

THE EFFICACY OF MEDIA FREEDOM IN UGANDA POST 1995 TO PRESENT

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**A RESEARCH DISSERTATION SUBMITTED TO THE FACULTY OF LAW AS A
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DECLARATION

I Musambai Eric Analo, hereby declare that this dissertation is my original work undertaken after carrying out research except where acknowledged, and that it has never been submitted to any institution of learning for any award.

Signature.....

Date.....21/12/2010.....

APPROVAL

This is to certify that this dissertation has been submitted for examination with my approval as university supervisor.

Signed *Nyanielita*

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Date *21/12/2010*

Supervisor

DEDICATION

This work is dedicated to my dad Patrick Analo Osede who has been by my side throughout my academics: financially, emotionally and morally.

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I extend my sincere appreciation to all my classmates and friends and all my relatives. I appreciate you all

LIST OF STATUTES

NATIONAL LAWS

The Constitution of Republic of Uganda 1995

Newspaper and Publication Act Cap 305

Penal Code Act Cap 120

Electronic Media Act Cap 104

The Press and Journalist Act Cap 105

Uganda Communications Act Cap 106

INTERNATIONAL INSTRUMENTS

International Covenant on Civil and Political Rights (ICCPR)

African Charter on Human and Peoples' Rights (ACHPR)

LIST OF CASES

Charles Onyango Obbo and Andrew Mwenda Vs Attorney General, Supreme Court of Uganda,
Constitutional Appeal No. 2 of 2002

Charles Onyango Obbo and Andrew Mujuni Mwendwa Vs AG Constitutional petition No 15 of
1997

In the Matter Of THE SUSPENSION OF THE BROADCASTING LICENCE OF KFM LTD No
1 of 2005

Uganda Vs Haruna Kanabi Criminal case No 997/1995

Uganda Journalist Safety Committee & Another Vs AG, Constitutional petition, No 6 of 1997,

ABBREVIATIONS

CBS:	Central Broadcasting Station (CBS)
FHRI:	Foundation for Human Rights Initiative
ICCPR:	International Covenant on Civil and political Rights
NGOS:	Non governmental Organizations
NRM:	National Resistance Movement
RDC:	Resident District Commissioners
U.C.C:	Uganda Communications Council
UN:	United Nations
U.T.V:	Uganda Television
WBS:	Wavah Broadcasting Station

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CHAPTER ONE:

INTRODUCTION

1.1 Background

The 1995 constitution of the Republic of Uganda confers on the rights of individual to be inherent rather than being granted by the state. Among the provisions includes the bill of rights, which provides for the provisions of freedom of speech and expression in **Article 29 (1) (a)**¹ which include press and other media. Medial freedom despite being a cherished right, it is different from other liberties of the people in that it is both individual and institutional. It applies not to just a single person's right to publish ideas, but also the right to print and broadcasting media to express political views and to cover and publish news.

Freedom of media is a cardinal pillar of democracy that should be protected at all costs because an informed population is crucial to a functioning democracy. The Ugandan Supreme Court recognized the relationship between free speech and democratic governance in **Obbo & Mwenda v. Attorney-General**², a landmark 2004 case. Deeming the crime of "publishing false news" unconstitutional, **Justice Mulenga** stated that "*A person's expression or statement is not precluded from constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant. Everyone is free to express his or her views. Indeed the protection is most relevant and required where a person's views are opposed or objected to by society or any part thereof, as "false" or "wrong." ... A democratic society respects and promotes the citizen's individual rights to freedom of expression because it derives*

¹ 1995 Constitution of Republic of Uganda

² Charles Onyango Obbo and Andrew Mwenda v. Attorney General, Supreme Court of Uganda, Constitutional Appeal No. 2 of 2002, February 11, 2004.

a benefit from the exercise of that freedom by its citizens. In order to maintain that benefit, a democratic society chooses to tolerate the exercise of the freedom even in respect of 'demonstrably untrue and alarming statements,' rather than to suppress them."

The media provides a public sphere on which all citizens are free to air their views with no interference and no fear. The media also functions as the watchdog of the society holding the three arms of the government that is; the executive, parliament and the judiciary hence its independence is vital for a just society.

It is through the media that a number of issues are made known to the people, thus keeping them abreast with the various occurrences. In a democratic society which is based on the respect for the rule of law, freedom of press without interference is not a privilege as the antidemocrats may think but an organic necessity in the society. Nevertheless where the rule of law is not adhered to by antidemocratic forces, with the aim of achieving their own individualistic goals freedom of the press is muzzled through barbaric laws which date back in the colonial era.

The NRM government since coming into power has permitted many media houses to operate because it is the major mode of media communication, however on the other hand it has put into place repressive laws through government regulatory bodies such as the **Media Council**, established by the Press and Journalist Act, the **Broadcasting Council** established by the 1996 Electronic Media Act, **Uganda Communications Council (UCC)** established under the Uganda Communications Act, **The Media Center**, created under the office of the president in 2005, and lastly **The Police Media Crime Department**, Hence it can clearly be said that the government grants the freedom of press on one hand and takes it with the other hand through the repressive laws.

However media freedom is not just about the absence of political interference but also independence from other stake holders like the multinational corporation and the business world. Nevertheless the media is not always professional and sometimes the press may get it wrong but above all its independence is vital.

With almost 12 newspapers,14 televisions and hundreds of radio stations and numerous magazines, all reflecting various political, social and economic views, Uganda has made a milestone on media freedom and it is everybody's responsibility to protect this. This is especially crucial if the small media houses that play a key role in disseminating information to every corner of this nation are to survive. Thus for Uganda to continuously promote the freedom of press all the stake holders have to excise their powers accordingly.

1.2 Statement of the problem

Despite the 1995 Constitution of the Republic of Uganda in **Article 29 (1) (a)** providing for the freedom of speech and expression, which includes freedom of press and other media, there are still a number of challenges facing media freedom in Uganda. This can be attributed to a number of factors, majorly the government lack of tolerance to opposition views especially from the ever critical media. The government counters such views of the press by intimidation of journalists, either through physical violence, imposing criminal charges and imprisonment of journalist, temporal closure of radio stations without due process of law and other forms of repression.

Several of Uganda's national laws in regard to media freedom are inconsistent with its obligations under international law, and the government exploits vagueness in national laws to suppress critical appraisals. It does so by charging journalists with crimes and granting media

regulatory bodies' broad powers to restrain speech through the revocation of licenses and other forms of control or regulation over the media.

1.3 Purpose of the study

The major purpose of this research will be to examine and analyze the effectiveness of media freedom in Uganda post 1995 to the present state and the challenges facing the media at large in regard to the constitutional right of the freedom of expression.

1.4 Research Questions

1. What is media freedom in relation to freedom of speech and expression?
2. How has media freedom been violated in Uganda?
3. What is the cause of such violation of media freedom?
4. How can media freedom be enhanced?

1.5 General research objectives

The thrust of this study is to analyze the legal and other constraints on the exercise of the right to freedom of expression as it relates to Uganda media with the view to identify the anomalies that exist in practice and under the law. On the basis of this, the study will to put in place the recommendations to remedy the shortcomings manifested in the democratic right to freedom of expression and the press in Uganda.

1.6 Scope of the study

The study is set to cover efficacy of media freedom in Uganda in relation to the right to freedom of speech and expression. The period that will be covered within the study will be between the 1995 to the present however the historical analysis of media freedom in Uganda will also be examined. The 1995 constitution of the Republic of Uganda will be the basis for the

analysis of the efficacy of media freedom in Uganda in relation to freedom of speech and expression.

1.7 Significance of the study

The study is set out to identify whether the freedom of media is guaranteed by the Constitution of the Republic of Uganda, and if so whether such freedom has been adhered to by all the stakeholders that includes, media independence without any interference and whether the various policies, legislation and administrative framework such as the proposed **Press and Journalist (Amendment) Bill of 2010** if put in place guarantees media freedom.

Those who are likely to benefit from this study will be the government departments, and the various legislators responsible for setting national policies in regard to media freedom, this is because they will learn the importance of media freedom to the society at large because it's the only way through which the general public is kept abreast with various occurrences.

Also the media industry at large will benefit because they will know how their right of expression is supposed to be exercised professionally and how to champion for various reforms in collaboration with various human rights organizations.

1.8 LITERATURE REVIEW

There is a growing body of literature in the context of Uganda about the effectiveness of the media freedom in Uganda in relation to their constitutional right to the freedom of speech and expression. I attribute this to various factors and among them is the need to promote and strengthen democracy and the need to enhance human rights. The literature reviewed here represents the work of handful scholars, commentators and various human rights organizations

of recent years. For the most part the literature examines the general right to the freedom of speech and expression which includes freedom of press and other media.

A study of freedom of speech and expression which includes the freedom of press and the media was undertaken by various scholars and various human rights activists and organization. **B.K Twinomugisha's** study on "*how free is the press in Uganda*"³ critically analyses how the media has been free in Uganda. He states that when in 1986, Yoweri Kaguta Museveni under the National Resistance Movement (**NRM**) was sworn in as the president of the Republic of Uganda, he promised a "fundamental change." Ugandans hoped for a renewed era of governance characterized inter-alia by the enjoyments of their rights and freedom of expression. Journalists hoped that press freedom had received a new surge of life. Indeed a number of newspapers with varying political view points emerged. This was followed by the liberalization of electronic which gave rise to a number of television and FM radio stations breaking the monopoly of **Uganda Television** (U.T.V) and **Radio Uganda** which had been used by the previous governments primarily for propaganda purposes. He defines media freedom according to **Royal Commission on the Press** (RAP)⁴ to mean "*the freedom from restraint which is essential to enable proprietors, editors and journalists to advance the public interest by publishing the facts and opinions without which a democratic electorate cannot make responsible judgment.*"

Thus media freedom refers to the general freedom enjoyed by the media- both print and electronic- to carry out the essential function of transmitting information. In spite of the developments, and regardless of the fact that media freedom is guaranteed by the 1995

³ In East Africa Journal of peace and Human Rights Vol 4:2 1998 "how free is the media in Uganda" by B.K Twinomugisha Shokoro

⁴ Royal Report on the Press Final Report 1977, CMND 6810 cap 2 Para 3

Constitution of the Republic of Uganda in **Article 29(1) (a)**, the current government has systematically moved towards great censorship.

Since 1986 the NRM government has employed various tools designed to essentially kill and frustrate press including the use of draconian laws such as sedition and criminal libel. Journalists have been subjected to arbitrary arrest and detention, intimidation and harassment. This article hence tries to examine how free the media is in Uganda. This article finds that media freedom in Uganda is merely superficial and does not actually exist in reality and the long awaited “fundamental change” for the media freedom is elusive even up to the present times. Thus to have media freedom included in the constitution is different with having the enjoyment of such in practice without interference.

A study by **M.K.O Abiola**⁵ critically analyses the effectiveness of media freedom, the study provides that a free media is one of the cardinal pillar of democratic society. The media generally in the society acts as the watchdog of the general public. For democracy to flourish there must be an independent, free and vibrant media to act as the fourth state. The study was sought to highlight the importance of media freedom being enhanced and above all the press freedom and its independence being adhered to. His primary objective was to show that media freedom is not adhered to and all mechanisms were put in place to suppress such freedom which was endangering democracy.

A study by **Sylvia Tamale-Balaba**⁶ addresses various issues of press freedom, because it is through the media that a number of issues are made known the people, thus keeping them abreast with the various occurrences. In a democratic society which is based on the respect for the rule of law, freedom of press without interference is not a privilege but an organic necessity

⁵ Speech by chief M.K.O Abiola, reported in the duties of the fourth state, Guardian, Oct ,14, 1992

⁶ Sylvia Tamale-Balaba In his book “Press Freedom and the Law in Uganda Today”

in the society. Nevertheless where the rule of law is not adhered to by antidemocratic forces, with the aim of achieving their own individualistic goals freedom of the press is muzzled through barbaric laws which date back in the colonial era. He compares the colonial era with the present time in regard to sedition charges, where in the colonial state it was used to control any kind of political agitation which is still the same in the present contemporary Uganda.

Tamale argues that despite the 1995 constitution providing for the freedom of speech and expression which includes media freedom, its applicability is still in doubt this is because, the media and individual journalists are one category of human of human rights defenders who have received resounding attacks from the governments. That argument indisputable, there are increased reports of systematic attempts by government to silence critical reporting by the journalists through legislative and regulatory measures that continue to limit freedom of the media. Journalists and broadcasters especially from the private independent media have been subjected to negative government reaction and interference.

Fred Jjuko's study⁷ specifically argues Freedom of the Press although a cherished right of the people, is different from other liberties of the people in that it is both individual and institutional. It applies not just to a single person's right to publish ideas, but also to the right of print and broadcast media to express political views and to cover and publish news. A free press is, therefore, one of the foundations of a democratic society, *"A free press is not a privilege, but an organic necessity in a great society."* Indeed, as society has grown increasingly complex, people rely more and more on newspapers, radio, and television to keep abreast with world news, opinion, and political ideas.

⁷ Fred Jjuko, freedom of thought, opinion and expression (1987) unpublished manuscript, on file with the East African Journal of peace and human rights

In circumstances where democracy is fragile the (press regulatory laws) can be turned into effective instrument of repression. They are easily prone to administrative abuses, moreover he observed that sedition which always is alleged against the journalist is an outrageous contradiction of constitutional freedoms and rights in liberal democracies, and should be scrapped from the law books.

Jjuko's approach to freedom of expression is a vital one because, freedom of expression should not be restricted on public order or national security grounds unless there is a real risk of harm to a legitimate interest and there is a close causal link between the risk of harm and the expression. With the liberalization of the media, the control and dissemination of information is no longer the exclusive preserve of the state. However, in spite of this status quo where the state is a mere player, information as a constituent tool for rallying the nation for policy absorption remains the responsibility of the state.

The interests of the private media are clearly very different from those of the state. And the state's attempt to bring her influence to bear on private players is sometimes the object of friction between the media and state. And of course the media cries foul and claim abuse of human rights.

Takirambudde's study⁸ examines media freedom; the study shows that media freedom and freedom of expression should generally be viewed within the broader context of freedom. Media freedom can only exist where the state respects democracy, with the capacity and goodwill to absorb ideas that are inconsistent within its own line of thinking. He notes that the ultimate objective of democratic arrangement is the establishment of representative government

⁸ P.N. Takirambudde, *Media freedom and the Transition to Democracy in Africa*

whereby the governed are permitted to develop and assert their political problems without restraint. Nevertheless the formulation and declaration of political opinion require two elements: access to political information and the freedom of expression.

He specifically argues that the role of the media in promoting access to information presupposes a functional relationship between the media and access to information. Hence it follows that such access to information falls within the role of the media in the society, because the media is an intrinsic part of the democratic process by offering not only strategic information upon which the citizens base to make informed choices about government issues. Thus media helps its citizens to participate and influence public policy formulation and decision making. This is because the media is the only institution capable of reflecting the broad spectrum of political, economic, cultural and social lives of citizens.

Clement Nwanko, Frank Aigbogun, Eluem Emeka in their study⁹ focuses on the importance media freedom. They argue that communication has unarguably played a very prominent role in the effort of human beings to dominate a naturally hostile world. From very early in the history, human beings had discovered the essence of dialogue- whether at the interpersonal level or in the mass communication, within the communities or between the communities. They continue to state that experience has taught that communication is the best and most beneficial to man and man's ultimate collective survival.

They argue that because of the need to enhance communication and freedom of the media in regard to their right of expression that is the reason that the Universal Declaration of Human Rights states that: *"Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinion without interference and to seek to receive and impart*

⁹ In their book "The Crisis of Press Freedom in Nigeria"

information and ideas through any media regardless of frontiers."¹⁰ Despite this writing based on the Nigerian context, there various ways that make it relevant to the Ugandan context.

A study by the **Foundation for Human Rights Initiative** (FHRI) in their magazine "*The Defender*"¹¹, the study shows that freedom of the press and freedom of expression are fundamental rights enshrined in the Universal Declaration of Human Rights. Thus it needs to be defended because it's a vital component of the rule of law that is based on democracy. In the study it is clear right to access information goes hand in hand with the freedom of the press, in which the media and civil society are equal stakeholders in the benefits of having a good access to information.

Also the study shows that promoting the right to access to information is relevant in the context of media professionalism. According to this model journalist are part and parcel of society hence they have the role of informing the masses. According to a media theorist called **Morris Janowitz**, a journalist "*must be an advocate of those who are denied powerful spokesmen, and he must point out the consequences of the contemporary power imbalance. The search for objectives reality yields to a struggle to participate in the socio-economic process by supplying knowledge and information*"

The study goes a head to an observation that whereas the 1995 constitution of Republic of Uganda presents a liberal view of media freedom, the existence of claw back provisions in the statute books such as the law of **sedition** and **criminal defamation**, as well as the anti-sectarian law restrains on the media houses to allow legitimate comment on matters of governance. Moreover the study shows the various instances where media freedom has been undermined within the post 1995

¹⁰ Article 19 of Universal Declaration of Human Rights, 1948

¹¹ The Defender Issue No 2 December 2008, "Media Freedom in Uganda Fact or Fiction"

In the study¹², the **FHRI** argues that it should be noted that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Under our Constitution of the Republic of Uganda law confers upon citizens that all their rights are inherent are not provided for by the state. Thus all persons shall be protected of freedom of consciences, expression, movement, religion and assembly, which is in line with the notion of media freedom. In practice freedom of expression including media is under threat due to legislative restriction, underlying economic and political pressure and the unfavorable working conditions for the media practitioners.

The study goes a head to state that media freedom has steadily worsened in the recent times as a result of media restrictions and criminal convictions against journalists. Although the 1995 Constitution of the Republic of Uganda (as amended) provides for freedom of expression, libel is still considered a criminal offence and laws in the name of national security such as Anti-Terrorism Act of 2002 have limited the Constitutional provisions in practice.

Similarly a research carried on by **Committee to Protecting Journalists (CPJ)** is concerned with the proposed amendment in regard to media that would involve various issues such. Presiding over the system under the proposed **Press and Journalist (Amendment) Bill 2010** would be a new Media Council, appointed by the Minister of Information and National Guidance. To obtain a license, publishers would need to show "proof of existence of adequate technical facilities" and the "social, cultural and economic values of the newspaper. The Bill proposes issues dealing with: **annual licensing; Restrictions on foreign ownership; Strengthening of disciplinary procedures and Media Council power to close media houses.**

The study shows that Uganda is a signatory to several regional and international

¹² Supra

Declarations and **protocols** that are very clear on how licensing and regulation of the media should proceed. The regulator, for one, should be independent. Hence the study came to a conclusion that the Bill will undermine the freedom of the press. The study goes a head to state that Press freedom and free expression facilitate the enjoyment of other rights enshrined in the constitution. This is not simply about media organizations and journalists. It is about every citizen. The Constitution gives all of us the right to freedom of speech and expression. The Constitution is also clear that limitations to these freedoms must be acceptable and demonstrably justifiable in a free and democratic society. The limitations to freedom of expression that the government is proposing are neither acceptable not justifiable in a free and democratic society.

In the study carried by **Human Rights watch**¹³, it was observed that Uganda's government has been limiting free expression under the dubious guise of keeping public order and security, also Uganda's multiple media regulatory bodies, under the Information Ministry's control, have broad powers to seize radio equipment and close stations without prior notification, court orders, or any evidence of criminal wrongdoing. The report goes ahead to observe that, Since the previous political campaigns in 2005, more than 30 independent journalists have been summoned by the police or charged with crimes such as sedition, incitement to violence, and promoting sectarianism. In many cases, these charges are levied for criticizing the government or reporting views of those who are critical of the ruling party.

Outside of the capital, local government officials, such as resident district commissioners who represent the President's office at the district level, police, district internal security officials, and ruling party leaders, wield significant formal and informal power to silence the media. The

¹³ Human Rights Watch, in its Report titled, "A Media Minefield: Increased Threats to freedom of expression in Uganda"

Ugandan government is currently moving to curtail free speech even further. In that study, **Human Rights Watch** called on members of parliament to reject proposed draft amendments to the current Press and Journalist Act that require annual licensing of print media and permit the government to deny a license if it disagrees with a newspaper's "social, cultural and economic values." Instead, the lawmakers should amend current laws so that they comply with international human rights standards.

Human Rights Watch in their report goes a head to call on the Ugandan government to end intimidation, threats, and physical attacks on journalists, to tolerate open reporting and commentary on any issue of public concern, to amend laws to ensure that media regulatory bodies are free from all government interference, and to appoint an independent commission of experts to investigate the unlawful detention and beating of journalists during the **September 2009 riots** and any other allegations of intimidation of the Ugandan media.

In conclusion I find that most of the literature reviewed especially in Uganda was carried out after the NRM government came to power. I intend to analyses the efficacy of media freedom according to the various legislative mechanisms put in place in regard to media freedom in the context of their right to freedom of press and media and suggest some recommendation to improve the current legislative framework for better enjoyment of the right to freedom of the media and the press in excising their constitutional right of the freedom of press.

1.9 METHODOLOGY

In order to execute this study accordingly to the terms of the reference, the methodology employed will be qualitative research method. Qualitative data spans range of materials from the description of social life provided by the participant observation and unstructured interview and

information from written sources so as to gain the broadest information in regard to media freedom which includes; a review of available literature on the media freedom in Uganda and elsewhere. A critical legal analysis of the relevant statutes, regulations and judicial and administrative decision related to press freedom, where applicable case law will be used in the analysis of this study.

CHAPTER: TWO

STATE OF MEDIA FREEDOM IN UGANDA

2.0 Concept of media freedom

The media freedom refers to the general freedom enjoyed by the media- both print and electronic- to carry out the essential function of transmitting information. Vibrant media freedom is one of the cardinal pillars of a democratic society. The media generally in the society acts as the watchdog of the general public. For democracy to flourish there must be an independent, free and vibrant media to act as the fourth state.

The development of media freedom has its roots in the struggle for freedom, fairness, justice and equality and it involves various responsibility and duties that has to be adhered to by all the stakeholders. Recognition of media freedom in Uganda has its origin in the **Constitution of Republic of Uganda**¹⁴; **Article 20 (1)** of the Constitution provides that the fundamental rights and freedom of the individual are inherent and not granted by the state.

Several of Uganda's national laws are inconsistent with its obligations under international law and its constitution, and the government exploits vagueness in national laws to suppress critical appraisals. It does so by charging journalists with crimes and granting media regulatory bodies' broad powers to restrain speech through the revocation of licenses. Under international human rights law, namely the **International Covenant on Civil and political Rights (ICCPR)**, governments are allowed to restrict speech in specific instances to protect narrowly determined interests, such as national security or public morals. However, such restrictions must meet several high hurdles. First, the restriction must be prescribed clearly and narrowly by law;

¹⁴ Constitution of Republic of Uganda 1995

second, it must have the genuine purpose and effect of protecting such interests; and third, it must be the least restrictive means available.

Ugandan laws criminalizing certain types of speech are overly vague and broad, which makes even innocuous public statements open to criminalization. For example, the crime of “promoting sectarianism,” is defined as “any act which is likely to ... promote ... feelings of ill will or hostility among or against any ethnic group or body of persons on account of religion, tribe or ethnic or regional origin.” Ugandan government authorities use these laws not to safeguard national security, but rather to stifle speech.

According to international standards as set out by the **Johannesburg Principles**¹⁵, governments should permit and tolerate these types of speech. Both international and African standards on freedom of expression, including rulings by the African Commission on Human and Peoples’ Rights, recognize that the threshold for restricting criticism of public officials, who are accountable to citizens, is higher than for private individuals.

The state of media freedom in Uganda is very controversial in the contemporary Uganda this is because the government has deployed a wide range of tactics to stifle critical reporting, which involves the use of extrajudicial means such as setting criminal charges against journalist, radio presenters and various talk show panelists to repress the media. Under every Ugandan government since 1962, journalists who have spoken out against government policies have faced physical violence, criminal charges which include sedition, criminal and civil defamation, promoting sectarianism among others.

¹⁵ on National Security, Freedom of Expression and Access to Information, adopted by a group of experts in international law, national security, and human rights and endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression

The ruling National Resistance Movement (NRM) came to power in 1986 and instituted the “Movement” system, which denied other political parties the right to operate for almost twenty years. Uganda’s first private radio station, Radio Sanyu, opened in 1993, ending the state’s monopoly on radio broadcast that had been in place since colonialism. Ugandan media experts have noted that during the regime NRM government tolerated more outspoken criticism than did previous regimes. However, others argue that radio liberalization in Uganda was principally about an NRM economic strategy of privatization and “a freeing of business space than as a deliberate strategy of enhancing media freedom.”

Since NRM government came into power it has permitted more radio stations to be set up because Radio station continues to be the primary source of information, it has also passed a series of increasingly repressive laws and has expanded the number of government regulatory bodies, which have mandates to oversee, control, and monitor the media. Radio continues to be the primary source of information throughout the country, and the various stations are owned by a range of actors. Some stations are owned directly by government via the public broadcaster, Uganda Broadcasting Corporation, or by the state corporation Vision Group, which owns a large number of radio stations and newspapers in a diverse array of local languages.

2.1 Criminal charges against journalists

Despite the Constitution of the Republic of Uganda, in **Article 29 (1) (a)**¹⁶ providing for the freedom of speech and expression which includes freedom of press and other media, Media freedom in Uganda has not been adhered to because the government uses various mechanisms to suppress such a right which it has clearly been provided for by the constitution, such mechanisms

¹⁶ Of 1995

to stifle media freedom include bringing of criminal charges against journalists and talk show panelists, such criminal charges include crimes in regard to **sedition, incitement to violence, or promoting sectarianism** for any critical reporting that is always brought against government. All such laws have their origin in the colonial era where repressive laws were put in place so as suppress media freedom and such laws were further reinstated even after post colonial period. For example **The Newspaper and Publications Ordinance**¹⁷, became **The Newspaper and Publication Act**¹⁸ in **Section 21 (1)** imposed stiff penalties on journalists and printers. It gave police officers powers to seize any newspaper which they suspected of contravening the law.

Therefore the period after the colonial era, even though it was thought to it will provide a reprieve for the African intelligentsia and the proliferation of divergent political opinions, this proved not to be so. For the period after 1962 saw the extinction of the dominant section of the African press which had shown its vibrancy and had caused the colonial regime a lot of headache.

There are various journalist who various criminal charges have been brought against, for example in the case of **Uganda Vs Haruna Kanabi**¹⁹ the editor of **The Shariat** a defunct Islamic Newsletter, was charged with sedition contrary to **section 41 (1) (a)** and **section 42 (1) (c)**, and publication of false news contrary to **section 50 (1)** of the **Penal Code Act**²⁰ when he wrote in a newspaper that president Museveni had gone to visit Rwanda, the 40th district of Uganda and on both counts he was convicted. The Chief magistrate's court set out the issue of constitutionality of the penal code provisions in regard to the restriction it imposed on the enjoyment of rights and

¹⁷ No 3 of 1961

¹⁸ Cap 305

¹⁹ Criminal case No. U997/1995

²⁰ Cap 120 of the Laws of Uganda

freedoms of individuals and the court went a head to decide the case base on the provisions of the penal code and accepted the restriction as lawful.

In some few cases that have come before the courts, judges have upheld the right to freedom of speech as enshrined in the Ugandan constitution. The Ugandan Supreme Court recognized the relationship between free speech and democratic governance in **Obbo & Mwenda v. Attorney-General**, Justice Mulenga stated that a person's expression or statement is not precluded from constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant. Everyone is free to express his or her views. Indeed the protection is most relevant and required where a person's views are opposed or objected to by society or any part thereof, as "false" or "wrong." ... A democratic society respects and promotes the citizen's individual rights to freedom of expression because it derives a benefit from the exercise of that freedom by its citizens. In order to maintain that benefit, a democratic society chooses to tolerate the exercise of the freedom even in respect of 'demonstrably untrue and alarming statements,' rather than to suppress them.

The protections of due process afforded in formal court proceedings have been a source of assurance for some journalists. Due process is available when formal charges go to trial, but these instances are rare due to both the pending constitutional petitions of various criminal charges and the fact that cases are seldom pursued to trial.

Journalists have over a long period experienced various criminal charges being brought against them, for example On August 11, 2009 Daily Monitor journalist **Moses Akena**, based in Gulu, was charged with **criminal defamation** for an article that appeared on August 7, 2009. In the article, Akena quoted the Gulu district speaker from a press conference in which he said that the deputy resident district commissioner, Milton Odong, gave 60 iron sheets donated by the

president's office to his friends instead of to the intended needy families.²¹ Human Rights Watch interviewed Odong about the criminal defamation charges against Akena, but Odong denied any knowledge of the case. He said that journalists should be careful of "reporting maliciously." He said that "professional journalism" After being charged, Akena was released on bail but is still regularly reporting to court.

2.2 Cases against Print Journalists

The various print journalist have experienced various charges being brought against them majorly those working in various print press that are regarded to be opposition to the government such as The Monitor. Majority of the currently pending charges are against journalists from the Daily Monitor, a publication that is at times perceived to be a platform for the opposition, though journalists working for other publications have also been charged. Most recently, Angelo Izama, a senior reporter with the Monitor group, and Henry Ochieng, editor of Sunday Monitor News, were charged on February 4, 2010 with criminal libel, based on a complaint from the president. Izama wrote a piece of political analysis published on December 19, 2009 about the risk of political violence during the 2011 election in which he compared Museveni to former Philippine President Ferdinand Marcos.

Even when criminal cases are slow to proceed, the requirements of police bond or court bail serve as a form of harassment for journalists. At one point, Monitor journalist Angelo Izama was reporting to police on a weekly basis for months until he was eventually charged with libel.

²¹ Moses Akena, "Gulu Officials Row Over IDPs' Iron Sheets," The Daily Monitor, August 7, 2009

James Tumusiime from the Weekly Observer has been reporting at regular intervals since being charged in 2005. For three years, he and co-accused were required to report each month until the court changed the requirement to reporting every six months.

2.3 Threats to Radio Journalists in rural areas

Generally media freedom in the rural areas is under threat just like in the urban areas. RDCs are the local representative of the President's office present in each district and are directly appointed by the president²². Among other roles at the district level, RDCs chair the district security committee and the intelligence committee. Largely because of the perception that these individuals are close to the president, they wield tremendous power at the local level, despite overlapping roles with the elected district council chairs.

Numerous radio journalists have stated ways in which they have been threatened, harassed, and intimidated by local government officials, particularly RDCs, district internal security officials, and ruling party "mobilizers" because of their reporting, covering opposition events, or trying to access government information. Topics that incur government interference and the extent of the intimidation vary by geographical area, and depend on personalities of key security and government officials, as well as the perceived strength of the ruling and opposition parties in a given area. Political talk shows, involving invited guests and a moderator discussing current political issues, are a forum that appears to draw the greatest intensity of intimidation and threats. In several districts, RDCs had told station managers and talk show hosts that they had to submit lists of all invited guests to the RDC's office for approval, as a "security measure."²³

²² The Constitution of Republic of Uganda, Article 203

²³ National Security Council Act, of 2000, Section. 6. Resident district commissioners are legally supposed to be senior civil servants.

In some parts of the country, police and government officials appear to act with impunity, threatening journalists who seek sensitive information, for example about local-level corruption, or when the topic involves the government or police being derelict in their duties. In February 2010, Charles Osendro, a journalist at **Radio Unity** in Lira, was temporarily detained by the District Police Commander (DPC) of Apac district. Osendro was interviewing the police in Apac about a murder.²⁴ One of the suspects had reportedly turned himself in to police and allegedly implicated others in the murder. However, no further action had followed. Trying to gather information for a news story on these events, Osendro questioned the police about their failure to investigate the crime. Police allowed their answers to be recorded, but at the end of the interview, Osendro's identification card and recorder were confiscated.

2.4 Physical assault on journalists

Journalists have often complained that police and military do not distinguish between the media and others during politically charged events, such as riots and demonstrations. According to the Human Rights Network for Journalists, some journalists are physically assaulted, for example during the September riots, several journalists were alleged to have been beaten by police and military personnel while trying to document the unfolding chaos. Photojournalists, especially those that documented killings by state agents, appear to have been specifically targeted. For example Edward Echwalu, the photo editor at the independently-owned **Observer newspaper**, took pictures of the dead body of a young man who had been shot by police. After taking the pictures, he left the scene and later came upon a group of 10 soldiers who harassed him and demanded that he delete the photos.

²⁴ In the report by Human Rights Watch interview with Charles Osendro, of Unity Radio, Lira, March 9, 2010.

Similarly Prominent journalist Robert Kalundi Serumaga, immediately after speaking on a talk show on September 11, 2009, was assaulted outside the **Wavah Broadcasting Station (WBS)** studio in Kampala by men in civilian clothing and forced into an unmarked car²⁵. The men did not identify themselves or the reason for his arrest. During transport, they physically assaulted him and at one point tried to gouge his eyes when he tried to defend himself. He was taken to an illegal place of detention in Kireka, where at least 23 others who had also been arrested during the protests were being held. The following morning he was brought to the Central Police Station and held for three days without charge. No one has been held accountable for the illegal manner of Serumaga's arrest or initial illegal detention. On September 15, Serumaga was charged with six counts of sedition and released on bail. One of the charges stemmed from stating that President Museveni suffered from a "very poor quality upbringing." The Broadcasting Council also suspended Serumaga from hosting or moderating talk shows on air²⁶.

Physical assaults on journalists have gone largely uninvestigated by the Ugandan police. Because police and other security forces are often the perpetrators of such violence and most journalists are very reluctant to report physical abuse by government agents.

²⁵ Uganda: End Media Clampdown," Human Rights Watch news release, September 15, 2009, <http://www.hrw.org/node/85602>.

²⁶ In one very recent positive example, on February 23, 2010, the Kampala High Court ordered the government of Uganda to compensate two Wavah Broadcasting Service (WBS TV) journalists who were tortured by police in 2008.

2.5 Closures of Radio Stations

Media freedom has been under threat in Uganda through the numerous closures of radio stations. The number of instances of license suspension by the Broadcasting Council has increased generally in recent years. The closures appear to be tied to open criticism of government or the ruling party or granting significant airtime to members of the opposition but the precise reasons for the suspensions were never made fully to the public but it was simply stated that they were in violation of the “minimum broadcasting standards.”

Choice FM in Gulu was temporarily closed by the Council in the wake of the 2006 elections. There is no specific description of what was broadcast that warranted closure of the station and no citation to a specific part of any transmission broadcast. Several people interviewed by Human Rights Watch indicated that Choice FM had routinely given a platform to opposition candidates for parliament during the 2006 elections and that many of them had ultimately been elected. Letter The Broadcasting Council also claimed that the station had failed to renew its annual license and therefore was broadcasting illegally

During the 2009 September riots, the Council abruptly shut down four Luganda-speaking radio stations—**Radio Sapientia**, **Radio Two** (also known as Akaboozi ku Bbiri), **Radio Ssuubi**, and **Central Broadcasting Station (CBS)**. These radio stations, like many others, were trying to manage coverage of the dramatic unfolding events on the streets of Kampala. Before the closure, CBS, for example, had a reporter live in Kayunga relaying what was transpiring during the attempted visit of the prime minister of Buganda Kingdom.

The closures occurred without any official or written warning to radio station owners or managers. In most instances, government agents broke into the transmission room of the radio stations, and confiscated studio transmission links. Although there is a statutory provision that

the Broadcasting Council has power to confiscate equipment, there is no explicit statutory language granting the Council power to suspend, revoke, or cancel licenses. The Council has interpreted its own mandate broadly to include powers to suspend licenses, stating that “coordinate, exercise and supervise as provided in terms **Section 10(1) of the Electronic Media Act** in ordinary English mean to make things work effectively as a whole, watch over, order, limit, instruct, regulate or stop.” After the shutdown, some stations received letters from the council stating that their broadcasts had violated the “minimum broadcasting standards” by inciting the public to violence, but the letters did not specify how broadcasting standards had been violated or what part of their broadcast was in violation. Nor did the letters have any citations to specific language spoken.

The Minister of Information, Hon. Kabakumba Matsiko, stated to the press that the riots had been preceded by “inflammatory and sectarian broadcasts from various radio stations, which systematically incited the listeners to cause chaos and destruction wherever they could.”

General David Tinyefuza, Senior Presidential Advisor/Coordinator of Internal and External Security organizations wrote in the independently owned Daily Monitor newspaper that CBS “not only engage[d] in hosting and broadcasting inflammatory statements of opposition politicians, but it also engaged in promoting an anti-government political agenda, actively de-campaigning government programmes.”²⁷ He issued an explicit set of conditions for the radio station to return on air, including the replacement of the station’s management, admission of wrongdoing in a letter from the station owners to government, removing the Kabaka as a shareholder in the station, relocation of the station to an area more easily accessible to “people

²⁷ “Tinyefuza’s Take on CBS Question,” The Daily Monitor, January 31, 2010, http://www.monitor.co.ug/News/Insight_/688338/852468/-/view/printVersion/-/10lier8z/-/index.html (accessed April 16, 2010).

who keep law and order,” and reapplication for a broadcasting license. President Museveni’s press secretary was quoted in the press as saying that CBS would not return to the air until it apologized to government. Such direct interference with content and editorial decision-making violates international human rights law and constitutional requirements to protect freedom of expression.

The closure of such radio stations insures that press freedom is undermined because there will not be dissemination of information to the public. Similarly such closure ensures that the other radio stations are very vigilant in the news reporting so as to avoid any reporting that might attract the wrath of the government. Even some of the closure reasons of radio stations are not clearly accounted for because in most cases the major reason is always hidden under frivolous and vexatious allegations such as state security or public necessity.

2.6 Uganda’s International Obligations in regard to media freedom

Uganda is a party to the **International Covenant on Civil and Political Rights (ICCPR)**,²⁸ which under **Article 19** imposes legal obligations on states to protect freedom of expression and information which is to the effect 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.*

The **ICCPR** permits governments to impose certain restrictions or limitations on freedom of expression, if such restriction is provided by law and is necessary: these restrictions are

²⁸ 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, 2005, art. 19.

provided for under **Article 19(3) (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 UN Human Rights Committee, which monitors state compliance with the ICCPR, has stated that *"the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multiparty democracy, democratic tenets and human rights."* Uganda is also a party to the **African Charter on Human and Peoples' Rights (ACHPR)**, which in **Article 9** states *"every individual shall have the right to receive information" and "every individual shall have the right to express and disseminate his opinions within the law."* **The African Commission's 2002 Declaration of Principles on Freedom of Expression in Africa** sets out regional norms guaranteeing free expression. The African Commission has held that governments should not enact provisions which limit freedom of expression "in a manner that override constitutional provisions or undermine fundamental rights guaranteed by the [Charter] and other international human rights documents."

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 offers 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.”

There are some restrictions on freedom of speech permitted under international law in the context of protecting national security, but such restrictions must meet several high hurdles. **First**, the 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, and is the least restrictive means available, which must be compatible with democratic principles.

Various human rights bodies and courts around the world have determined that protection of freedom of expression 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.”

2.7 Ugandan National Law in regard to media freedom

Uganda’s constitution guarantees every person the right to freedom of speech, including “freedom of the press and other media.” However, several criminal laws in Uganda claw back those constitutional protections. Uganda’s Penal Code Act criminalizes certain conduct by journalists, such as the crimes of sedition, promoting sectarianism, incitement to violence, and libel. Criminal charges against journalists in Uganda are most often brought on these grounds.

Under the **2002 Anti-Terrorism Act**, a journalist may be imprisoned for up to ten years if found guilty of publishing or airing information that is deemed to promote terrorism. Under the act, coverage of opposition politicians, dissidents, and rebels is potentially criminal. Critics have said that the overly broad definition of “terrorism” in the statute prevents journalists from accurately reporting on clashes between the government and rebel groups without risking imprisonment and potentially implicates those whose views are in opposition to those of the government.

The definitions of the crimes as set out in the penal code are vague and overly broad and therefore have little predictive value for what speech is or is not permissible. Statutes that are overly broad can ultimately lead to abusive prosecutions of legitimate political speech. For example, the statutory definition of the crime of promoting sectarianism is defined to include “any act which is likely to degrade, revile or expose to hatred or contempt ... or promote in any other way, feelings of ill will or hostility among or against any group or body of persons on account of religion, tribe or ethnic or regional origin.” There is no explicit requirement that the speaker actually intend to degrade when speaking. The crime of sedition, currently being challenged before the Constitutional Court, includes conduct committed with the intent 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.”

These definitions cover an impermissibly broad range of conduct and have been used to target journalists who are critical of government officials. Vague provisions such as these are susceptible to a wide interpretation by both authorities and those subject to the law. As a result, they can lead to abuse as authorities may apply them in situations that bear no relationship to the original purpose of the law or to the legitimate aim sought to be achieved.

2.8 Courts approach to media freedom attack

With the promulgation of the 1995 Constitution, there was recognition of fundamental human rights which included; freedom of expression. Unfortunately, with the setting up of the constitutional court, the other court felt that human rights matters should be preserved to the constitutional court. Therefore hence matters of media freedom were thrown out of the other courts citing their inability to entertain such. This was a bad precedent.

The court to some has failed to promote the freedom of press in certain circumstances for example in regard to matters of interpretation of the constitution. In the case of **Uganda Vs Haruna Kanabi**²⁹ Haruna Kanabi was charged with sedition contrary to **Section 41 (1) (a)** and **Section 42 (1) (c)**, and publication of false news contrary to **Section 50 (1)** of the **Penal Code Act**. He had written in his paper in December, 1995 that president Museveni had gone to visit Rwanda, 40th district of Uganda while at the time Uganda had 39 districts. On both counts he was convicted. The chief magistrate's court on its own motion set out to address the issue of constitutionality of these penal code provisions.

In the case of **Uganda Vs Haruna Kanabi**³⁰ the magistrate correctly pointed out that the matter was an example of how the law puts great restrictions on the enjoyment of the fundamental rights and freedoms of individual. However the court fell short of declaring this provision unconstitutional because the court had no jurisdiction to make such a declaration and hence the court accepted that restriction as lawful and went a head to punish the transgressor according to the existing law until such a time as the state would deem it fit to lift such

²⁹ criminal case no u997/1995

³⁰ supra

restrictions. Haruna appealed to the **High court**³¹ however the decision of the magistrate's court was upheld.

On further appeal to the constitutional court where the case was cited as **Uganda Journalist Safety Committee & Another Vs AG, Constitutional petition, No 6 of 1997**, the case was dismissed because it was filed under wrong law because it was filed under both **Article 50** and **137** of the Constitution. In essence, the court preferred strict procedure to protection of fundamental human rights. Further it was held that the suit was time barred. This meant that even if the suit had been correctly filed it could have still been struck out on the ground of being time barred. Therefore the constitutional court still avoided the matter concerning the restriction of press freedom on technicalities without reference to **Article 126 (2) (e)** of the Constitution.

Similarly in, **Charles Onyango Obbo Andrew Mujuni Mwendwa Vs AG**³² in that case the petitioners, practicing journalists petitioned court for the declaration of **Section 50** of the **Penal Code Act** as unconstitutional which makes publication of false news a criminal offence. The court failed to address the main issue and instead resorted to justifying the restriction, hence the court held that **Section 50** of the **Penal Code** was not inconsistent with the constitution.

The courts today prove to be one of the greatest obstacles to media freedom, this is because the courts use their inherent powers to decide on matters that constitutes contempt of court and silence journalists. *The most relevant doctrine is the doctrine of subjudice. The judges are given wide discretion; they can impose the penalty they want and interpret any action as contempt of court. These are so wide, sweeping powers which could easily be used to muzzle the freedom of the press, this is according to Obel Ronald Bosco*³³

³¹ Criminal Appeal No 72/1995

³² Constitutional petition No 15 of 1997

³³ In his 1991 LLB dissertation, entitled: Law and communication: freedom of press in Uganda

The other way through which media freedom has been infringed by the courts is through the delay in prosecuting cases. The judiciary suffers from this great set back, while its independence is doubtful and such delay affects the press in that the charges remain hovering over the heads of journalists and thus they and others are always restrained from reporting independently.

2.9 Conclusion

Despite the media freedom being provided for in the Constitution in clear and elaborate words in Uganda, it has not been observed to the maximum because the space of press freedom has been shrinking, due to the interference majorly by the government. This makes it clear that the provision for the media freedom in the constitution is just a theoretical while its practical application is another, which to a large extent has not been observed.

CHAPTER THREE

3.0 MEDIA REGULATORY BODIES AND MEDIA FREEDOM

The Ugandan government has used its national laws to bring charges against journalists, restrict the number of people who can lawfully be journalists, revoke broadcasting licenses without due process of law, and practice other forms of repression. Similar laws and procedures exist in other countries, but in Uganda, the government uses the laws in partisan ways to create a minefield for media owners and reporters who speak or write about issues that the government deems politically sensitive or controversial.

Currently, there are five separate regulatory entities which all have some formal overlapping mandate to control, monitor, discipline, and/or sanction journalists and media houses. All are subject to direct government control contrary to internationally accepted standards; this structure leaves the media, and especially those who are critical of government action, extremely vulnerable punitive action.

3.1 Media council

The Press and Journalist Act³⁴ established a **Media Council** in **Section 8**. The Media Council regulates the conduct of journalists; arbitrates disputes between the public and media or the state and the media; disciplines journalists, editors, and publishers; and censors films, videotapes, and plays. The Minister of Information has the power to appoint a majority of members, and to write regulations for the statute. The law requires the editor in charge of any mass media organization to register with the Media Council and to provide “such other particulars as may be prescribed by the Council,” in effect an unlimited amount of information.

³⁴ Cap 105

The Media Council's powers also violate international human rights standards by severely restricting access to the profession of journalism. In Uganda, all journalists must hold certificates issued by the Media Council in order to "practice journalism."³⁵ The definition for "practicing journalism" is very broad: "[A] person is deemed to practice journalism if he or she is paid for the gathering, processing, publication or dissemination of information; and such person includes a freelance journalist." In addition, journalists must renew their licenses on an annual basis and pay fees. It is also a criminal offense to practice journalism without a license.

There is a disciplinary committee, a sub-group of the executive committee of the Media Council, which issues decisions on complaints against journalists. The disciplinary committee can admonish a journalist, force the journalist to issue a public apology, and/or suspend the journalist from working for up to six months; the same committee can force the journalist's employer to pay damages to an injured party. After suspension, a journalist may appeal the disciplinary committee's decision to the High Court, but may not work as a journalist while the appeal is pending.

3.2 Broadcasting council

The **Broadcasting Council**, created by the **1996 Electronic Media Act**³⁶, grants licenses, regulates radio and television stations, arbitrates disputes between broadcasters and the public, and "coordinates and exercises control over" broadcasters. The Council is a government body, comprised of twelve people, all either government representatives or directly appointed by the Minister of Information without any public consultation. The law explicitly states that the Council is subject to the "directions" of the Minister of Information. The Council is charged with enforcing vaguely worded "minimum broadcasting standards," prohibiting broadcasters from

³⁵ Press and Journalist Act, Section 27 (3)

³⁶ Cap 104

airing programs offending public morality, promoting violence or ethnic prejudice, distorting facts, or creating public insecurity or violence.

3.3 Broadcasting Council attack on media freedom

The Broadcasting Council also has wide powers under the law such as to “confiscate any electronic apparatus which is used in contravention” of the **Electronic Media Act**. The Council can and does make its own determination as to who has contravened the Act, and seizes equipment without any hearing. It is a criminal offense for any person to attempt to stop the council from confiscating the equipment. The person whose equipment is confiscated has no clear recourse set out in law to challenge the seizure and to reclaim the confiscated items. The powers of the council to confiscate equipment without due process violates several rights enshrined in the constitution and in international human rights law, including the right to free speech, the right not to be arbitrarily deprived of property, under **Article 26 of the Constitution** and the right to a fair hearing.

Under the minimum standards, broadcasters must also present programs that are “balanced to ensure harmony.”³⁷ The law is silent on the definition of harmony, which body has powers to determine it, or how council decisions regarding these standards may be appealed. The Broadcasting Council is not subject to adequate controls or procedural safeguards in issuing determinations on the suspension or revocation of licenses or applying fines and penalties.

The structure and broad legal powers of the Broadcasting Council are a serious impediment to the protection of freedom of expression in Uganda, in particular its direct subordination to the minister of information with no guarantees of independence. The world’s four special rapporteurs with specific mandates on freedom of expression publicly jointly declared that

³⁷Electronic Media Act, First Schedule, Minimum Broadcasting Standards

“Regulation of the media ... is legitimate only if it is undertaken by a body which is protected against political and other forms of unwarranted interference, in accordance with international human rights standards.”³⁸

The Broadcasting Council’s requirements for an annual broadcasting license and the grounds for revoking a license are unclear in law and are open to abuse.³⁹ A one-year license is a serious burden on owners who have invested significant financial capital to function. One year is considerably shorter than the license duration permitted in several other African countries. For example, South Africa, Malawi, Tanzania, and Zambia allow between ten and three years⁴⁰. While under the terms of Ugandan law, the Broadcasting Council also has complete discretion when granting licenses as long as “such conditions as it may deem fit” are met⁴¹, This is unfair and arbitrary. Owners cannot predict what conditions may be required, and those conditions can change at any time.

The functions of the Broadcasting council are however not in line with the promotion of the freedom of the press. This can be clearly illustrated in its ruling **IN THE MATTER OF THE SUSPENSION OF THE BROADCASTING LICENCE OF KFM LTD**⁴² the case arose out of the statement made by Andrew Mwenda, the then presenter of the live show on **KFM** who claimed that the government of Uganda was the one responsible for the death of Dr

³⁸ Joint Declaration on Diversity in Broadcasting, signed by the UN Special Rapporteur on Freedom of Opinion and Expression, the Organization for Security and Co-operation in Europe’s Representative on Freedom of the Media, http://www.osce.org/documents/rfm/2007/12/28855_en.pdf (accessed April 27, 2010)

³⁹ Sec 6 (3) Of the Electronic Media Act of 1996

⁴⁰ In South Africa, broadcasting licenses for commercial radio stations are renewable every 10 years and for community radio stations are renewable every five years. South Africa Electronic Communications Act, No. 36 of 2006, Section 19

⁴¹ Electronic Media Act, Section 6 (2) (b)

⁴² No 1 of 2005

John Garang the vice president of Sudan. The next day the broadcasting licence of KFM was suspended. The Council was of the view that the act was justified because it was its duty to monitor the dissemination of information in the country, information that was not harmful to the public interest. Which duty was imposed under **section 8 of The Electronic Media Act**⁴³ Therefore it held that KFM was in violation of its duties under the constitution and therefore their actions could not be justified even in a free and democratic state.

3.4 Uganda Communications Commission

The **Uganda Communications Act**⁴⁴ establishes the **Uganda Communications Commission** under **Section 3**. The **Uganda Communication Commission** has the following functions under the Act:

- (a) Monitor, inspect, license and regulate communications services;
- (b) Allocate and license the use of the radio frequency spectrum and to process applications for the allocation of satellite orbital locations;
- (c) Make recommendations to the Minister in relation to the issuance of major licences under the Act;
- (d) Supervise and enforce the conditions of those licences;
- (f) Establish a tariff system to protect consumers from excessive tariff increase and avoid unfair tariff competition;

⁴³ cap 104

⁴⁴ Cap 106

(g) Set national communications standards;

(h) Ensure compliance with national and international communications standards and obligations laid down by international communication agreements and treaties to which Uganda is a party and to issue certificates of compliance in relation to them;

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

To a large extent the Uganda Communications Commission has failed to perform its functions without interference to media freedom. For example among its function is to ensure compliance with national and international communications standards and obligations laid down by international communication agreements and treaties to which Uganda is a party and to issue certificates of compliance in relation to them.

However the commission has failed to ensure that Ugandan laws adhere to the international standard. For example several of Uganda's national laws are inconsistent with its obligations under international law and its constitution, and the government exploits vagueness in national laws to suppress critical appraisals. It does so by charging journalists with crimes and granting media regulatory bodies' broad powers to restrain speech through the revocation of licenses. Under international human rights law, namely the **International Covenant on Civil and political Rights (ICCPR)**, governments are allowed to restrict speech in specific instances to protect narrowly determined interests, such as national security or public morals. However, such restrictions must meet several high hurdles. First, the restriction must be prescribed clearly

and narrowly by law; second, it must have the genuine purpose and effect of protecting such interests; and third, it must be the least restrictive means available.

Ugandan laws criminalizing certain types of speech are overly vague and broad, which makes even innocuous public statements open to criminalization. For example, the crime of “promoting sectarianism,” is defined as “any act which is likely to ... promote ... feelings of ill will or hostility among or against any ethnic group or body of persons on account of religion, tribe or ethnic or regional origin.” Ugandan government authorities use these laws not to safeguard national security, but rather to stifle speech.

3.5 Media Center

The other regulatory body is the **Media Centre**, created under the Office of the President in 2005, is the central site for access to government press statements. There is no statutory basis for the Centre. Its objective is “[t]o cause positive and factual public awareness of government in the media.” During the run-up to the 2006 elections, the Media Centre usurped some of the powers of the Media Council. The Media Centre set out to investigate and accredit foreign journalists and prohibited a KFM Radio journalist from moving outside a 100-kilometer radius of Kampala city. Critics have pointed out that the Centre has often operated as a “political prop, acting largely as the information outlet for the National Resistance Movement rather than as an independent government agency.”

3.6 Police Media Crimes Department

The **police Media Crimes Department** was established two years ago to investigate alleged crimes committed via print and broadcast. The department monitors the media closely

and summons journalists, talk show panelists, and others for questioning, curtailing freedom of expression via intimidation in and of itself, even if charges never go forward.

3.7 Other Restrictions by the media regulatory bodies

Several government-controlled bodies, including the **Broadcasting Council**, the **Media Council**, and the **Uganda Communications Commission (UCC)** wield broad, ill-defined, and unchecked powers to regulate the media. Many of the sanctions they levy have been determined to be in violation of freedom of expression by international experts leading to the media freedom attack.

These kinds of restrictions—on both media outlets and individual journalists—were fully on view in **September 2009**, when Uganda experienced two days of rioting. Government troops responded to rioters throwing stones, blocking roads and lighting debris on fire with excessive lethal force, resulting in the deaths of many people. The riots occurred when the government instructed state agencies to block the visit of a cultural leader of the Baganda, from visiting an area that was historically part of his kingdom. Luganda-speaking radio stations voiced support for the Buganda cultural leader and encouraged listeners to show that support by traveling to the area during the planned visit.

In response to the riots experienced on September 2009 the NRM-controlled regulatory body governing radio in Uganda, the **Broadcasting Council**, suspended the licenses of three Luganda-speaking stations and withdrew the license of another, **Central Broadcasting Station (CBS)**—all without notice or a prior court order. Police and soldiers threatened journalists trying to photograph and report on the unfolding events. In the wake of the riots, the Broadcasting Council also pressured these and other stations to suspend specific journalists whom the Council

deemed had “incited violence.” The Council officially banned any open-air broadcasting—a very popular forum for public debate in local communities, known as bimeeza in Luganda—in the country on any topic. **CBS** remained off air at the time of writing, while the other three stations have informally negotiated with authorities to return to the airwaves.

3.8 Conclusion

There are various mechanisms and repressive laws which undermine media freedom which are actualized by various regulatory bodies such as the **Media Council**, established by the Press and Journalist Act, the **Broadcasting Council** established by the 1996 Electronic Media Act, **Uganda Communications Council (UCC)** established under the Uganda Communications Act, **The Media Center**, created under the office of the president in 2005, **The Police Media Crime Department**, and lastly the **Media Centre**, created under the Office of the President in 2005. Therefore the establishment of the various regulatory bodies instead of fostering media freedom, it has led to the undermining of the media freedom as a result of the various powers placed upon such regulatory bodies.

CHAPTER 4

4.0 APPLICABILITY OF PRESS JOURNALISTS (AMENDMENT) BILL 2010

Due to globalization and technological advancement, there have been new development in the industry of mass media hence these has push for the need to amend the current **Press and Journalist Act** so as to incorporate various changes. This has led to the current **Press journalist (Amendment) Bill 2010** whose main aim is to repeal and replace the already existing Act.

However the bill has various shortcomings in regard to the enhancement of media freedom as has been incorporated in the constitution and the compliance with national and international communications standards and obligations established by international communication agreements and treaties to which Uganda is a party and to issue certificates of compliance in relation to them.

4.1 Relevance the 2010 Draft Amendments to the Press and Journalist Act in regard to media freedom

January 2010 draft amendment to the Press and Journalist Act threatens to codify into law even more restrictive requirements, extending to print media the government's arbitrary rule over broadcasts. This can be criticized because it "seeks to destroy critical and independent journalism by giving the government the power to determine what is fit to print and what is not. The draft amendments require newspapers to be both registered with and licensed by the Media Council on an annual basis; failure to do either is punishable by up to two years imprisonment. For example **The Press and Journalist (Amendment) Bill, 2010** in **Clause 2** is to the effect that *"The proprietor of a newspaper shall not operate a newspaper unless it is registered. A person*

who contravenes [this requirement] commits an offence and is on conviction liable to ... imprisonment not exceeding two years."

The Bill provide for the revocation of licence of publishers in regard to national security, however with what constitute national security, such is very controversial because its always the government that determine what is national security which in all circumstances various the government position. Those in support of the Bill have regard to the effect that freedom goes hand in hand with responsibility therefore the media ought to be responsible in carrying out its functions so as to avoid the infringement of other rights. However these are mere allegations of the government because its to try as possible to render the press not acting as the watch dog of the general public in reporting various issues that are deemed to be important to the general public such corruption in government offices.

Under the draft amendments, the Media Council has unlawfully broad discretion in granting licenses, which could lead to arbitrary and selective licensing. Among the vague criteria the council takes into account when issuing licenses are the "social, cultural and economic values of the newspaper." The Council retains power to revoke newspapers' licenses for:

- (a) Publishing material that is prejudicial to national security, stability and unity;
- (b) Publishing any matter that is injurious to Uganda's relations with new neighbors or friendly countries;
- (c) Publishing material that amounts to economic sabotage; and
- (d) Contravention of any condition imposed on the license.⁴⁵

Currently the media council has wider powers such in regard to the revocation of licence this was the major reason that has lead to the attack of the press that is why there was need to

⁴⁵ The Press and Journalist (Amendment) Bill, 2010, sec. 6

reduce such powers of the media council, however instead of **The Press and Journalist (Amendment) Bill, 2010** tying to reduce the powers that was already existing by the media council which led to the attack of the media, in widens such powers has this could lead further to non observance of the media freedom through the revocation of newspaper licenses.

This kind of content-based limitation on print media licensing violates international standards. The Declaration on Freedom of Expression in Africa states that “any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.”⁴⁶ Registration of print media should be automatic once owners have complied with technical requirements administered by a body fully independent of government. As international experts in freedom of expression have stated, “Periodicals should not be subject to a licensing regime; anyone who wishes to produce a publication should be allowed to do so without restraint.”⁴⁷

The draft amendments make editors criminally liable for two new crimes—publishing material that is “*prejudicial to national security or stability and unity or utterances that are injurious to relations between Uganda and her neighbors or friendly countries*” and publishing material that “*amounts to economic sabotage*.”⁴⁸ These crimes are punishable by up to two years imprisonment. These definitions of crimes are overly vague and fail to meet international standards for national security-related restrictions on speech as set out in the **Johannesburg**

⁴⁶ The Declaration on Freedom of Expression in Africa Section VIII (1)

⁴⁷ Article 19, International Centre against Censorship, and the Centre for Media Freedom in the Middle East and North Africa, “The 1995 Press Law of the Palestinian National Authority,” June 1999, www.article19.org/pdfs/analysis/palestine.prs.99.pdf

⁴⁸ The Press and Journalist (Amendment) Bill, 2010, sec. 9

Principles.⁴⁹ Criticism of one's own government is protected speech. The creation of new speech crimes is unnecessary and must in any event meet the high hurdles set out in the Johannesburg Principles to be permissible restrictions on free speech according to international law.

Presiding over the system under the proposed **Press and Journalist (Amendment) Bill 2010** would be a new Media Council, appointed by the Minister of Information and National Guidance. To obtain a licence, publishers would need to show "proof of existence of adequate technical facilities" and the "social, cultural and economic values of the newspaper.

Journalists would have to prove they are qualified - a degree in journalism, or in another field but accompanied by a post graduate diploma in journalism or mass communications - plus a clean criminal record. **Professor Fredrick Jjuuko**, a media law expert for example has critized such provisions by stating that they violate the constitution. The constitution provides for a freedom of expression and media and the presumption is that means for everybody.

Ugandan media is already burdened with repressive laws such as the one that makes it a crime to publish unfavorable information about government activities and public officials. "Criminalizing these activities opens up the media to the partisan and subjective actions of people in power. For instance, when it comes to who defines and what constitutes prejudice to national security or injury to Uganda's relations with her neighbors or friendly countries, its always the government that defines such to its favour.

Uganda has more newspapers, and radio and television stations than ever before, and the media have consistently exposed corruption, human rights abuses and impunity for top politicians. The country boasted a vibrant independent press in the earlier years of President

⁴⁹ Johannesburg Principles 1

Yoweri Museveni - he assumed power in 1986 - but with growing opposition to his regime, those days could be drawing to a close, says Dr Livingstone Sewanyana, executive director of the Foundation for Human Rights Initiative. One example is the case of the host of the talk show "Spectrum", Kalundi Serumaga, who was taken off the air on **Radio One** on the orders of the Broadcasting Council. He was accused of abusing the president while appearing as a panelist on current affairs programme on **WBS TV** called "Kibazo".

The absence of public accountability mechanisms in the Broadcasting Council has stifled the culture of openly discussing public affairs on radio. Media activists say government wants to gain the power to deny, revoke or refuse to renew newspaper licenses at will and without recourse to the courts of law. Article 29 has united various media organisations, including the Ugandan Journalists' Association, to resist further encroachment on media freedom. From a business perspective, newspaper publishers also fear that the proposed amendments will hinder foreign investment into the publishing business; the annual registration introduces an element of uncertainty into any investment. Currently, newspapers and magazines are required by law to register just once.

4.2 Conclusion

Currently the 1995 Constitution of the Republic of Uganda providing for the freedom of expression, however despite this being provided for there are various instances through which media freedom has been under threat as a result of the various repressive laws put in place to guide the observance of the freedom of speech and the media. The 2010 Draft Amendments to the Press and Journalist Act instead of enhancing and addressing the right to freedom of expression as already under threats it tries to aggravate the situation by providing further for repressive laws and ensuring the media independence is not fully enjoyed.

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The 1995 constitution of the Republic of Uganda confers on the rights of individual to be inherent rather than being granted by the state. Among the provisions includes the bill of rights, which provides for the provisions of freedom of speech and expression in **Article 29 (1) (a)**⁵⁰ which include press and other media. Media freedom despite being a cherished right, it is different from other liberties of the people in that it is both individual and institutional. It applies not to just a single person's right to publish ideas, but also the right to print and broadcasting media to express political views and to cover and publish news.

Despite the freedom of the press being a cardinal pillar to the democracy to a state that recognizes the rule of law and human rights principle, which Uganda has tried to appreciate through the constitution. However when it comes to the practical application of the media freedom, such freedom has been under attack especially by the government through the various machineries put in place such as the regulatory bodies that regulate the way the freedom of press is to be excised. Hence this makes media freedom merely like a myth.

5.2 Recommendations

5.2.1 to the Government of Uganda,

1. The government should issue a clear and public statement to all government officials and members of the ruling **NRM** party to refrain from any intimidation, obstruction, threats,

⁵⁰ 1995 Constitution of Republic of Uganda

harassment, and arbitrary arrest of journalists, talk show moderators, and news editors, and state that such incidents will be immediately investigated and prosecuted.

2. The government should also revise the structure of the **Broadcasting Council** and the **Media Council** to establish them as independent bodies that can protect the media from illegitimate government interference and promote diversity in and access to the media because it is through that information dissemination to the public is enhanced.

3. The government should allow full, open reporting and comment on any issues of pressing public interest, including politics, in Uganda without any intimidation in the press. This will also enable to concentrate on the news that is very useful to the country as opposed publishing obscene news that has been resorted to by various news papers such as The Redpapper and The Onion newspaper because such news does not attract the wrath of the government.

4. Cease further arbitrary closures of radio stations, television stations, and/or newspapers without a court order or without good course

5. Ensure that government officials, especially at the local level, and ruling-party activists cease blocking opposition parties' access to the media, either directly or via pressure on media owners and station managers.

6. Amend the **Press and Journalist Act**, the **Electronic Media Act**, and the **Penal Code** to bring them into line with Uganda's constitution and its obligations under international law regarding freedom of expression.

7. Respect and support the self-regulation systems of media practitioners, such as the Independent Media Council.

5.2.2 to the Parliament of Uganda

1. Review laws comprehensively, including the **Press and Journalist Act**, the **Electronic Media Act** and the **Penal Code** and make amendments as needed to bring them into line with Uganda's constitution and its obligations under international law regarding freedom of expression.
2. Initiate a review of Uganda's many regulatory bodies and consult broadly with stakeholders, with the aim of increasing transparency and objectivity in media oversight.
2. If tabled unchanged in Parliament, reject the January 2010 draft amendments to the Press and Journalist Act because it leads to the attack on the media freedom

5.2.3 To the International community

1. Publicly press the Ugandan government to reform its laws and rationalize the powers of its regulatory institutions well in advance of the 2011 elections to bring them into compliance with Uganda's human rights obligations.

5.2.4 To Uganda's Various Journalists' Associations and the media houses

2. Promote compliance with the code of ethics promulgated by the Independent Media Council.
1. Promote the voluntary publication of apologies, corrections, and replies for inaccurate or unfair statements.

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