate the conduct of all public meetings and assemblies. This is a re-enactment of section 32(3) The Police Act which was outlawed in *Muwanga Kivumbi V. A.G*<sup>143</sup>. This contravenes prohibition of passage legislation to alter the decision of any court<sup>144</sup>.

#### **4.7 NGO Amendment Bill,2015**

The national objectives and directive principles of state policy, political objectives, and civic organizations shall retain autonomy in pursuit of their declared objectives issues<sup>145</sup>. However a NGO bill was passed by parliament in November 2015. It includes vague and undefined “special obligations” of independent groups, provisions that could make organizations vulnerable<sup>146</sup>.

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<sup>142</sup> Daily Monitor, 3 June 2016

<sup>143</sup> Constitutional Petition NO.5/2005

<sup>144</sup> Article 92 1995 Constitution of Uganda

<sup>145</sup> 1995 Constitution of Uganda

<sup>146</sup> Human Rights Watch; World Report 2016

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.0 Introduction**

This chapter presents the conclusion, recommendations and summaries of the study. Free expression and association is a necessary requirement of the democratic process. It is the means of assuring the individual a degree of personal fulfillment enabling a person to realize his or her potentialities as a human being. It is necessary in order to allow all members of society to participate in public decision making furnishing them with information and ideas vital in reaching a common judgment.

#### **5.1 Conclusion**

Laws that regulate the rights of freedom of expression and association are in most cases manipulated in favour of government. Media monopolies and security impositions are yet another way in which the rights are restricted.

Power monopolies created by media council which is the regulatory body for expression do not serve the public interest. By appointing the minister of information and assigning him the role to appoint the media and broadcasting councils deprive the council of its independence implying that the executive impinges on the rule of law. The police suppression of public gatherings through the disguise of enforcing the Public Order Management Act, 2013 restricts political, civil society and trade union associations.

Therefore citizens should be free to express themselves and associate accordingly without being constrained by the likelihood of punishment. The laws regulating expression and association ought to be liberalized and should only be resorted to during periods national emergency.

Human Rights Watch conducted over 170 interviews in eight (8) towns in Uganda in the two months before the official presidential campaigns began on November 9, 2015. The report

documents threats to free expression and association particularly government and ruling NRM officials to criticism of government by the media and civil society groups in Uganda<sup>147</sup>.

## **5.2 Recommendations**

There should be unrestricted broadcasting, press and associations with no state censorship. People should be allowed to speak out as they observe instead of being prosecuted. On October 30<sup>th</sup>, 2015 a NGO leader in Fort Portal stated that what happens is that now people are in a state of self censorship. They know things are wrong but do not want to get in bad terms with government<sup>148</sup>.

There should be a system of checks and balances which should include adequate limitation of state power in curtailing free expression and association. It is therefore suggested that the human rights commission should be more concerned with interests of human rights than with state interests.

Recognition of rule of law. There is need for the executive to recognize the rule of law while executing its assignments. There is need to sensitize and educate the executive on constitutional issues particularly the information ministry and police. This will help to define the confines of power that the law accords to the executive.

Freedom comes from responsibility. Certain limitations are in public interest however they must be reasonable and justifiable in a free and democratic society. They must be clearly and narrowly defined in order to avoid the possibility of abuse.

Access of information should be made a public right either through freedom of expression or association of any disclosure where individuals should have a right. Legislation needs to be adopted to be guided by the principle of maximum disclosure where individuals should have a right to appeal against a refusal to disclose information to an independent administrative body<sup>149</sup>.

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<sup>147</sup> "Keep the people uninformed" January 11, 2016

<sup>148</sup> "Keep the people uninformed" January 11, 2016 on intimidation of media, civic groups

<sup>149</sup> Waliggo (2007) Op cit 25

Patriotism should be encouraged through activities that promote patriotism eg fighting corruption, providing public services etc. Without genuine patriotism in the hearts and minds of citizens, abuse of media freedom and public gatherings is likely to continue aiming at undermining the country's struggles for justice, human rights and peace.

Government should facilitate enjoyment of the rights. The enjoyment of freedom of expression and association is not a favour that any government grants its citizens. Government is under obligation to facilitate the enjoyment of the rights as provided by national and international instruments. Rules that regulate the rights need to be carefully designed without providing government with an opportunity to interfere with freedom of expression and association.

### **5.3 SUGGESTIONS FOR FUTURE RESEARCH**

After carrying out the research study on freedom of expression and association in Uganda, Kampala, I suggest that the government needs to operationalise the law without discrimination to any party.

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