

A CRITIQUE OF THE LAW RELATING TO FREEDOM OF EXPRESSION IN UGANDA

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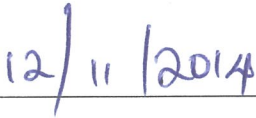
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DECLARATION A

This Thesis is my original work and has not been presented for a Degree or any other academic award in any University or Institution of learning



APIO ESTHER



Date

DECLARATION B

I confirm that the work reported in this Thesis was carried out by the candidate under my supervision

Godard Rousselle



Name and Signature of Supervisor

12-11-2014

Date

DEDICATION

This thesis is dedicated to my dad the late Elayu Steven (R.I.P), my mum Mrs. Betty Ikareut and Sister Elayu Catherine for making this dream come to a reality. God bless.

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First of all I do acknowledge the Almighty God for the gift of life, finances, wisdom and understanding that he blessed me with, because of this I was able to accomplish my llm on time I gave him all the honour and glory.

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LIST OF ACRONYMS

AHB	Anti-Homosexuality Bill
AHA	Anti-Homo Sexuality Act
CEDAW	Convention on the Elimination of all forms of Discrimination Against Women
CRPD:	Convention on the Rights of People with Disabilities
HRW	Human Rights Watch
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
UN	United Nations
UDHR	Universal Declaration of Human Rights

LIST OF LEGISLATION

The Constitution of the Republic of Uganda (1995)
The Anti-Homosexuality Bill (2009) the Anti-Homosexuality Act 2014
The Ugandan Penal Code Act (1950)
The public Order Management Act (2012)
African Charter on Human and People's Rights (1981)
Universal Declaration of Human Rights (UDHR), (1948)
United Nations Charter (UN) (1945)
Convention on the Elimination of all forms of Discrimination against Women (CEDAW) (1979)
Convention on the Rights of People with Disabilities (CRPD) (2006)
International Covenant on Civil and Political Rights (ICCPR) (1966)
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ABSTRACT

This research analyzed the right to freedom of expression in Uganda; it begins by stating that Human rights are classified into four generations that is to say the first, second, third and fourth. Freedom of expression originates from the first generation rights which encompass all civil and political rights set forth under the Universal Declaration of Human Rights (1948). This right entails freedom of thought, conscience and religion; freedom of opinion and expression; freedom of peaceful assembly and association; the right of all to take part in the government of their country; equal access to public services; and, periodic and genuine elections.

It further analysis the enjoyment of this right from the period of pre Colonial Freedom of expression was greatly suppressed as evidenced by various legislations inform of Ordinances passed at that time for example , **the Newspapers Surety Ordinance No. 9 of 1910, the Press Censorship Ordinance No. 4 of 1915**, introduced by Sir Frederick Jackson, to protect British information. **The Press Censorship and Publications Act was passed in 1949.** Constitutionally the origin of right to freedom of expression dates back to the **1962 Constitution** The second Obote Government passed **The Newspaper and Publications (Prohibition) Order, 1981, No. 4 (March 11, 1981), No. 5 (March 25, 1981), and No. 48 (September 18, 1981).** under the bill of rights there are a number of laws that have a direct impact on freedom of expression this include the Penal Code Act (CAP 120) of the laws of Uganda, the Anti Terrorism Act of 2002, the Access to Information Act 2005, under the current regime freedom of expression is provided for under article 29 of the 1995 Constitution of the laws of Uganda. And other Acts of parliament discussed therein.

The purpose of the study was to examine freedom of expression, its legal frame work, its nature and the legitimate limitations both under international law and national and it found out that freedom of expression is not absolute its enjoyment is subject to some legitimate limitations discussed in the research there in after research, the main objective was to analysis the effectiveness of the laws protecting the right to freedom of expression in Uganda. According to the purpose of this study the design that was adopted was desk legal research meaning the research was conducted using the library materials the researcher used both primary source and secondary source. The primary sources that the researcher used included International Human Rights laws, Constitutional and other laws of the Republic of Uganda. The secondary sources that the researcher used include the available literature on the right to freedom of expression such as books, articles, papers, reports and journals by visiting libraries and internet websites. Also the study adopted qualitative methodology a method of looking at things 'holistically and comprehensively, to study it in its complexity and to understand it in its context'¹.

¹ Punch, K.F (2005) Introduction to Social Research, *Qualitative and Quantitative approaches*, Sage publication limited, London. P.186.

CHAPTER ONE

GENERAL BACKGROUND

1.0 Introduction

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

1.1 Introduction

Human rights are usually referred to by various names and phrases. These include 'fundamental' rights, 'basic' rights, and 'natural' rights or sometimes even 'common' rights².

Human rights could be generally defined as those rights which are inherent in our nature and without which we cannot live as human beings . . . Human rights and fundamental freedoms allow us to fully develop and use our Human qualities, our intelligence, our talents and our conscience and to satisfy out spiritual needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection³.

Human rights are classified into four generations that is to say the first, second, third and fourth. Freedom of expression originates from the first generation rights which encompass all civil and political rights set forth under the Universal Declaration of Human Rights (1948). This right entails freedom of thought, conscience and religion; freedom of opinion and expression; freedom of peaceful assembly and association; the right of all to take part in the government of their country; equal access to public services; and, periodic and genuine elections⁴.

The first generation of subjective rights are precisely those rights that refer to personal autonomy of the individual and the rights that enable citizen participation in power in a society where "the exercise of natural rights of each man has no limits, than those which ensure for the other members of society the same rights. They are also known as the

² PS Jaswal & N Jaswal Human rights and the law (1996) 3.

³ VT Thamilmaran Human rights in third world perspectives (1992) 17.

⁴ S. Kelsey and B. Peterson, Human Rights Handbook for Uganda :Journalists for Human Rights(JRH),2003,P.6

traditional rights of the individual as against the state and they reflect the *laissez-faire* doctrine of non-interference⁵.

In the modern age, these rights have found their consecration in constitutions and in the laws of most countries, as well as in international documents. Among them we mention, The Universal Declaration of Human Rights U.N. (1948)⁶.

The first generation of subjective rights is acquired through the force of writing and of arms. Once time passed and ideas and concepts about state were developed, political power, and right and freedom. The works of philosophers John Locke, Ch Montesquieu, Th. Hobbes, JJ Rousseau), appeared a fight against monarchical absolutism, struggle which lead to documents with legal force as Magna Charta in 1215, Petition of Rights in 1628, The Bill of Rights (Declaration of Rights) in 1689, England, The American Declaration of Independence in 1776, The French Declaration of Human and Citizen Rights in 1789⁷.

Through these documents of constitutional nature, were established early forms of limitation of absolute power in the sense that there were supported and declared the freedom of speech, that freedom of thought and the right to petition. And there were stated principles of individualism, starting from the idea expressed by the French Declaration of Human and Citizen Rights in 1789 as "*the purpose of each political association is keeping natural and inalienable human rights.*" It is considered that the Declaration of human and citizens rights from 1789 expresses in the best way the idea that there are inherent human rights, rights that are exercised in a state which is not an end in itself, but only a mean to ensure coexistence of individuals and the exercise of individual rights. For this reason, it is estimated that it is an expression of the first generation of subjective rights. The French Declaration of Human and Citizens Rights from 1789 contained two new ideas. The idea that man as an individual, benefits of "natural rights, inalienable and sacred" including liberty and equality⁸.

⁵ DD Basu Human rights in constitutional law (1994) 82.

⁶ A.V. Cornescu, the Generations of Human's rights, dny práva – 2009 – days of law: the conference proceedings, 1 edition.P.2.

⁷ A.V. Cornescu, op.cit.p.3

⁸ A.V. Cornescu, the Generations of Human's rights, dny práva – 2009 – days of law: the conference proceedings, 1 edition.P.2.

Another category of human rights is the second generation of subjective rights. This class is composed of the socio-economical and cultural rights which includes human rights like, the right to work, freedom of association, the right to education, learning. These rights come from positive law, as well as from international law International Covenant on Economic, social and cultural⁹. This dedication has not the same coverage, as in the case of first generation rights, as consecration requires significant effort from the State and so it is appropriate to everyone's prosperity¹⁰. The second generation of rights, against the first generation of rights requires institutional support from the state, the first generation rights can be exercised independently and singular. The state must intervene through legislation to create an institutional system that allows the exercise, for example, of the right to education or retirement. It is estimated that if the first generation rights form "free status", social economic rights are related to the "social status" of the individual¹¹.

The third generation of human rights can be identified with the rights called as solidarity rights, rights which cannot be exerted only by an individual, but only collectively, like. The right of people to self-determination, the right to peace, the right to development, the right to humanitarian assistance, environmental law the right of sexual minorities, ethnic, religious, linguistic¹². These rights have a positive consecration, generally in international law. The rights in this category cannot be exerted individually, but only by groups or collectivities of people. The third generation rights require not only the need to create an institutional support by the State, but, as in the case of second generation rights, they need to restrict the first generation of rights, through a so called "positive discrimination", in the sense that these rights, like the rights of any minority, require a limitation of rights of first generation¹³. The environmental law allows social groups to live in a healthy environment, clean, without harmful agents to health but, in the same time, involves a number of limitations of rights of first or second generation, like owning a forest or the right to work¹⁴.

The last category of human rights is the fourth generation of subjective rights. In this category are included the so called "rights related to genetic engineering", rights which are on

⁹ A.V.Cornescu, op.cit, p.4.

¹⁰ Ibid.

¹¹ Ibid.

¹² A.V.Cornescu, the generations of human are rights, *dny práva – 2009 – days of law: the conference proceedings*, 1. edition. P. 6.

¹³ Op.cit, p.6.

¹⁴ Ibid.

the doctrinal debate in what regards their recognition or prohibition of certain activities¹⁵. We could put in the same category the so called rights of future generations, as well as rights that can not belong to an individual or to social groups, including nations. They belong only to humanity as a whole¹⁶. The rights of humanity would treat the common assets of the whole humanity. In the same category it is possible to insert rights deriving from exploration and exploitation of cosmic space. In the classic way it is considered that rights related to genetics can be classified as belonging to this last generation of rights, but even if fourth generation in itself is challenged as existence¹⁷. In doing so, there are identified rights that ensure the inviolability of individual rights and unavailability of human body in terms of development of medical science, of genetics

It is very possible that the exercise of a fundamental right cannot be plenary, without limitation of another fundamental right: the right to technological development within environmental law, the right to work, in relation to the right to social security. According to Mrs. Professor Sofia Popescu conflicts between different generations of subjective rights and fundamental rights are explained by the fact that they come from different social interests, protected by different rights and from the rivalry between the values that are protected by various fundamental rights to protect their "existence of second-generation rights economical, social, cultural and involves massive state legislature, are endangering the first generation of human rights political and civil rights¹⁸.

The protection of the rights and freedoms of the individual at the international level, work began in the nineteenth century to outlaw slavery and to improve the situation of the sick and wounded in times of war¹⁹.

Following the atrocities committed during the Second World War, the acute need to maintain peace and justice for humankind precipitated a search for ways of strengthening international cooperation, including cooperation aimed both at protecting the human person against the

¹⁵ ibid

¹⁶ ¹⁶ A.V.Cornescu, the generations of human are rights, *dny práva – 2009 – days of law: the conference proceedings*, 1. edition. P.7.

¹⁷ ibid

¹⁸ Sofia Popescu, *General Theory of Rights*, Ed. Lumina Lex, Bucharest, 2000, p.356.

¹⁹ A.H. Robertson, *Human Rights in the World* (Manchester, Manchester University Press, 1972), pp. 15-20.)

arbitrary exercise of State power and at improving standards of living.²⁰ The foundations of a new international legal order based on certain fundamental purposes and principles were thus laid in San Francisco on 26 June 1945 with the adoption of the Charter of the United Nations. In the Preamble to the Charter, faith is first reaffirmed “in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”. Secondly, the Preamble also, *inter alia*, expresses the determination “to promote social progress and better standards of life in larger freedom”. Thirdly, one of the four purposes of the United Nations is, according to Article 1(3) of the Charter, “To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”²¹.

International human rights provides for the protection of human rights however International human rights law is not limited to the rights enumerated in treaties, but also comprises rights and freedoms that have become part of customary international law, binding on all States, including those that are not party to a particular treaty. Many of the rights set out in the Universal Declaration of Human Rights are widely regarded to have this character²².

International human rights law is reflected, *inter alia*, in the Universal Declaration of Human Rights, as well as in a number of international human rights treaties and in customary international law. In particular, the core universal human rights treaties are²³.

Throughout the world, the most important international legal document on human rights is the International Bill of Human Rights. Its creation began at the end of World War II and is comprised of four key documents: The Universal Declaration on Human Rights 1948 (UDHR), The International Covenant on Civil and Political Rights 1966 (ICCPR), The

²⁰ Human Rights in the Administration of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers, P.3

²¹ Article 1(3) of the United Nations Charter 1945

²² See the Human Rights Committee’s observations in its general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, and in its general comment No. 29 (2001)—that some rights in the International Covenant on Civil and Political Rights also reflect norms of customary international law.

²³ . International Human Rights Law And International Humanitarian Law In Armed Conflict: Legal Sources, Principles And Actors Hr/Pub/11/01, United Nations Publication, p.8

International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), The Optional Protocol to the International Covenant on Civil and Political Rights 1966.

Furthermore, some rights are recognized as having a special status as peremptory norms of customary international law (*ius cogens*), which means that no derogation is admissible under any circumstance and that they prevail, in particular, over other international obligations. The prohibitions of torture, slavery, genocide, racial discrimination and crimes against humanity, and the right to self-determination are widely recognized as peremptory norms, as reflected in the International Law Commission's draft articles on State responsibility²⁴.

The UDHR was adopted in 1948 and later on The International Covenant on Civil and Political Rights 1966 (ICCPR), The International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR), The Optional Protocol to the International Covenant on Civil and Political Rights 1966 were also adopted by member states. Together these four documents transformed individuals from, "objects of compassion into subjects of rights." The documents transformed ideas of human rights into legally binding obligations on United Nations member states.

The United Nations Universal Declaration of Human Rights begins: "Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, The General Assembly, Proclaims this Universal Declaration of Human Rights (1948) as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms"²⁵.

Before colonialism took firm roots in Africa, many indigenous rulers' occupied unique positions in their realm, they were accepted by their subjects as religious, political and judicial head of the kingdom, the spirit and embodiment of the nation, and the custodian of the

²⁴ Draft articles on responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session in 2001, reproduced in Yearbook of the International Law Commission, 2001, vol. II, Part II (United Nations publication, Sales No. E.04.V.17 (Part 2))

²⁵ United Nations Universal Declaration Of Human Rights (1948)

people's ancestral cultural heritage.²⁶ With colonialism, African communities became subject to laws externally developed by Europeans. This generally attacked the development of modern democratic ideas among educated, independence-minded Africans. Because colonizers feared the development of a human rights culture in Africa would undermine their colonial rule, they failed to promote equality or human rights and in fact practiced quite the opposite²⁷.

After the end of world war two eventually a human rights culture emerged under the banner cause of self-determination. This right states that, 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development', Articles 1²⁸ however it was later on rejected under the demands of self-determination by the colonized states that anti-colonial protests eventually led to the collapse of the system of colonialism throughout Africa²⁹.

Self-determination means the right of people to be free from outside interference and intervention. It may also mean that people have the right to withdraw from existing state structures to set up new states or the rights of people to act against their own government as enumerated in Article 2³⁰, The United Nations Human Rights Commission believes the right to self-determination is vital because its realization is an individual human rights³¹.

Uganda has ratified a wide range of international and regional human rights treaties related to the enjoyment of the highest attainable standard of physical and mental health ('right to health'), including the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of All forms of Discrimination against Women (CEDAW), the Convention on the Rights of the Child (CRC) and the African Charter on Human and Peoples' Rights (ACHPR). International commitments to human rights, including the right to health, provide a guiding framework for legislation, policies and programming at national level³².

²⁶ See www.ghana.co.uk.

²⁷ Sarah Kelsey and Ben Peterson, Human Rights Handbook for Uganda: Journalists for Human Rights (JRH), 2003, P.15.

²⁸ ICCPR and ICESCR.

²⁹ Sarah Kelsey and Ben Peterson, Human Rights Handbook for Uganda: Journalists for Human Rights (JRH), 2003, P.15.

³⁰ Ibid.

³¹ Sarah Kelsey and Ben Peterson, (n 5)15.

³² World health organization, Fact Sheet health And Human Rights in Uganda

It is important to note that even those countries that have not ratified the International Bill of Rights must adhere to a moral code under 'international customary law'³³ which forbids: Slavery, Torture and Arbitrary deprivation of life, arbitrary arrest and detention, Denial of freedom of thought, conscience or religion³⁴.

1.2 Historical background of freedom of expression in Uganda

1.2.1 Freedom of expression during pre- colonial

Freedom of expression was greatly suppressed during this period as evidenced by various legislations in form of Ordinances passed at that time for example in 1910, the Newspapers Surety Ordinance No. 9 of 1910 was introduced which stated inter alia: '*no person or company shall print or publish or cause to be printed or published within the protectorate unless executed and registered in the office of the Registrar of Documents under the Registration of Documents Ordinance a bond in the sum of shs.6000 with one or more [surety]*'.³⁵

At the height of the Great War known afterwards as World War in 1915, the Governor of the Protectorate, Sir Frederick Jackson, introduced the Press Censorship Ordinance No. 4 of 1915 to protect British information. The Press Censorship and Publications Act was passed in 1949, following the riots that had almost brought the Colonial economy to its knees, fueled in no small part by a number of radical native-owned newspapers. What was to become the mother of all Colonial media legislations in the Protectorate, with implications for post-independent Ugandan media the Colonialist may possibly never have conceived was the passage of the Penal Code in 1950.³⁶

1.2.2 Freedom of Expression during Colonial Uganda

Peaceful assembly and demonstration were used as a means of expression, this is because even before independence Ugandans used it as a means of showing dissatisfaction or disagreement, in 1947 Uganda African Farmers Union, founded by I.K. Musazi, was blamed

³³ Draft articles on responsibility of States for internationally wrongful acts, adopted by the International Law Commission at its fifty-third session in 2001, reproduced in Yearbook of the International Law Commission, 2001, vol. II, Part II (United Nations publication, Sales No. E.04.V.17 (Part 2)).

³⁴ Answell, Gwen and Veriava, Ahmed, Human Rights Handbook for Southern African Communicators (Institute for the Advancement of Journalism: Johannesburg, 2000), p. 25.

³⁵ Zie Gariyo, The press and democratic struggles in Uganda, 1990 -1962, centre for basic research (Kampala), working paper n No.24, 1992.

³⁶ Reality Check, Revisiting The media freedom debate at Uganda's independence Golden Jubilee, p.30

for the riots and was banned by the British. Two years later in 1949 discontented Buganda rioted and burned down the houses of pro government chiefs. The rioters had three demands: the right to bypass government price controls on the export sales of cotton, the removal of the Asian monopoly over cotton ginning, and the right to have their own representatives in local government replace chiefs appointed by the British³⁷.

1.2.3 Freedom of expression during the post colonial Uganda

During the first decade of independence, political parties suffered the intolerance of Obote's political machinations, including threats and bribery to opposition elites. By 1967, most of the prominent opposition members of parliament of the Democratic Party (DP) and Kabaka Yekka (KY) had either been imprisoned or bribed to cross the floor. By the time Obote was thrown out in a coup in 1971, only a handful of opposition MPs remained in parliament. During Amin's period, parties were forced to close shop.³⁸

In January 1964 units of the Ugandan Army mutinied, demanding higher pay and more rapid promotions. Minister of Defence Onama, who courageously went to speak to the mutineers, was seized and held hostage. Obote was forced to call in British troops to restore order, a humiliating blow to the new regime. In the aftermath, Obote's government acceded to all the mutineers' demands.³⁹ It is evident that demonstrations were used as a means expression. Constitutionally the origin of right to freedom of expression dates back had to the 1962 Constitution under the bill of rights when Uganda gained Independence and promulgated the Independence Federal Constitution. For the first time after years of colonial exploitation and oppression, Ugandans in 1962 gained constitutionally guaranteed fundamental rights and freedoms. However, it should be noted that, as probably dictated by the conceptions of human rights at the time, the Bill of Rights had its own limitations. First, instead of opening with an assertion of the inherent nature of the rights, the Bill began with a clear caution that the rights were not absolute and that the rights would be enjoyed subject to the rights of others and the public interest⁴⁰.

³⁷ Mongabay.com ,Uganda history accessed on 3/25/2014 @12:15pm

³⁸ Sabiti Makara, Deepening Democracy through Multipartyism: the Bumpy road to Uganda's 2011 elections, PhD Makerere University Uganda, P.5.

³⁹ Ibid 1

⁴⁰ Article 17 of the 1962 Constitution of the Republic of Uganda.

The explicit guarantees for freedom of expression in the constitution, coupled with favorable court rulings, Justice Joseph Mulenga, who wrote the Supreme Court's majority decision which annulled the law against the publication of false news, summed it up this way:

*'It is evident that the right to freedom of expression extends to holding, receiving and importing all forms of opinions, Ideas and information, it is not confined to categories, such as correct opinion, sound ideas or truthful information. Subject to the limitations under article 43 a person expression or statement is not precluded from the constitutional protection simply because it is thought by another or other 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 subjected to by society or any part thereof as false or wrong'*⁴¹

However despite that, some other laws some of which date back to the colonial era such as the official secrets act also have a direct impact on freedom of expression, the penal code has several provisions with adverse implications for reporting on public affairs in general and the state in particular according to professor Joe Oloka Onyango, the penal code curtails free expression in A fashion reminiscent of medieval ages⁴²

The code defines offences related to sedation, promotion of sectarianism, libel /defamation and terrorism. All of which limit freedom of expression, it was so until in 2004 when the supreme court annulled it following a successful appeal by journalists **Charlie's Onyango Obbo and Andrew Mwenda vs. attorney general, constitutional appeal no.2 of 2002**⁴³. Justice Joseph Mulenga, who gave a lead Judgment, *'had this to say the core problem of section 50 was in its construction, which wittingly or unwittingly criminalized not only the category of false statements that prejudice public interest but also the category of false statements that were likely to, but do not prejudice public interest. The conclusion of the court was that criminalizing the latter category was a form of limitation on the right to freedom of expression which went beyond what is acceptable and demonstrable justifiable in a democratic society'*⁴⁴

New post-independence media legislation did not look forward in time for inspiration but benchmarked with the past. The shock factor for the post-independence Governments' heavy-

⁴¹ Onyango Obbo and Andrew Mwenda vs. attorney general (constitutional appeal no.2 of 2002

⁴² Joe Oloka Onyango, the limits of free expression under Museveni:kampala,p.19

⁴³ constitutional appeal no.2 of 2002

⁴⁴ speech by justice Mulenga at the world press freedom day celebrations,kampala,3 may 2006

handedness and brutality against the media was not so much to be found in its excesses but rather in the continuity in spirit with the bygone Colonial era⁴⁵. The evolution of what has been described as the imperial presidency in the post-independence era was not in itself radical, but essentially conservative. The governance model of a dominant centralized power had simply had a change of clothes from those worn by the British Crown to those that were now the rage donned by the Ugandan institution of the presidency, as formally unveiled in the 1967 Constitution. The studied circumspection of the media as a primeval self preservation strategy under the first Obote Government became, a silence louder than that of the grave, a tragic truism, under the military strongman, Idi Amin. The flashes of militarism under Obote that were exposed behind the constitutional veneer anticipated the brutal militarism of the Amin regime when the governance model of a dominant centralized power was stripped bare of all Constitutional pretensions and went muscular. State media became Government's propaganda arm of mass disinformation⁴⁶.

It is important to note that during Obote administration broadcasting remained an exclusive State monopoly during the first Obote Administration. The outreach of the State Radio named Radio Uganda after independence as a powerful agent of socio-economic development was broadened after independence with the direct injection of Government investment; a second broadcast channel was created. Programming was increased to include thirteen languages and over 100 hours of weekly broadcast, and was eventually split into four regional programmes.⁴⁷

In 1966 president Obote declared a state of emergency in Buganda, which lasted until 1986. The declaration of a state of emergency and the abrogation of the 1962 Constitution ushered in a perpetual state of political instability. It also marked the beginning of a spate of constitutional it is important to note that the enjoyment of the right to peaceful assembly and demonstration in Uganda during the periods of 1960 to 1980 was very difficult in that whoever tried to exercise this right had to face the wrath of the government or the emergency laws put in place to curtail the enjoyment of this right making, which various regimes also used as an excuse to commit massive human rights abuses on a scale never before

⁴⁵ Reality Check, Revisiting The media freedom debate at Uganda's independence Golden Jubilee, p.62

⁴⁶ Op.cit

⁴⁷ Jacob Matovu, 'Mass Media as Agencies of Socialization in Uganda; Journal of Black Studies, Vol. 20, No. 3, March 1990, pp. 350-352

experienced in the country. These abuses were committed under the guise of national security, but only served to perpetuate dictatorial rule for the benefit of a few.⁴⁸

Abu Mayanja, a former minister in Buganda Kingdom and member of the Uganda People's Congress who actively contributed to the 1967 Constitutional debate in the Transition had this to say: *'The key-note of the Government proposals is the concentration of all powers of Government legislative executive, administrative and judiciary-into central Government institutions and the subjection of those institutions to the control of one man-the President, The result is the creation-not of a republic, but of a one-man dictatorship, ... The people of Uganda, must summon all their courage and make it clear to our Government that when we fought for freedom we meant just that-that we believed all men, by reason only of the fact that they are human beings, are entitled to freedom and government by consent, freely given in free elections. Neither more nor less. A dictatorship by black-men has no objective advantages whatsoever over a dictatorship by white men: it may even be less efficient and less impartial'*⁴⁹.

The fact is that after Independence all the previous laws became the laws of the Independent Sovereign State of Uganda overnight. Some of those laws are perhaps not in keeping with the spirit and aspirations of an independent State and it is idle to suggest that the Government did nothing about them. The laws of a country also a matter of public importance .Mayanja is in effect drawing attention to certain laws and gives one instance thereof which, according to him, has vestiges of the old Colonial era... I refuse to believe that this represents a slur on the independence of the country which, according to Mr. Binaisa, is thereby rendered a 'sham.' If at all, it goes a long way in emphasizing that Independence by reasserting that the Independent Parliament is now capable of amending the laws as it thinks fit and in the interests of the country by doing away with even the slightest vestiges of a bygone era.⁵⁰

The 'Transition Affair' debunked the Government's pretensions to Constitutional rule and unmasked an evident continuity in substance with the governance model anchored in

⁴⁸ Francis M. Ssekandi and Cos Gitta ,Columbia Human Rights Law Review; protection of Fundamental Rights in the Uganda Constitution , (1994) ,p. 2

⁴⁹ Abu Mayanja, The Government's Proposals for a New Constitution of Uganda, Transition, No. 32 (Aug-Sep. 1967), pp. 20, 25

⁵⁰ Notes on transition, The Judgment' in the Transition Sedition Case] delivered by Mr. Saied, Chief magistrate, transition, no 38(jun-jul.1971), pp.48 -49

centralized power monopoly, power domination and power preservation of the bygone Colonial regime.⁵¹

The second Obote Government passed The Newspaper and Publications (**Prohibition**) **Order, 1981, No. 4 (March 11, 1981), No. 5 (March 25, 1981), and No. 48 (September 18, 1981)**. Seven newspapers were banned in the first year in power of the second Obote Government. Papers which had emerged in the immediate aftermath of Amin's downfall such as Mulengera, Weekly Topic, The Champion, and Weekend Digest, among others, were banned. The editor of the Government mouthpiece, Uganda Times, was dismissed over an article that appeared in the newspaper pointing to the complicity of the Government army in civilian deaths. Journalists continued to be thrown in jail⁵² to paraphrase what was said of the Bourbons restored to the French throne after the defeat of Napoleon Bonaparte, Obote in his second Government, had learnt nothing and forgotten nothing.

Critical to the success of Idi Amin's military coup in 1971 was the securing of control of Radio Uganda and UTV by the military. The same pattern was to be followed in subsequent military take-over's, till 1986. Captain Aswan was killed during the regime, who proclaimed the new military Government, cited 18 grievances for the change of Government, among which was "*the lack of freedom in the airing of different views on political and social matters*." "At the time of Idi Amin's coup, the tone of the newspapers that still prevailed reflected minimal or sanitized editorial comment and this testified to the progressively claustrophobic political environment of the toppled Obote regime. Philip Short writing in the infectious popular excitement of the first months of Amin's Government observed.⁵³

Various proclamations and decrees resulted in major revision of the 1967 Constitution. Major-General Idi Amin Dada began this process on February 2, 1971, with **Legal Notice No. 1 of 1971 (Amin Proclamation)**. It amended and suspended parts of the 1967 Constitution but in a manner not provided for under that constitution⁵⁴. The years of 1980 to 1985, was characterized by widespread civil unrest and gross human rights violations. 1971⁵⁵

⁵¹ revisiting the media freedom debate at Uganda's independence golden jubilee, p. 54

⁵² Lugalmi & Tabaire, op. cit., p. 9; Sewanyana (ed), 'Freedom of Expression', pp. 11-12

⁵³ Matthias Mugisha, reproduced a transcription of the radio proclamation of the coup in the Sunday Vision, January 24 2009 11/06/2012

⁵⁴ Article 3 of the 1967 Constitution provided for amendments to the constitution by an act of Parliament.

⁵⁵ Francis M. Ssekandi and Cos Gitta, Columbia Human Rights Law Review 191 protection of fundamental rights in The Uganda constitution Copyright (C) 1994 .p 4 @ page 4

Uganda's constitutional history from 1966 to the middle of the 1980s regressed from a parliamentary-style democracy to variants of arbitrary rule characterized by the abrogation of the 1962 Constitution, multiple amendments to the 1967 Constitution⁵⁶.

Idi Amin issued the **Newspaper and Publication (Amendment) Decree in 1972**. The decree gave the Information minister the discretion to proscribe publication for a specified timeframe or indefinitely, citing the public interest. A lot of privately-owned newspapers were banned, including foreign ones, whose owners were labelled "confusing agents," "imperialists" and "Zionists."⁵⁷ Having been subjected for years to the brute power of a despotic military regime, the immediate post-Amin era resurrected hopes for media independence. The 1967 Constitution was restored after a fashion, with amendments to accommodate the new political dispensation under the Uganda National Liberation Front.

Freedom of Expression during the NRM Regime is seen to be crucial for the development of a full democracy particularly in Uganda's newly revived multi-party system the media can play a critical role in Promoting discussion and debate and ensuring political accountability.

Under the NRM government, the media has gained considerable freedom and the number of media outlets has exploded. Statutory and regulatory measures, however, continue to limit freedom of the media, and the freedom of the press has declined considerably during the last two years. Journalists and broadcasters continue to be subject to negative government Reactions and interference. Public statements, judicial sanctions and arbitrary police actions have been employed to intimidate media practitioners critical of the current regime. These Restrictive measures have created a level of self-censorship, which undermines the role of the media in providing a forum for public debate, public information, analysis, and discussion.⁵⁸

Government agencies, such as the Uganda Communications Commission (UCC) and the Broadcasting Council (BC), have been set up by the government to regulate the media. The Authority given to these regulatory bodies has been abused often disrupting the work of the Media groups. Some agencies do not have clear mandates and have overlapping duties, Particularly the UCC and the Broadcasting Council. The multiple licenses, registration, and

⁵⁶ Ibid, P.13

⁵⁷ Sewanyana (ed.) 'Freedom of Expression', chibita, 'Ugandan Radio', pp. 5 6

⁵⁸ Freedom of Expression: In Defence of Media Freedom in Uganda
(Report for the Period 1st June- 30th November 2007)

Certification requirements and fees have created undue burden on the media industry ALSO restrictive legislation governing the operation of the media and provisions criminalizing particular acts by the media severely restrict journalists' and broadcasters' freedom and Right to seek, receive, and impart information and the public's right to access such information. This in turn harms individuals' ability to fully exercise their rights and responsibilities in a Multi-party democracy.⁵⁹

As President, Museveni has consolidated political power, reduced lawlessness and greatly improved the economy. Nevertheless, there has been a gradual decline in freedom, democracy, and official accountability during the second half of his 25 years in power. From 2009–2011, the government regularly broke up public demonstrations, used excessive force in responding to riots, closed newspapers and radio stations, and detained prisoners for long periods without trial.⁶⁰

The constitutionality of Section 32 (2) was challenged in the case **Muwanga Kivumbi vs. the Attorney General Constitutional Petition No. 9 of 2005, in the Constitutional Court of Uganda (Unreported)decided by the Constitutional Court in May 2008**⁶¹. In this case the Constitutional Court unanimously declared the sub-section unconstitutional on the basis that it amounts to granting 'prohibitive' rather than 'regulatory' powers to the police and hence was an unjustifiable restriction to the exercise of the freedom of assembly and peaceful demonstration guaranteed under Article 29⁶². In the lead judgment the court stated that:

'...Peaceful assemblies and protests are a vital part of every democratic society. They can be a very powerful tool and some of the rights and freedoms that some countries enjoy today were gained because some people were prepared to go out on the streets and protest...The right to peaceful protest is not absolute. The police have a wide range of powers to control and restrict the action of protestors. These powers should not be exercised by the police in an unaccountable and discriminatory manner....In the matter now before us; there is no doubt that the power given to the Inspector General of Police is prohibitive rather than regulatory.

⁵⁹ *ibid*
(Report for the Period 1st June- 30th November 2007), p.7

⁶⁰ Countries at the Crossroads Uganda, (2012) P. 3

⁶¹ Constitutional Petition No. 9 of 2005, in the Constitutional Court of Uganda (Unreported)decided by the Constitutional Court in May 2008

⁶² The 1995 constitution of the Republic of Ugandan

It is open-ended since it has no duration. This means that the right available to those who wish to assemble and therefore protest will be violated...The Government has a duty of maintaining proper channels and structures to ensure that legitimate protest whether political or otherwise can find a voice'. This case proves that the right to peaceful assembly and demonstration did not just start today but rather it has been in existence. Amnesty International welcomes the court decision in light of Uganda's obligation to ensure the rights to freedoms of peaceful assembly and expression. Section 32 (2) of the Police Act was worded in such a manner as to provide the police with far-reaching and broad powers to unilaterally determine whether to allow protests. To this extent the provision failed the three part test under international law in relation to interference with the freedom of peaceful assembly. *In view of the Court's interpretation declaring section 32(2) as unconstitutional* the power of the police under the Act is to regulate the conduct of rallies or assemblies as provided under section 32(1). The remaining provisions of section 32 of the Police Act do not grant powers to the police to license public assemblies as is the current practice of the Ugandan police⁶³.

It has been documented that in the first eighteen years of the NRM government over 24 journalists were charged in Court on offences listed under the Penal Code, particularly on sedition, false publications and defamation ⁶⁴. The paradoxical contrast in Uganda between a vocal and diverse press and the regular arrests and prosecutions of leading media figures results in part from the draconian press laws which remain on the books, despite the constitutionally guaranteed right to freedom of the press. Some of the laws used to prosecute journalists, such as the law on seditious libel, date back to the colonial era.⁶⁵

The genesis of Article 41 of the 1995 Constitution of the Republic Uganda can be traced to the recommendations of the Uganda Constitutional Commission (the Odoki Commission). Reflecting on a constitutional history that entailed the non-respect for human rights and the absence of democratic values, the Odoki Commission pointed out that "the fundamental freedom of expression and the right of every person to information are vitally important rights, at the centre of the struggle for the defence of human rights and democracy".

⁶³ Stifling Dissent: Restrictions on the rights to freedom of expression and peaceful assembly in Uganda Index: AFR 59/016/2011 by Amnesty International November 2011 page 26-27

⁶⁴ Lugalambi and Tabaire, pp 11-12

⁶⁵ peter Bouckaert, hostile to democracy: the movement system and political repression in Uganda (1988) human rights watch

Ultimately, the Odoki Commission recommended, "the freedom of expression which includes freedom to speech, receive, hold and impart opinions, information and ideas without interference should apply to all individuals, groups and the media". Further, the Commission recommended, "public officials should be free to disclose information they come across in the course of their duties, provided it is not classified"⁶⁶.

According to Odoki Commission the right to access information is an important human right. Access to information in government possession is one of the ways of promoting good governance, improve and strengthen the culture of transparency and accountability in the public sector. The value of access to information legislation comes from its importance in establishing a framework of open governance. In this context, the law must be premised on a clear commitment to the rule of maximum disclosure. It will curtail abuse of power, human rights violations and corruption by exposing the veils in government dealings to the public⁶⁷.

In the face of these momentous developments on the media landscape, the paradox of governance under the Movement System and its implications for media independence continued to be evident. Over and above already existing and inherited media legislation, Government passed legislation that created a number of media regulatory bodies. Three pieces of media legislation were passed in three years. The Press and Journalist Statute of 1995 (became the Press and Journalist Act of 2000) established the Media Council (MC) as well as the National Institute of Journalists of Uganda (NIJU). A year later; the Electronic Media Statute of 1996 (it became the Electronic Media Act of 2000) created the Broadcasting Council as the body in charge of issuing broadcast licenses and liaising with the Ministry of Information. The Electronic Media Act also tasks the Broadcasting Council with standardizing, planning, managing, and allocating the frequency spectrum dedicated to any broadcasting station.⁶⁸ The Uganda Communications Act of 1997 established the Uganda Communications Commission (UCC).⁶⁹ Media scholars and practitioners have decried the

⁶⁶ Vincent Babalanda, Uganda: It's your right to get information, *The Monitor* (Kampala) October 18, 2006

⁶⁷ Vincent Babalanda, Uganda: It's your right to get information, *The Monitor* (Kampala) October 18, 2006

⁶⁸ Revisiting the media freedom debate at Uganda's independence golden jubilee. P. 71

⁶⁹ Panos Eastern Africa, Report of the Review of the Media Environment in Uganda: 2003 to 2006, by March 2006, pp 10 -12

regulation overkill and the overlapping roles between the media regulatory bodies that have become increasingly manifest over the years.

In 2005 Government established the Media Centre. Which come under criticism by the media fraternity for its perceived partisanship? The following excerpt from a release by the Media Centre highlights why its objectivity as a government agency has been challenged.

“Actually, in Uganda freedom of expression is so great that it is often abused by certain ‘self-appointed political analysts’ who have made it their personal mission to slander President Museveni openly in the media verbally and through their writings. A certain media house is fond of ridiculing President Museveni in satirical cartoons on a regular basis. Why don’t human rights organizations say anything about that?”⁷⁰

In 2002, Uganda was given the 52nd position out of 139 evaluated countries. It is paradoxical, just as Peter Mwesmge observed that Uganda shows weaker credentials on media freedom under the political dispensation of multi-party democracy than ten years before under the Movement system.⁷¹

In September, 2009 Riots broke out in Kampala and surrounding areas following media reports that the Government had stopped the Kabaka of Buganda from making a royal tour in Kayunga District, citing security concerns. In the aftermath of the riots, the following four radio stations were shut down by the BC, namely, the Central Broadcasting Service (CBS), Radio Suubi, Radio Sapientia, and Akaboozi ku Bbiri. Closure of radio stations was not unprecedented under the current Government as it had already been carried out in the past, examples being the closure of a Catholic radio station, Radio Kyoga Veritas in June 2003.⁷² And Kfm radio in August 2005.⁷³

Also during the unfolding of political-social upheavals in North Africa in the first months of 2011, what is now referred to as the Arab Spring, an animated debate among Ugandan net users was generated, especially on the role played by the social media platforms. Different sections of the Ugandan public and members of civil society debated the rationale for and the developments around the April and May 2011 protests on various social networking sites,

⁷⁰ Josepha Jobo Phony, human rights concerns at Amnesty, June 21, 2012

⁷¹ The Paris-based Reporteurs sans Frontières (RSF) World Press Freedom Index 2012

⁷² 12 police close church owned radio station, <http://www.ifex.org/Uganda> 2003/06/26.

⁷³ The police raid the office of the independent newspaper. “The monitor” 11 October 2002

particularly on Face book. Media regulators took a keen interest in the direction of the debate. The authorities attempted to block the use of social networking internet sites, such as Face book and Twitter citing the potential for widespread violence, even though there was no evidence that the protest organizers were or had been using the various sites to organize the protests in any way. a letter addressed to ten internet service providers by the UCC is illuminating.

*"We have received a request from the security agencies that there is need to minimize the use of the media that may escalate violence to the public in respect of the ongoing situation due to demonstration relating to "Walk to Work", mainly by the opposition in the country...You are therefore required to block the use of Face book and tweeter [sic] for 24 hours as of now, that is: 14 April 2011 at 3.30 p.m. to eliminate the connection and sharing of information that incites the public."*⁷⁴

From this background of freedom of expression one can say that the enjoyment of this right was to a greater extent limited during the pre colonial, post colonial more it as compared to today

1.3 Statement of the Problem

The International Covenant on Civil and Political Rights which Uganda ratified in 1995 guarantees the right to freedom of expression providing, 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...." Article 9 of the African Charter on Human and Peoples' Rights also provides for freedom of expression⁷⁵. The enjoyment of the right to freedom of expression in Uganda peacefully without any interference is almost a right more much as it is fundamental right enshrined in Article 29 (1)⁷⁶. This limitation to the enjoyment of this right is evidenced by the interference by the police of public rally and demonstrations⁷⁷ and the non favorable provisions of other laws for example the Public Order Management Act 2012. This kind of conduct is not in agreement with article 29(1)⁷⁸.The research will there for try to course a fundamental change in ideology of Ugandans about this right Despite this intension its

⁷⁴ Stifling dissent: Restrictions on the rights to freedom of expression and peaceful assembly in Uganda, Amnesty International (2011) p.23

⁷⁵ Vincent Babalanda, Uganda: It's your right to get information ,The Monitor (Kampala) October 18, 2006

⁷⁶ 1995 constitution of the republic of Uganda

⁷⁷ The Observer Of Sunday, 13 October 2013 22:09 Written By Deo Walusimb Accessed On 4/11/2014

⁷⁸ ibid

difficult for the researcher to change the mind set of the public and particularly the police however even if the researcher is able to identify the means to solve the problem he would encounter other problems such as lack of literature on the subject, lack of the ability to ensure that the research findings reach the targeted audience and above all implementation of the existing laws remains a big challenge.

1.4 Purpose of the Study

The purpose of the study was to examine right to freedom of expression in Uganda.

1.5 Main Objective of the Study

To analyse the effectiveness of the laws providing for protecting the right to freedom of expression in Uganda.

1.5.1 Specific Objectives

1. To provide a background for the enjoyment of the right to freedom of expression in Uganda.
2. To discuss the strength and weakness of the laws in the protection of the right to freedom of expression.
5. To suggest possible recommendations and conclusions.

1.6 Research Questions

1. What is the background for the enjoyment of the right to freedom of expression?
2. What are the strengths and weaknesses of laws that provide for the protection of the right to freedom of expression in Uganda?
3. What are the possible recommendations and solutions?

1.7 Scope of the Study

1.7.1 Geographical scope

The study was conducted within the territory of Uganda.

1.7.2 Time scope

The study covered the period of 1995 up to 2014.

1.7.3 Content scope

The study examined the right to freedom of expression, its legal framework, and its effectiveness.

1.8 Significance of the study

The researcher believes that once the study conducted can contribute significantly in addressing the identified loophole in the law. Also the study shall contribute to a review of the laws governing the right to freedom of expression in Uganda.

The study is also expected to contribute towards the pool of knowledge which is useful in further research in the related field of study. The research will enable the researcher to be awarded a masters degree of law (public international law).

1.9 Review of literature

Concepts, opinions and ideas from Authors and Experts

A number of Uganda's national laws are inconsistent with the countries obligations under international law and as such 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 available⁷⁹. 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."⁸⁰

⁷⁹ UN Human Rights Committee, General Comment No. 10, Freedom of Expression (Article 19), U.N. Doc. 29/06/83 (1983), para.4; and Johannesburg Principles on National Security, Freedom of Expression, and Access to Information (Johannesburg Principles), adopted on October 1, 1995.

⁸⁰ Stifling Dissent: Restrictions on the rights to freedom of expression and peaceful assembly in Uganda Index: AFR 59/016/2011 by Amnesty International November 2011,P.9

According to international standards as set out by the Johannesburg Principles 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, governments should permit and tolerate these types of speeches. 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.⁸¹

In Africa the concept of human rights emerged from struggle, in particular struggles against colonialism and the remnants of colonialism.⁸² For instance part of the Declaration of the 1945 Pan African Congress reads: "We are determined to be free. [W]e want education; we want the right to earn a decent living; the right to express our thoughts and emotions. We will fight in every way we can for freedom democracy and social betterment."⁸³ In the process of trying to develop the standards of human rights, a lot of difficulties have arisen and even as we enter into the era of implementation and enforcement of the universally agreed standards, conceptual wars regarding the several aspects of human rights continue.⁸⁴

Africa set out the constitutional foundations of freedom of assembly and association in 5 Sub Saharan countries including Tanzania, Ghana and South Africa. They also, examined the extent the legal environment and government practice facilitate or hinder freedom of association in three main areas of association life: politics, NGOs (Non Governmental Organizations) and labor spheres. In addition, the extents to which associational activities are affected by the relevant laws relevant to freedom of assembly, particularly public order laws were also dealt with. They are of the view that the rights to freedom of assembly and association have not been enjoyed widely in Sub Saharan Africa because of the inadequacy of the laws that are supposed to give effect to these constitutional rights; oppressive practices by ruling parties against opposition groups; and legal regimes relating to public order⁸⁵

⁸¹ Ibid.

⁸² Heyns, A Struggle Approach to Human Rights, Kluwer Academic Publishers, (2001)

⁸³ El Obaid (1996) 823 as quoted from C Heyns above

⁸⁴ M Hansungule, The Concept of Human Rights and Its Implications, Centre for Human Rights, University of Pretoria, 2004, unpublished, manuscript on file.

⁸⁵ Article 19(XIX, Article 19, Freedom of Association and Assembly in Sub Saharan Africa, March 2000)Recent reports on Freedom of Association and Assembly in Sub Saharan

Public authorities such as police service have to understand the extent of their powers not to interfere with the freedoms and rights of the citizens. The author still insist on the old language of balancing between civil liberties and social order which police in Uganda can hardly be said to practice this balance of rights.⁸⁶

It is therefore the aim of this work to analysis the right to peaceful assembly in Uganda, the challenges encountered while enjoying this right from the legal point of view and suggests the possible reforms both in law and practice guided with the help of existing laws both in the international and national, it will also be an opportunity to re affirm Uganda's obligation under international law to which Uganda is a party as it has ratified most of the international human rights instruments

Freedom of peaceful assembly is a fundamental human right that has a firm basis in International human rights law and was reaffirmed by OSCE participating states in the 1990 Copenhagen Document. The right to assemble, demonstrate, picket, rally, March and protest is an important aspect of all democratic societies⁸⁷. As such, the freedom of peaceful assembly is associated with the right to challenge the dominant views within society, to present alternative ideas and opinions, to promote the interests and views of minority groups and marginalized sections of society, and to provide an opportunity for individuals to express their views and opinions in public, regardless of their power, wealth or status⁸⁸ which agrees with my research on the fact that this right is a fundamental in international al human rights law

The hand book⁸⁹ further states the relevance of law Public assemblies in that they can be particularly important and prominent at times of political tension or when citizens are making demands for social change. Demonstrations and protests are often used in a variety of campaigns by political groups and are generally an important aspect of election campaigns. They can also be an important means of calling for change in contexts where more institutional mechanisms for effecting social change are not available⁹⁰. The hand book also states that the right to Freedom of peaceful assembly is an individual right that is always

⁸⁶ Fraser Sampson ,Blackstone's Police Manual: General Police Duties, (2003)

⁸⁷ OSCE, Handbook on monitoring freedom of peaceful assembly, published by the office for democratic institutions and human rights (ODIHR) www.osce.org/odihr

⁸⁸ Ibid. 7.

⁸⁹ Ibid 1

⁹⁰ Ibid 1, p. 7

expressed in a collective manner. Such collective manifestations of individual views can be perceived as particularly threatening to the authorities in some contexts. And, because assemblies take place in public spaces and are used by diverse organizations, groups and individuals, they are very visible indicators of the level of tolerance and respect that is given to different political, social and cultural practices and beliefs. A government's approach to assemblies can provide a clear indication of the respect that the state has for basic human rights⁹¹.

However It's also important to note that as with all human rights, the primary responsibility to promote and protect freedom of assembly lies with the state, but civil society organizations have a crucial role to play in monitoring the implementation of this freedom⁹². It should be noted that, following an assembly, further actions by the state and its officials might be aimed at restricting the full enjoyment of the right to freedom of assembly and might constitute violations of other human rights. For instance, the response by the state to assemblies might include arbitrary detentions, torture and other ill-treatment, as well as the prosecution of participants in assemblies for acts that only resulted from their exercise of freedom of peaceful assembly⁹³.

It's important to note that peaceful assemblies and demonstrations is one of the most accepted ways of expressing dissatisfaction or even demand for a change of government policy since it involves the whole public. Participation in public assemblies is a political right, the realization of which can give a public voice to those without access to their legislative bodies, those who lack representation through elections, or those with little or no opportunity to voice their opinions through the media. Furthermore, the right to peaceful assembly can play an instrumental role in building support for change or reforms, or in voicing discontent. In most cases, however, the mobilization of people through a public assembly is the most direct means of trying to influence government, reflect local opinion, or express views as part of the regular political process⁹⁴.

⁹¹ Ibid, p. 8

⁹² Ibid

⁹³ Ibid. 12

⁹⁴ OSCE, Handbook on monitoring freedom of peaceful assembly, published by the office for democratic institutions and human rights (ODIHR) www.osce.org/odihr, p.7

1.10 Methodology

According to the purpose of this study the design that was adopted was desk legal research meaning the research was conducted using the library materials the researcher used both primary source and secondary source. The primary sources that the researcher used included International Human Rights laws, Constitutional and other laws of the Republic of Uganda. The secondary sources that the researcher used include the available literature on the right to freedom of expression such as books, articles, papers, reports and journals by visiting libraries and internet websites.

1.10.1 Study Design

In an attempt to properly address the research objectives and questions, the study adopted qualitative methodology. Qualitative research as a method of looking at things '*holistically and comprehensively, to study it in its complexity and to understand it in its context*'⁹⁵. That the major feature of qualitative research is reflected in its designs, being naturalistic and preferring to study things, people and events in their natural settings⁹⁶. Silverman adds that qualitative methods are '*especially interested in how people observe and describe their lives*'⁹⁷. He argues that this gives room for flexibility and for an in-depth focus on the study being conducted since the data obtained is in form of words rather than in numbers⁹⁸.

Sampling; Nachmias et al... defines a sample as '*a smaller group obtained from the accessible population. Each member or case in the sample is referred to as a subject*'⁹⁹. Sampling is very important in qualitative research; because we cannot study everyone; sampling decisions are required not only about the participants to be interviewed but also the setting and process of the interview itself¹⁰⁰. Punch looks at '*Purposive sampling*' to mean sampling in a deliberate way, with some purpose or focus in mind¹⁰¹.

⁹⁵ Punch, K.F (2005) Introduction to Social Research, *Qualitative and Quantitative approaches*, Sage publication limited, London. P.186.

⁹⁶ Silverman, D. (2005) *Doing Qualitative Research*, Los Angeles: Sage Publications. p.140.

⁹⁷ Ibid opicit, p.170.

⁹⁸ Ibid, p.140.

⁹⁹ Nachmias et al (1992) *Research Methods in Social Sciences*, 4th edition, St Martin Press, New York. P.185.

¹⁰⁰ Punch, K.F (2005) Introduction to Social Research, *Qualitative and Quantitative approaches*, Sage publication limited, London, P.187.

¹⁰¹ Ibid.

1.10.2 Document Reviews/Content Analysis

Documents, both historical and contemporary, remain a major source of data for social research¹⁰². For this study, I analyzed, national and international documents which included; Human Rights Watch report, Article 19 publications and reports, Amnesty International report, the Domestic legislations this included :- The 1995 Constitution of Uganda, The public Order Management Act 2012, *The Uganda Penal Code Act CAP 120*, *The 2002 Anti-Terrorism Act*, *The 1995 Press and Journalist Act*, *The 1996 Electronic Media Act, cap 104*, *The Regulation of Interception of Communication Act, 2010*, Text books literatures, Periodicals, Journals articles, Magazines, Publications posted on internets and Newspaper Articles. Through examining these documents and other texts, the overall picture of the study was drawn.

Through reading the Ugandan domestic laws, there is always different ways of interpretations of the legal text. I strike a balance between the different sources so as to make a contribution through a balance understanding of the different legislations.

The review of documents as a source of data in this study is supported by the argument by MacDonald and Tipton¹⁰³, that with the development of social sciences research, documents have proved to be useful sources of data. Similarly, sociologists like Durkheim, Marx, and Weber did their research primarily relying on documents¹⁰⁴. Documents were important for this research because it provided the study with a '*rich vein for analyses*'¹⁰⁵. Like Ethnographers says, social researchers should always use any written document that they feel is useful in documenting either '*the immediate natural and detailed behavior of participants*'¹⁰⁶.

¹⁰² Punch, K.F (2005) Introduction to Social Research, *Qualitative and Quantitative approaches*, Sage publication limited, London. P.184.

¹⁰³ MacDonald and Tipton (1996) p.187.

¹⁰⁴ Punch, K.F (2005) Introduction to Social Research, *Qualitative and Quantitative approaches*, Sage publication limited, London. P.184.

¹⁰⁵ Hammersley, M. and Atkinson, P (1995) *Ethnography; Principles in practice*. 2nd (edn) London: Routledge.p.173.

¹⁰⁶ Spindler, G. and Spindler, L. 1992 'Cultural process and ethnography: an anthropological perspective. p.74.

1.10.3 Interviews

Interviewing is described as '*a conversation with a purpose*'¹⁰⁷. With the selection of interviews as a method of data collection, the researcher took into considerations that the respondents had the experience in a given phenomenon under investigation.

Focused (Semi structured) interviews were used; Merton identified this form of interview as taking place with respondents known to have been involved in a particular experience¹⁰⁸. It's important to note that much as this method can be used for research it was not applied in this particular research.

Non-directive (Unstructured) lauded unstructured interview are a powerful tool being widely used in social research because of its richness in producing valuable data¹⁰⁹. While using this method, there are no specific set of questions, nor were the questions asked in specific order, there were no schedules as well¹¹⁰.

1.11 organization layout/ chapterisation

Chapter one covers the general introduction, the background of the study, purpose of the study, statement of the problem, objectives of the study, research questions, scope of the study, significance of the study, research methodology and literature review.

Chapter two analyses the non-legal issue that affect the rights under discussion. For example culture, religion, politics, ideology.

Chapter three discusses the place of international law in Uganda.

Chapter four examines the effectiveness of the laws in the protection of the right to freedom of expression.

Chapter five suggests possible recommendations and conclusions.

¹⁰⁷ Kahn and Cannell (1957) the dynamics of Interviewing: *Theories, techniques and cases*, New York. p.149.

¹⁰⁸ Merton, R. K. & Kendal P. L (1946) 'The Focused interview' *American journal of Sociology*, 51(1946) 541-557. Payne, G and Payne, J (2004) *Key concepts in Social research*, Sage Publication London. p.541-557.

¹⁰⁹ Punch, K.F (2005) Introduction to Social Research, *Qualitative and Quantitative approaches*, Sage publication limited, London. P.175.

¹¹⁰ Donald, A.D (1983) 'Mail and other self-administered Questionnaires' *In Hand Book of survey Research*, ed Peter H. Rossi, James D. Wright, and Andy B. Anderson (Orlando, Fla: Academic Press.

CHAPTER TWO

NON LEGAL ISSUES THAT AFFECT THE RIGHT TO FREEDOM OF EXPRESSION

2.0 Introduction

This chapter analysis the non legal issues that affects the right to freedom of expression in Uganda such as politics, religion and many more.

2.1 Politics

The Presidential Elections Act and the Parliamentary Elections Act 2005, detail candidates' rights to equal treatment and access to information and the media, and outline the responsibilities of media outlets related to campaigns and candidates. Under Section 24 of the Presidential Elections Act, all candidates are to be given equal treatment by State-owned media¹¹¹. Similarly, the Parliamentary Elections Act holds that "a candidate in an election shall not be denied reasonable access to and use of State-owned communication media¹¹²." Also during campaigns, private electronic media outlets are prohibited from knowingly using the media or allowing it to be used to enable a candidate to make or use false, malicious, sectarian, derogatory, exaggerated or derisive statements, words, songs, poems, or images¹¹³. Further, both legislations criminalize the publication of false statements regarding a candidate's illness, death or withdrawal for the purpose of securing the victory of another candidate, whether done knowingly or without reasonable grounds for believing it to be true¹¹⁴.

However Studies carried out in the period showed that the state-owned media did not abide by the regulation stipulating that all candidates be afforded equal treatment. It was found that, as of January 2006 and in the weeks leading up to the election, UBC Television's Prime News coverage and UBC Radio's News House both demonstrated bias in favor of candidate Y.K. Museveni. Figures in the table below show the percentage of coverage afforded each candidate¹¹⁵.

¹¹¹ The Presidential Elections Act, Section 66; and The Parliamentary Elections Act, Section 70.

¹¹² The Parliamentary Elections Act, 2005, Section 22

¹¹³ The Presidential Elections Act, Section 24; and The Parliamentary Elections Act, Section 22

¹¹⁴ The Presidential Elections Act, Section 66; and The Parliamentary Elections Act, Section 70

¹¹⁵ Democracy Monitoring Group/Uganda Journalists Safety Committee (DEMG/Group/UJSC), Ugandans Decide: Final Report

The laws do not enhance media freedom but are often used to muzzle the press. Some of the laws are unnecessary; legislations such as that against sedition and the Anti-Terrorism Act simply promote extreme forms of self censorship and remove all sense of discretion and responsible journalism. The media exercises their right to freedom of expression with restraint; out of fear that they may be arrested, detained, or charged with some offense¹¹⁶. The restrictions on the media are ambiguous, enabling the government to use the laws to its Advantage¹¹⁷.

The laws are applied selectively and unfairly. The government rarely uses these laws except when it is convenient to clamp down on critical journalists and media houses. For instance, while the law against sectarianism is meant to protect groups, it is used to clamp down on media discussion of particular groups. While in enforcing the laws relating to inciting the public, defamation, and sedition, the police express far less interest in stories critical of the opposition than they do in stories critical of the ruling party. The selective application was attributed to the fact that there is no separation in practice between the government and the ruling party. As a result, if a journalist writes about the NRM as a political party and is critical in his analysis, that journalist is viewed as having been critical not simply and solely of a political party but of the government itself. The government is then keen to look for an offense that may have been committed, combing the myriad of statutes governing journalistic content for the most appropriate law to indicate which offense has been committed¹¹⁸.

The rationale for regulation does not apply to the print media¹¹⁹ and it is acknowledged by African governments that effective-self regulation is the best system for promoting high Standards in the print media¹²⁰. The licensing of newspapers, journals and magazines by the

Presidential and Parliamentary Elections 2006, pp. 43; and DEMGroup/UJSC, "Report on the State Media Coverage of the

2006 Elections, January 2006, cited in Report of the Commonwealth Observer Group, March 2006, Annex XI

¹¹⁶ freedom of expression: in defence of media freedom in Uganda report for the period 1st June- 30th November 2007.p 35

¹¹⁷ freedom of expression: in defence of media freedom in Uganda report for the period 1st June- 30th November 2007.p 35

¹¹⁸ freedom of expression: in defence of media freedom in Uganda report for the period 1st June- 30th November 2007.page 35

¹¹⁹ article 19: statement on the draft media council of Kenya bill, 2006)

¹²⁰ ACHPR/Res 62(XXXII) 02: Resolution on the Adoption of the Declaration of Principles of Freedom of Expression in Africa (2002).

state is unacceptable ¹²¹. (.) Further, statutory licensing of journalists as required under the Press and Journalists Act is a breach of the right to freedom of expression and Assembly¹²².

2.2 Culture

The freedom of expression in relation to cultural practices is provided for under Article 37¹²³ of the 1995 Constitution. However this freedom can be limited by the challenged Anti pornography Act 2014 .The Act creates the offence of pornography; to provide for the prohibition of pornography; to establish the Pornography Control Committee and prescribe its functions; and other related matters.

Under Section 2¹²⁴, pornography is defined as any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means of a person engaged in real or stimulated sexual activities or any representation of the sexual parts of a person for primarily sexual excitement. Under Section 13¹²⁵, pornography is prohibited. The section provides that a person shall not produce, participate in the production or traffic in, publish, broadcast, procure, import, export, sell, and abet any form of pornography. Under Section 7¹²⁶, the Pornography Control Committee is mandated to develop and install software on electronic equipment such as computers, mobile phones and televisions for detection and suppression of pornography.

The Act infringes on the freedom of expression in relation to cultural practices some of which are protected by the 1995 Constitution under Article 37¹²⁷ which provides to the effect that ‘every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others. The Constitution recognizes such customs, cultures and traditions for as long as they are not repulsive to natural justice or inconsistent with any of the provisions of the Constitution.

¹²¹ The Commonwealth Media Laws Project; Statement on Freedom of Expression, 1997

¹²² In *Kasoma v. Ag*, 22 August 1997, 95/HP/29/59. High Court of Zambia stressed that statutory licensing of journalist would be a breach of the right to freedom of expression and Assembly)

¹²³ The constitution of the Republic of Uganda 1995

¹²⁴ Anti pornography Act 2014

¹²⁵ Anti pornography Act 2014

¹²⁶ The Anti Pornography Act 2014

¹²⁷ The Constitution of The Republic of Uganda 1995



It is evident that a number of traditional or cultural practices in Uganda may portray state of undress or show body parts which are considered pornographic under the Act. Arguably, the enforcement of the Anti pornography Act will restrict regional cultural expression. Additionally, it uses ambiguous terms, in relation to the definition and constitution of pornography, publication and media rights, a loophole that can be abused easily to achieve ends that are contrary to constitutionalism and also limit the right to freedom to expression in Uganda.

2.3 Conclusion

In conclusion therefore there are a number of non legal issues that limit freedom of expression in Uganda this include culture, politics as discussed in the above.

CHAPTER THREE

THE PLACE OF INTERNATIONAL LAW IN THE PROTECTION OF THE RIGHT TO FREEDOM OF EXPRESSION IN UGANDA

3.0 Introduction

This chapter analyzed the right to freedom of expression from the international perspective, the position of international law in Uganda, the international legal frame work for the protection of this right, the fundamental nature of freedom of expression, its legitimate limitations under the international legal frame work. There are a number of International conventions that Guarantee Freedom of Expression as discussed below:-

3.1 Position of international law in Uganda

The right to freedom of expression is central in enhancing the running of a democratic society. This freedom has been conceptualized widely to include the right to hold diverse opinions without hindrance and the rights to convey, seek, and obtain information and ideas, not considering form, content, or source. It is a fundamental conduit through which citizens express their views with the aim of seeking to influence their leaders and ultimately the governance of their particular communities. This freedom of expression is guaranteed by several international and regional human rights instruments to which Uganda is a party¹²⁸. Consequently, these international standards form part of Uganda's legal framework on freedom of expression and the attendant media rights there under¹²⁹.

The Constitution of the Republic of Uganda 1995, under Article 287¹³⁰, saved all the earlier treaties, agreements or conventions that the previous governments had entered into with any country or international organization on or after the 9th of October, 1962 when Uganda got her independence from Britain; that were still in force immediately before the coming into force of the Constitution. The two provisions emphatically treat international law as a central component in the governance of the country.

¹²⁸ Hrea.Org, 'Freedom of Expression,' Accessed at <http://www.hrea.org/index.php> accessed on 27/02/2014.

¹²⁹ Catherine Anita and James Nkumbi, Media freedom in Uganda, analysis of the inequitable limitations, p.10

¹³⁰ The Constitution of the Republic of Uganda 1995

The new Parliament was directed to make laws to govern the ratification of treaties or other arrangements made under article 123(1) of the Constitution.¹³¹ This provision created an impasse with many treaties with many treaties that were not ratified until an enabling law was passed in 1998. **The Ratification of Treaties Act, 1998**, is in some ways a re-statement of the pre-1995 position. Cabinet is responsible for the ratification of all treaties except treaties that relate to armistice, neutrality or peace; or treaties in respect of which the Attorney-General has

In the same vein, Article 119¹³² provides guidelines on reception, incorporation and application of international law in Uganda. Article 119 (4) of the Constitution grants the Attorney General the duty to draw and peruse agreements, treaties, conventions and documents whatever name called to which the government is a party or in respect of which the government has an interest. Article 119 (5) further provides that the government cannot enter in any of the above commitments and cannot conclude them without the legal advice from the Attorney General except in such cases and subject to such conditions as Parliament may by law prescribe. Article 123 (1)¹³³, states that the execution of international treaties, conventions and agreements is a preserve of the Executive arm of government that is to say the President or his or her delegate. Article 123 (2) provides for Parliament to make laws to govern the ratification of treaties¹³⁴.

International law has therefore continued to inspire various provisions within the domestic legislations. Judicial activism has also played a key role in contributing to the use of international human rights instruments including provisions relating to freedom of expression and media rights. This has been more pronounced in cases requiring constitutional interpretation where courts have relied on some of these international human rights instruments to arrive at progressive conclusions¹³⁵.

Article 19¹³⁶ of the *Universal Declaration of Human Rights* is binding on all States as a matter of customary international law, proclaims the right to freedom of expression in the following terms: Everyone has the right to freedom of opinion and expression; this right

¹³¹ Article 123 (2), the Constitution of the Republic of Uganda, 1995.

¹³² The Constitution of the Republic of Uganda 1995

¹³³ *ibid*

¹³⁴ Catherine Anita and James Nkumbi, Media freedom in Uganda, analysis of the inequitable limitations, p.11

¹³⁵ Catherine Anita and James Nkumbi, Media freedom in Uganda, analysis of the inequitable limitations, p.11

¹³⁶ Universal Declaration of Human Rights

includes freedom to hold opinions without interference and to seek to receive and impart information and ideas through any media regardless of frontiers.

Uganda's international legal obligations to respect freedom of expression are also spelt out in Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR), to which Uganda acceded in 1995. Article 19¹³⁷ states:

(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of 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.

Uganda is also a party to the *African Charter on Human and Peoples' Rights*, which guarantees freedom of expression at Article 9¹³⁸. Both the *European Convention for the Protection of Human Rights and Fundamental Freedoms* and the *American Convention on Human Rights* also guarantee freedom of expression¹³⁹.

3.2 International Legal Framework For the protection of the right of freedom of expression

Among some of the International Conventions which have been adopted by Uganda to propel freedom of expression include; the Universal Declaration for Human Rights¹⁴⁰; International Covenant Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966 all collectively constituting the International Bill of Rights. The International Covenant on Civil and Political Rights (ICCPR), which Uganda acceded to on 21st January 1987; under Article 19 of the ICCPR, guarantees the right to freedom of expression in the following terms;

(1) *Everyone shall have the right to freedom of opinion.*

¹³⁷ International Covenant on Civil and Political Rights (ICCPR)

¹³⁸ African Charter on Human and Peoples' Rights

¹³⁹ At Articles 10 and 13 respectively

¹⁴⁰ Adopted in 1948 by the UN General Assembly was the first to guarantee Freedom of Expression under Article 19 by expressly providing as follows; "Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." The UDHR is not a legally binding instrument on States including Uganda since it is a UN Declaration but scholars maintain that it 'constitutes general principles of law and are widely held as having acquired legal force as customary International Law since its adoption in 1948.' see M. Akehurst, "Custom as a Source of International Law", 48 BYBIL 1974 – 1975 pg. 1-53 Accessed on <http://www.hrw.org/news/2013/12/19/amicus-curiae-freedom-expression-and-academic-freedom> accessed on 23rd February 2014.12)

(2) 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 African Charter on Human and Peoples' Rights (ACHPR)¹⁴¹. Also Guarantees the right to freedom of expression. These guarantees are largely similar to those found in the ICCPR¹⁴². The Charter under Article 9 states;

(1) Every individual shall have the right to receive information.

(2) Every individual shall have the right to express and disseminate his opinions within the law.

Additionally, the African Commission on Human and People's Rights in its 32nd Ordinary Session meeting on 17th to 23rd October 2002 adopted the Declaration of Principles on Freedom of Expression in Africa¹⁴³.

According to the Declaration, freedom of expression is 'an individual human right, a cornerstone of democracy and a means of ensuring respect for all human rights and freedoms, Principle 1 of the Declaration is to the effect that:

(1) Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy.

(2) Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

The Declaration elaborates a number of principles and standards on freedom of expression and enjoins State parties to the African Charter on Human and Peoples' Rights to make every effort to give practical effect to these principles¹⁴⁴.

¹⁴¹ Adopted 26 June 1981, entered into force 21 October 1986.

¹⁴² The Charter was adopted 17th June 1981 in force 21st October 1986 which Uganda ratified on 10th May 1986)

¹⁴³ Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights 32nd Session 17-23 October 2002: Banjul, The Gambia

¹⁴⁴ Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights 32nd Session 17-23 October 2002: Banjul, The Gambia. ARTICLE 1614

It should however be noted that these human rights instruments also provide for responsibilities and duties incumbent on the rights holders to ensure that the freedom to expression is not misused or abused to the detriment of other individuals. Consequently, limitations or restrictions on this freedom are acceptable and permitted under human rights law as long as they are not used to trample but regulate. Thus, Article 20(2) of the ICCPR requires State parties to prohibit ‘advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.’ Article 19 ICCPR further stipulates that these limitations ‘shall only be such as are provided by law and are necessary: a) for respect of the rights or reputations of others; b) for the protection of national security or public order, or of public health or morals’. The International Convention on Elimination of All forms of Racial Discrimination also enjoins State parties to make illegal certain hostile expressions.

The African Charter on Human and Peoples’ Rights under chapter 2 introduces duties that every individual should accord to his/her family, society and international community. The rights and freedoms such as expression carry with them duties including the duty to respect and not discriminate against fellow human beings but rather maintain mutual respect and tolerance. Under Article 29¹⁴⁵, as one exercises his rights and freedoms, he or she has a duty not to compromise the security of the State; has a duty to preserve and strengthen social and national solidarity. More centrally however, Article 27¹⁴⁶ provides an express limitation to the effect that ‘the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.’ The individual rights are subjected to the right of others for societal harmony

Under Article 5 of the Protocol and the Rules of the African Charter on Human and Peoples’ Rights, (Charter), the Protocol and any other relevant human rights instrument ratified by the States concerned. Under Article 5¹⁴⁷ the Court can receive complaints and/or applications from the African Commission of Human and Peoples’ Rights or State parties to the Protocol or African Intergovernmental Organizations. Non-Governmental Organizations that have observer status before the African Commission on Human and Peoples’ Rights and individuals from States which have made a Declaration accepting the jurisdiction of the Court

¹⁴⁵ The African Charter on Human and Peoples Right

¹⁴⁶ The African Charter on Human and Peoples Right

¹⁴⁷ The Protocol and the Rules (Rule 33)

can also bring cases directly before the Court. The African Court can be a central institution in promoting and protecting freedom of expression and media rights in Uganda at a continental level¹⁴⁸.

Article 30¹⁴⁹ establishes the commission known as **the African Commission on Human and Peoples' Rights** under the regional human rights system the African Union, the African Commission on Human and Peoples' Rights has mandate to oversee the implementation of the African Charter provisions by member states. The Commission is established under article 30 of the African Charter. It has power to interpret all the provisions of the African Charter. It acts as a quasi judicial body with power to hear communications (cases) alleging violations of the charter provisions by a particular State party as provided for under Article 47. It has power to examine State progress in implementation of the provisions of the Charter through the process of State reporting¹⁵⁰. In its mandate, the Commission has dealt with the right to freedom of expression in various cases. In **Sir Dawda K. Jawara v The Gambia, Communications 147/95 and 149/96 11 May 2000, Communication Nos. 147/95 and 149/96 (African Commission on Human and Peoples' Rights)** the Commission found that the failure of a state to investigate attacks against journalists violates their right to express and disseminate information and opinions and also violates the public's right to receive such information and opinions¹⁵¹.

3.3 The Fundamental Nature of Freedom of Expression

The right to freedom of opinion and expression is as much a fundamental right on its own accord as it is an "enabler" of other rights, including economic, social and cultural rights, such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the rights to freedom of association and assembly. Thus, by acting as a catalyst for

¹⁴⁸ Catherine Anita and James Nkumbi, Media freedom in Uganda, analysis of the inequitable limitations, p.15

¹⁴⁹ The African Charter

¹⁵⁰ Under article 62 of the Charter, every state is obligated to 'submit a report every two years on the legislative or other measures it has undertaken with a view to giving effect to the rights and freedoms recognized and guaranteed by the Charter

¹⁵¹ Sir Dawda K. Jawara v. The Gambia, Communications 147/95 and 149/96 11 May 2000, Communication Nos. 147/95 and 149/96 (African Commission on Human and Peoples' Rights), Theme: Miscellaneous Sub-Issues: Harassment of government critics Test: Penalty: Arrest/detention Decision: Violation of the right to freedom of expression (Article 9 ACHPR) Jurisdiction: African Commission on Human and Peoples' Rights

individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realization of a range of other human rights¹⁵².

The right to freedom of opinion and expression is as much a fundamental right on its own accord as it is an “enabler” of other rights, including economic, social and cultural rights, such as the right to education and the right to take part in cultural life and to enjoy the benefits of scientific progress and its applications, as well as civil and political rights, such as the rights to freedom of association and assembly. Thus, by acting as a catalyst for individuals to exercise their right to freedom of opinion and expression, the Internet also facilitates the realization of a range of other human rights¹⁵³.

The overriding importance of freedom of expression including the right to information as a human right has been widely recognized, both for its own sake and as an essential Underpinning of democracy and means of safeguarding other human rights. At its very first session in 1946 the United Nations General Assembly declared, Freedom of information is a fundamental human right and the touchstone of all the freedoms to which the United Nations is consecrated¹⁵⁴. These views have been reiterated by all three regional judicial bodies dealing with human rights. The African Commission on Human and Peoples’ Rights noted, in respect of Article 9 of the African Convention: This Article reflects the fact that freedom of expression is a basic human right, vital to an individual’s personal development, his political consciousness, and participation in the conduct of the public affairs of his country¹⁵⁵.

In the case of *Handy side v United Kingdom*, 7 December 1976, 1 EHRR 737, para.49¹⁵⁶. the European Court of Human Rights (ECHR) has also recognized the key role of freedom of expression: Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to “information” or “ideas” that are favorably received ... but also to those which offend, shock or disturb the State or any other sector of the

¹⁵² Frank La Rue*, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, United Nations, General Assembly A/HRC/17/27,P.7

¹⁵³ A/HRC/17/27,P.7.

¹⁵⁴ United Nations Resolution 59(1), 14 December 1946.

¹⁵⁵ Decision on Communications 105/93, 130/94, 128/94 and 152/96, para. 52.)

¹⁵⁶ 7 December 1976, 1 EHRR 737, para. 49

population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no “democratic society”.

Similarly, the Inter-American Court of Human Rights stated: Freedom of expression is a cornerstone upon which the very existence of a democratic society rests¹⁵⁷. These views have been reiterated by numerous national courts around the world, including, for example, the Zimbabwean Supreme Court: The profound role of this protected right, as one of the fundamental freedoms, has been underlined by this Court in several decisions. The most recent is *Retrofit (Pvt) Ltd v. Posts and Telecommunications Corporation and Anor* [1996] 4 LRC 489, pp. 499-501¹⁵⁸ which freedom of expression is characterized as one universally recognized as a core value of society¹⁵⁹.

3.4 Legitimate Restrictions on Freedom of Expression

3.4.1 International Standards

Freedom of expression is not, however, absolute. Every system of international and domestic rights recognizes carefully drawn and limited restrictions on freedom of expression to into account the values of individual dignity and democracy. Under international human rights law, national laws which restrict freedom of expression must comply with the provisions of Article 19(3) of the ICCPR¹⁶⁰. which states:-

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

- (a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order, or of public health or morals.

Restrictions must meet a strict three-part test. This test has been affirmed by the UN Human Rights Committee in the case of *Mukong v. Cameroon*, 21 July 1994, No. 458/1991, p. 9¹⁶¹. Views adopted. The same test is applied by the European Court of Human Rights¹⁶² which include first, the interference must be provided for by law. The law must be accessible and

¹⁵⁷ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism, Advisory Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para. 70.)

¹⁵⁸ 1996] 4 LRC 489, pp. 499-501

¹⁵⁹ *United Parties v. Minister of Justice, Legal and Parliamentary Affairs & Ors* [1997] 2 ZLR 254.

¹⁶⁰ Opinion OC-5/85 of 13 November 1985, Series A, No. 5, para 70 / ICCPR

¹⁶¹ 21 July 1994, No. 458/1991, p. 9.7

¹⁶² *The Sunday Times v. United Kingdom*, 26 April 1979, No. 30, 2 EHRR 245, para 45.)

“formulated with sufficient precision to enable the citizen to regulate his conduct¹⁶³. Second, the interference must pursue one of the legitimate aims listed in Article 19(3)¹⁶⁴ this list is exclusive. Third, the interference must be necessary to secure that aim, in the sense that it serves a pressing social need, that the reasons given to justify it are relevant and sufficient and that the interference is proportionate to the legitimate aim pursued. International jurisprudence makes it clear that this is a strict test, presenting a high standard which any interference must overcome. This is apparent from the following quotation, cited repeatedly by the ECHR: Freedom of expression, as enshrined in Article 10, is subject to a number of exceptions which, however, must be narrowly interpreted and the necessity for any restrictions must be convincingly established. This was the position in the case of *Thorgeirson v. Iceland* 25 June 1992, 14 EHRR 843, para. 63 (ECHR ¹⁶⁵

As set out in article 19, paragraph 3, of the Covenant, there are certain exceptional types of expression which may be legitimately restricted under international human rights law, essentially to safeguard the rights of others. This issue has been examined in the previous annual report of the Special Rapporteur¹⁶⁶.

However any limitation to the right to freedom of expression must pass the following three-part, cumulative test:

(a) It must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); and

(b) It must pursue one of the purposes set out in article 19, paragraph 3, of the Covenant, namely (i) to protect the rights or reputations of others, or (ii) to protect national security or of public order, or of public health or morals (principle of legitimacy); and

(c) It must be proven as necessary and the least restrictive means required achieving the purported aim (principles of necessity and proportionality). Moreover, any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences in a manner that is neither

¹⁶³ The Sunday Times, op cit.)

¹⁶⁴ The International Convention on Civil and Political Rights (UN ,1966)

¹⁶⁵ 25 June 1992, 14 EHRR 843, para. 63 (ECHR

¹⁶⁶ A/HRC/14/23, paras. 72 - 87

arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application¹⁶⁷.

As such, legitimate types of information which may be restricted include child pornography (to protect the rights of children¹⁶⁸, hate speech to protect the rights of affected communities¹⁶⁹, defamation to protect the rights and reputation of others against unwarranted attacks, direct and public incitement to commit genocide to protect the rights of others¹⁷⁰ and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (to protect the rights of others, such as the right to life¹⁷¹.

3.4.2 National Standards

National constitutions commonly require that any restrictions on freedom of expression be “demonstrably justifiable in a free and democratic society”¹⁷². National courts have elaborated a test for assessing whether a restriction is reasonably justifiable. In 1986, the Canadian Supreme Court in the case of *R vs. Oakes* [1986] 1 SCR 103, p. 138-9¹⁷³ set out what has come to be known as the “Oakes Test”, hence the accepted standard since that time, to establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures responsible for a limit on a Charter right or freedom are designed to serve, must be “of sufficient importance to warrant overriding a constitutionally protected right or freedom”:

The Canadian constitution permits only restrictions that are “prescribed by Law”. This test has been followed in substance in a number of other jurisdictions.

For example, the Supreme Court of Zimbabwe in *Nyambirai v. National Social Security Authority* The similarity between this test and the test under international law may be noted. Both require that any restrictions are set out clearly in law, that they pursue objectives or

¹⁶⁷ A/HRC/17/27, p 8

¹⁶⁸ Dissemination of child pornography is prohibited under international human rights law, see e.g. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, art. 3, para. 1(c).)

¹⁶⁹ See for example *Faurisson v. France*, United Nations Human Rights Committee, communication 550/1993, views of 8 November 1996. The issue of hate speech has also been addressed in previous reports, see inter alia E/CN.4/1999/64; E/CN.4/2000/63; E/CN.4/2002/75; and A/HRC/4/27.

¹⁷⁰ See for example article 3(c) of the Convention on the Prevention and Punishment of the Crime of Genocide

¹⁷¹ See for example article 20, paragraph 2, of the International Covenant on Civil and Political Rights.)

¹⁷² Constitution of Uganda, Article 43(2)(c)

¹⁷³ 1986] 1 SCR 103, p. 138-9)

aims of sufficient importance to warrant limiting a fundamental right and those they meet a test of necessity and proportionality.

3.5 The International Instruments that provide for Freedom of Expression

The following are some of the provisions of the international instruments that provide for freedom of expression.

3.5.1 International Covenant on Economic, Social and Cultural Rights (UN 1966)

The opening words of this convention in the Preamble states that :-The States Parties to the present Covenant, Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights¹⁷⁴, this statement is in support of article 29 of the 1995 constitution of the republic of Uganda.

It further affirms the countries obligation under this convention which is binding upon that member country and in this case Uganda Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant, Agree upon the following articles¹⁷⁵:

Article 1(1) All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

(3) The States Parties to the present Covenant, including those having responsibility for the

¹⁷⁴ Preamble of the International Convention on Economic, Social and Cultural Rights (UN,1966)

¹⁷⁵ Preamble of the International Convention on Economic, Social and Cultural Rights (UN,1966)

Administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Article 2(1) Each State Party to the present Covenant undertakes to take steps, individually and through International assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures¹⁷⁶. in fulfillment of this obligation Uganda as a party to this convention has enacted law that promote the enjoyment of the right to freedom of expression for example the Public Order Management Act 2014, and also amended some laws to incorporate rights for example chapter four¹⁷⁷.

(2) The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status¹⁷⁸.

Article 4 provides The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society. This provision is actualized by the limitation under article 41(1), (2)¹⁷⁹ restricting freedom of expression under article 29¹⁸⁰.

Article 5(1) Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a

¹⁷⁶ International Convention on Economic, Social and Cultural Rights (UN,1966)

¹⁷⁷ The 1995 Constitution of the Republic of Uganda

¹⁷⁸ Article 2(2) International Convention on Economic, Social and Cultural Rights (UN,1966)

¹⁷⁹ The 1995 Constitution of The Republic of Uganda

¹⁸⁰ *ibid*

greater extent than is provided for in the present Covenant¹⁸¹. This provision provides for the enjoyment of the right to freedom of expression

(2) No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent. This implemented by article 42 that provides for non derogable rights

Article 8(1)¹⁸² The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike provided that it is exercised in conformity with the laws of the particular country.

Article 8(2)¹⁸³ this article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

¹⁸¹ International Convention on Economic, Social and Cultural Rights (UN,1966)

¹⁸² International Convention on Economic, Social and Cultural Rights (UN,1966)

¹⁸³ International Convention on Economic, Social and Cultural Rights (UN,1966)

(3) Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention. This provision is support of the enjoyment of the right of freedom of expression

Article 16(1) ¹⁸⁴The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein. In living up to this obligation Uganda as a state party to this convention submits periodic Human Rights Reports to the United Nations Economic and social council reporting the state of Human Rights.

Article 18 provides Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs. This helps in promoting the enjoyment of the right to freedom of expression in member State countries.

Article 19 states that the Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.this is done in an attempt to realize the enjoyment and promotion of the rights in this case the right to freedom of expression

Article 20 states The States Parties to the present Covenant and the specialized agencies concerned may submit Comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

¹⁸⁴ Ibid.

Article 21 provides The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22 is to the effect that the Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant. Therefore promoting the enjoyment of the right to freedom of expression.

Article 23 stipulates that the States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned. Therefore promoting the protection of the right to freedom of expression.

3.5.2 Convention on the Elimination of All Forms of Discrimination against Women UN (1979)

The States Parties to the present Convention, Noting that the Charter of the United Nations reaffirms faith in fundamental human rights, in the Dignity and worth of the human person and in the equal rights of men and women, noting that the Universal Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex, Noting that the States Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights, Considering the international conventions concluded under the auspices of the United Nations and the specialized agencies promoting equality of rights of men and women, Noting also the resolutions, declarations and recommendations

adopted by the United Nations and the specialized agencies promoting equality of rights of men and women¹⁸⁵.

Article 1¹⁸⁶ states For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 3¹⁸⁷ provides States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

3.5.3 African (Banjul) Charter on Human and Peoples' Rights. (Adopted 27 June 1981) entered into force 21 October 1986)

Providing inter alia for the establishment of bodies to promote and protect human and Peoples' rights"; considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples"¹⁸⁸.

Recognizing on the one hand, that fundamental human rights stem from the attributes of Human beings which justifies their national and international protection and on the other hand that the reality and respect of people's rights should necessarily guarantee human rights, Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone; Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the

¹⁸⁵ Preamble Of Convention on the Elimination of all Forms of Discrimination Against Women (Un, 1979)

¹⁸⁶ Convention on the Elimination of all Forms of Discrimination Against Women (Un, 1979)

¹⁸⁷ *ibid*

¹⁸⁸ Preamble of African (Banjul) Charter On Human and Peoples' Rights (Adopted 27 June 1981, entered into force 21 October 1986)

satisfaction of economic, social and cultural rights are a guarantee for the enjoyment of civil and political rights¹⁸⁹.

Reaffirming their adherence to the principles of human and peoples' rights and freedoms Contained in the declarations, conventions and other instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nation and lastly Firmly convinced of their duty to promote and protect human and people' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa¹⁹⁰.

Article 1 provides The Member States of the Organization of African Unity parties to the present Charter Shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2 states every individual shall be entitled to the enjoyment of the rights and freedoms recognized And guaranteed in the present Charter without distinction of any kind such as race, ethnic Group, color, sex, language, religion, political or any other opinion, national and social Origin, Fortune, birth or other status.

Article 3(1) provides that every individual shall be equal before the law.

(2) Every individual shall be entitled to equal protection of the law.

Article 6 is to the effect that every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 8 provides for Freedom of conscience, the profession and free practice of religion shall be guaranteed. No One may, subject to law and order, be submitted to measures restricting the exercise of these freedoms. This provision ensures the enjoyment of the right to freedom of expression.

¹⁸⁹ *ibid*

¹⁹⁰ *ibid*

Article 9 (1) states that every individual shall have the right to receive information.

(2) Every individual shall have the right to express and disseminate his opinions within the law.

Article 10(1) states every individual shall have the right to free association provided that he abides by the law.

(2) Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

Article 11 states every individual shall have the right to assemble freely with others. The exercise of this Right shall be subject only to necessary restrictions provided for by law in particular those Enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others. This ensures the enjoyment of the right to freedom of expression

Article 19 provides all peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

Article 25 provides that States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

Article 45 provides for the functions of the Commission shall be:

(1) To promote Human and Peoples' Rights and in particular:

(a) To collect documents, undertake studies and researches on African problems in the Field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.

(b) To formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.

(c) Co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights.

(2) Ensure the protection of human and peoples' rights under conditions laid down by the present Charter.

(3) Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU.

Article 60 provides that The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

3.5.4 The Universal Declaration of Human Rights (UN, 1948)

The preamble to UDHR states that whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people, Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law¹⁹¹.

Whereas it is essential to promote the development of friendly relations between nations, Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom, Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms, Whereas a common understanding of

¹⁹¹ Preamble of The Universal Declaration Of Human Rights (UN, 1948)

these rights and freedoms is of the greatest importance for the full realization of this pledge¹⁹².

Now, therefore the general assembly proclaims this universal declaration of human rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction¹⁹³.

Article 1 provides 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.

Article 2 provides that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty¹⁹⁴.

Article 7 states that all are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination¹⁹⁵.

Article 18 states that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance¹⁹⁶.

¹⁹² Preamble of the Universal Declaration of Human Rights, 1948.

¹⁹³ Ibid.

¹⁹⁴ The Universal Declaration of Human rights, 1948.

¹⁹⁵ Ibid ,Article 7

¹⁹⁶ The Universal Declaration of Human rights 1948,Article 18

Article 19 is to the effect that everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20 (1) provides that everyone has the right to freedom of peaceful assembly and association.

(2) No one may be compelled to belong to an association¹⁹⁷.

Article 21 (1) states that everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

(2) Everyone has the right of equal access to public service in his country.

(3) The will of the people shall be the basis of the authority of government; this will or shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 23 (4) provides everyone has the right to form and to join trade unions for the protection of his interests.

Article 29 (1)¹⁹⁸ provides that everyone has duties to the community in which alone the free and full development of his personality is possible.

(2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society¹⁹⁹.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30 provides that nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein²⁰⁰.

¹⁹⁷ The Universal Declaration of Human Rights, 1948, Article 20

¹⁹⁸ The Universal Declaration of Human Rights, 1948.

¹⁹⁹ The Universal Declaration of Human Rights, Article 29(2).

²⁰⁰ The Universal Declaration of Human rights

3.6 Conclusion

The international conventions that provide for the right of freedom of expression are well enriched with provisions that ensure the enjoyment of this right internationally however the major challenge of all this treaties is the implementation and enforcement in order to achieve its intended goal of promoting and protecting the right to freedom of expression as seen in the above.

CHAPTER FOUR

THE EFFECTIVENESS OF THE LAWS IN THE PROTECTION OF THE RIGHT TO FREEDOM OF EXPRESSION IN UGANDA

4.0 Introduction

This chapter analyses the effectiveness of the domestic laws that provide for the protection of the right to freedom of expression, the legitimate restrictions and laws that illegitimately restrict freedom of expression. The Government of Uganda has amended and enacted laws that are meant to ensure the protection and enjoyment of the right to freedom of expression however despite these laws there are still challenges encountered in the effective enjoyment and realization of this right in Uganda as seen below.

4.1 The Regulation of Interception of Communications Act, 2010, Acts 18

This is an Act to provide for the lawful interception and monitoring of certain communications in the course of their transmission through a telecommunication, postal or any other related service or system in Uganda; to provide for the establishment of a monitoring centre; and to provide for any other related matters.

Section 2 (1) ²⁰¹ provides that Without prejudice to the provisions of Part VII of the Anti - Terrorism Act, Act 14 of 2002, and subject to subsection (2), no person shall (a) intercept any communication in the course of its Transmission by means of a telecommunication system or radio communication system unless (i) He or she is a party to the communication; (ii) he or she has the consent of the person to whom, or the person by whom, the communication is sent; or (iii) he or she is authorized by warrant. (b) Intercept any communication in the course of its transmission through the post unless (i) he or she has the consent of the person to whom, or the person by whom, the communication is sent; or (ii) he or she is authorized by warrant.

(2) Subsection (1) shall not apply to the bona fide interception of a communication for the purpose of or in connection with the provision, installation, maintenance or repair of a postal, telecommunication or radio communication service. (3) Subject to subsections (1) and (2)

²⁰¹ The Regulation Of Interception Of Communications Act, 2010, Acts 18.

any person who intentionally intercepts or attempts to intercept, or authorizes or procures any other person to intercept or attempt to intercept at any place, any communication in the course of its occurrence or transmission commits an offence and shall on conviction be liable to a fine not exceeding one hundred and twenty currency points or to imprisonment for a period not exceeding five years, or both.

Section 15 (1) ²⁰² provides No person may disclose any communication or information which he or she obtained in the exercise of his or her powers or the performance of his or her duties under this Act, except

(a) To any other person who of necessity requires it for the like exercise or performance of his or her functions under this Act; (b) information which is required to be disclosed under any law or as evidence in any court of law. (2) No (a) service provider or protected information key holder may disclose any information which it obtained in compliance with this Act; or (b) employee of a service provider or protected information key holder may disclose any information which he or she obtained in the course of his or her employment and which is connected with the exercise of any power or the performance of any duty under this Act.

(3) Any person who discloses any information in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred and twenty currency points or to imprisonment for a period not exceeding five years or both. (4) The Minister responsible for Information and Communications Technology may revoke the license of any service provider or protected information key holder who discloses any information in Contravention of subsection (1) ²⁰³.

4.1.1 However the following sections of the Regulation of Interception of Communications Act, 2010, Acts 18 Act limit the enjoyment of freedom of expression

Section 3 provides for the establishment of monitoring Centre.

(1) The Minister shall, in consultation with the relevant Ministers, at the expense of the State

(a) Establish a centre to be known as the Monitoring Centre for the interception of communications under this Act; (b) equip, operate and maintain the Monitoring Centre; (c)

²⁰² The Regulation Of Interception Of Communications Act, 2010, Acts 18.

²⁰³ The Regulation Of Interception Of Communications Act, 2010, Acts 18.

Acquire, install and maintain connections between telecommunication systems and the Monitoring Centre; and

(d) Administer the Monitoring Centre.

(2) The Minister shall exercise responsibility over the administration and functioning of the Monitoring Centre. (3) Notwithstanding the provisions of the Uganda Communications Act, the Monitoring Centre shall for purposes of performing its functions under this Act, be exempted from (a) obtaining any kind of license required by that Act; or (b) paying any fees payable under that Act. (4) The Monitoring Centre shall be the sole facility through which authorized interceptions shall be effected. (5) The Monitoring Centre shall be manned, controlled and operated by officers designated by the Minister and the relevant Ministers. (6) The officers referred in subsection (5) shall give advice to (a) authorized persons; and (b) service providers on the interception of communications under this Act.

Section 4²⁰⁴ provides that an Authorized persons to apply for warrant of interception.

(1) An application for the lawful interception of any communication may be made by the following persons (a) the Chief of Defence Forces or his or her nominee; (b) the Director General of the External Security Organization or his or her nominee; (c) the Director General of the Internal Security Organization or his or her nominee; or (d) the Inspector General of Police or his or her nominee. (2) An application under subsection (1) shall be made by an authorized person to a designated judge to issue a warrant for the interception of any communication.

Section 5²⁰⁵ provides for the Issue of warrant.

(1) A warrant shall be issued by a designated judge to an authorized person referred to in section 4(1) if there are reasonable grounds for a designated judge to believe that (a) an offence which may result to loss of life or threat to life has been or is being or will probably be committed

(b) an offence of drug trafficking or human trafficking has been or is being or will probably be committed; (c) the gathering of information concerning an actual threat to national security or to any national economic interest is necessary; (d) the gathering of information

²⁰⁴ The Regulation Of Interception Of Communications Act, 2010, Acts 18.

²⁰⁵ The Regulation Of Interception Of Communications Act, 2010, Acts 18.

concerning a potential threat to public safety, national security or any national economic interest is necessary; or (e) there is a threat to the national interest involving the State's international relations or obligations. (2) In the case of urgency or existence of exceptional circumstances, a designated judge may permit an oral application by an authorized person if the designated judge is of the opinion that it is not reasonably practicable to make a written application, but in such a case a formal application under this Part shall be lodged within forty eight hours with the designated judge.

- (3) A designated judge may, if he or she is of the opinion that the circumstances so require
- (a) Upon an application being made under this Part, issue an order rejecting the application;
 - or
 - (b) After a warrant has been issued, amend or revoke the warrant.
 - (e) Contain any other necessary details relating to the interception subject.

Section 10 (1) provides that Subject to the provisions of this Act, where an authorized person believes on reasonable grounds (a) that a key to any protected information is in the possession of any person; and (b) that the imposition of a disclosure requirement in respect of the protected information is necessary (i) in the interest of national security; or (ii) for the purpose of preventing or detecting an offence that may result to loss of life or threat to life; or (iii) for the purpose of preventing or detecting an offence of drug trafficking or human trafficking; or (iv) in the interest of the economic well-being of Uganda; the authorized person may, by notice to the person whom he or she believes to have possession of the key, impose a disclosure requirement in respect of the protected information.

- (6) A person who fails to make the disclosure required by a notice issued under this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred and twenty currency points or to imprisonment for a period not exceeding five years, or both.

4.2 The Constitution of the Republic Of Uganda 1995

The 1995 Constitution of the Republic of Uganda is the supreme law and contains a Bill of rights under chapter 4 which has been commended as a progressive one. The constitution specifically provides and guarantees human rights and freedoms.

Article 29 provides for the right to freedom of expression which shall include the right to (a) freedom of speech and expression which shall include freedom of the press and other media; (b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning opinion²⁰⁶.

Article 41 provides for the right of access to information. Information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person²⁰⁷. Whereas the constitution provides and protects both freedom of expression and information, the last submissions by the government are not a reflection of the situation on the ground. To the contrary, freedom of expression and opinion has come under attack since the turn of the 21st century in Uganda by various state machineries.

Indeed, democracy cannot exist without freedom to express new ideas and to put forward opinions about the functioning of public institutions. The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom. This is what is protected by the 1995 constitution²⁰⁸. it is however important to note that the right to freedom of expression is not absolute but rather subjected to some limitations as provided for in article 43²⁰⁹.

4.2.1 Legitimate Limitations to the right to freedom of expression

Limitations / restrictions to these freedoms are enshrined in Article 43²¹⁰ which provides for permissible restrictions as follows;

- (1) In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.
- (2) Public interest under this article shall not permit
 - (a) Political persecution;
 - (b) Detention without trial;
 - (c) Any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in the constitution

²⁰⁶ The 1995 Constitution of the Republic of Uganda.

²⁰⁷ Ibid.

²⁰⁸ The 1995 Constitution of the Republic of Uganda, Article 29

²⁰⁹ The 1995 Constitution of the Republic of Uganda, Article 43

²¹⁰ ibid

The provision in clause (1) have been ruled as acting as a prohibition of expressions that “prejudice” rights and freedoms of others and public interest. This translates into a restriction on the enjoyment of one’s rights and freedoms in order to protect the enjoyment by others, of their own rights and freedoms, as well as protect the public interest. It is important to note that protection of a guaranteed right is a primary objective of the constitution, limiting the enjoyment of a guaranteed right is a secondary objective and thus an exception to protection.

In the case of **Charles Onyango Obbo and Andrew Mujuni Mwenda Vs Attorney General of Uganda, Constitutional Appeal No 2, 2002**²¹¹. In which the lead judgment of Justice Mulenga (Rtd) very ably dealt with the issue of limitation similar to the one we have at hand. He had this to say:-

“However the limitation provided for in clause (1) is qualified by clause (2) which in effect introduces a limitation upon limitation”. It is apparent from the wording of clause (2) that the framers of the Constitution were concerned about probable danger of misuse or abuse of the provision in clause (1) under the guise of defence of public interest. For avoidance of that danger, they enacted clause (2) which expressly prohibits the use of political persecution and detention without trial as a means of preventing, or measures to remove, prejudice to public interest. In addition, they provided in that clause a yard stick, by which to gauge any limitation, imposed on the rights in defence of public interest. The yard stick is that the limitation must be acceptable and demonstrably justifiable in a free and democratic society. This is what I have referred to as a limitation upon limitation. The limitation on the enjoyment of a protected right in the defence of public interest is in turn limited to the measure of that yard stick. In other words, such limitation, however otherwise rationalized, is not valid unless its restriction on a protected right is acceptable and demonstrably justifiable in a free and democratic society”

4.3 The Public Order Management Act 2013

This is an Act to provide for the regulation of the public meeting; to provide for the duties and responsibilities of the police, organizers and participants in relation to public meetings; to prescribe measures for safeguarding public orders; and for related matters.

²¹¹ Charles Onyango Obbo and Andrew Mujuni Mwenda Vs Attorney General of Uganda Constitutional Appeal No. 2 of 2002

Section 2 is to the effect that the underlying principle of managing public order is to regulate the exercise of the freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition in accordance with article 29(1) d and 43 of the constitution (2) For purpose of this section the word regulate means to ensure that the conduct or behavior conforms to the requirements of the constitution²¹². From the wording of the Act the intention of the framers of this law is to protect and encourage the enjoyment of the right to freedom of expression.

Section 3 provides that the inspector general of police or an authorized officer shall have the power to regulate the conduct of all public meetings in accordance with the law.²¹³

4.3.1 However the following provisions of the Public Management Act limit the enjoyment of the right to freedom of expression

Section 4 states that for the purpose of this Act a public meeting mean a gathering, assembly, procession or demonstration in a public place or premise held for the purpose of discussing, acting upon. Petitioning or expressing views on matter of public interest²¹⁴.

Section (2) public meeting does not include

- (a) A meeting convened and held exclusively for a lawful purpose of any public body;
 - (b) A meeting of members of any registered organizations, whether corporate or not, convened in accordance with the constitution of the organization and held exclusively for a lawful purpose of that organization;
 - (c) A meeting of members of trade union;
 - (d) A meeting for social, religious ,cultural ,charitable, educational, commercial or industrial purpose and
 - (e) A meeting of the organs of apolitical party or organization convened in accordance with the constitution of the party or organization. and held exclusively to discuss the affairs of the party
- (3) For the avoidance of doubt, public meeting convened by a group or leader in a group or body at

²¹² Public Order Management Act 2013.

²¹³ Ibid.

²¹⁴ ibid

- (a) The ordinary place of business of that body, group or leader; or
- (b) any other place, which is not public place in the course of lawful business of the group, body or leader, is not a public meeting under this section unless that meeting spills over into a public place for the purpose of subsection (2) a public body includes government or any department of the local government a body established by the constitution or Act of parliament, a registered political party or political organization, or registered trade union²¹⁵.

Section 5 provides for notice of public meeting.

- (1) An organizer shall give notice in writing signed by the organizer or his or her agent to the Authorized officer of the intention to hold a public meeting, at least three days but not more than fifteen days before the proposed date of the public meeting.

Subsection (5) where a public meeting is held each of the persons organizing it commits an offence if:-

- (a) The requirements of this section as to notice have not been satisfied; or
- (b) The date when it is held, the time when it starts, or its route differs from the date, time or route specified in the notice.

subsection (7) to the extent that the alleged offence turns on difference of date, time or route, it is a defence for the accused to prove that the difference arose from circumstances beyond his control or from something done with the agreement of an authorized officer or by his direction

Subsection (8) an organizer or his or her agent who holds a public meeting without any reasonable excuse and fails to comply with the conditions under this Act commits an offence of disobedience of statutory duty and is liable on conviction to the penalty for the offence under section 116 of the Penal Code Act²¹⁶.

Section 6 provides for notification by authorized officer. Subsection (1) provides upon receipt of notice under section 5 where it is not possible to hold the proposed public meeting for reasons that:-

²¹⁵ Public Order Management Act 2013.

²¹⁶ Ibid.

(a) Notice of another public meeting on the date, at the time and the venue proposed has already been received by the authorized officer or

(b) The venue is considered unsuitable for the purposes of crowd and traffic control or will interfere with other lawful business

Subsection (3) where the authorized officer notifies the organizer or his or her agent that it is not possible to hold a proposed public meeting on the date or venue proposed, the public meeting shall not be held on that date or the venue proposed²¹⁷.

Section 7²¹⁸ provides for spontaneous public meetings

Subsection (1) provides that the notification required under section 5 shall not apply to a spontaneous public meeting.

Subsection 7(2) an officer may direct any person participating in a procession meeting to disperse where:-a notice of another public meeting at the same venue date and time has already been received by the authorized officer or, the venue is considered unsuitable for the purposes of traffic or crowd control; or will interfere with other lawful business²¹⁹.

Section 8 provides for the powers of the authorized officer

Subsection (1) states subject to the directions of the inspector general of police an authorized officer or any other police officer of the above the rank of the inspector, may stop or prevent the holding of a public meeting is held contrary to this Act

Subsection (2) an authorized officer may, for the purpose of subsection (1) issue orders including an order for the dispersal of the public meeting as are reasonable in the circumstances

Subsection (3) an authorized officer shall, in issuing an order under subsection (2), have regard to the right and freedoms of the persons in respect of whom the order has been issued and the rights and freedoms of other persons

²¹⁷ Public Order Management Act 2013

²¹⁸ Public Order Management Act 2013.

²¹⁹ Ibid.

Subsection (4) a person who neglects or refuses to obey an order issued under this section commits the offence of disobedience of lawful orders and is liable on conviction to penalty for that offence under section 117 of the penal code Act²²⁰.

Section 9²²¹ provides for the duties of the police

Section 9(1) the police shall be responsible for preserving law and order before, during and after a public meeting

Section 9(2) For the purpose of subsection (1), the police shall (a) provide security for both the participants and other members of the public likely to be affected by the public meeting.

4.4 The Computer Misuse Act, 2011

An Act to make provision for the safety and security of electronic transactions and information systems; to prevent unlawful access, abuse or misuse of information systems including computers and to make provision for securing the conduct of electronic transactions in a trustworthy electronic environment and to provide for other related matters. Section 5 provides for Authorized access. As it states access by a person to any program or data held in a computer is authorized if (a) the person is entitled to control access to the program or data in question; or (b) the person has consent to access that program or data from any person who is charged with giving that consent. This ensures the protection of the right to freedom of expression.²²²

Section 11(1) which provides for Production Order states:-Where the disclosure of data is required for the purposes of a criminal investigation or the prosecution of an offence, an investigative officer may apply to court for an order compelling (a) any person to submit specified data in that person's possession or control, which is stored in a computer system; and (b) any service provider offering its services to submit subscriber information in relation to such services in that service provider's possession or control. (2) Where any material to which an investigation relates consists of data stored in a computer, computer system or preserved by any mechanical or electronic device, the request shall be deemed to require the

²²⁰ Public Order Management Act 2013.

²²¹ Ibid.

²²² The Computer Misuse Act, 2011

person to produce or give access to it in a form in which it can be taken away and in which it is visible and legible²²³.

Section 9 (1) provides that an investigative officer may apply to court for an order for the expeditious preservation of data that has been stored or processed by means of a computer system or any other information and communication technologies, where there are reasonable grounds to believe that such data is vulnerable to loss or modification. (2) For the purpose of subsection (1), data includes traffic data and subscriber information. (3) An order made under subsection (1) shall remain in force (a) until such time as may reasonably be required for the investigation of an offence; or (b) where prosecution is instituted, until the final determination of the case or until such time as the court deems fit²²⁴.

Section 12 provides for unauthorized access. (1) A person who intentionally accesses or intercepts any program or data without authority or permission to do so commits an offence. (2) A person who intentionally and without authority to do so, interferes with data in a manner that causes the program or data to be modified, damaged, destroyed or rendered ineffective, commits an offence. (3) A person who unlawfully produces, sells, offers to sell, procures for use, designs, adapts for use, distributes or possesses any device, including a computer program or a component which is designed primarily to overcome security measures for the protection of data or performs any of those acts with regard to a password, access code or any other similar kind of data, commits an offence. (4) A person who utilizes any device or computer program specified in subsection (3) in order to unlawfully overcome security measures designed to protect the program or data or access to that program or data, commits an offence. (5) A person who accesses any information system so as to constitute a denial including a partial denial of service to legitimate users commits an offence.

(6) The intent of a person to commit an offence under this section need not be directed at (a) any particular program or data; (b) a program or data of any particular kind; or (c) a program or data held in any particular computer.

²²³ Computer Misuse Act, 2011

²²⁴ The Computer Misuse Act, 2011

(7) A person who commits an offence under this section is liable on conviction to a fine not exceeding two hundred and forty currency points or imprisonment not exceeding ten years or both.

Section 13 provides for Access with intent to commit or facilitate the commission of a further offence. (1) A person who commits any acts specified under section 12 with intent to (a) commit any other offence; or

(b) Facilitate the commission of any other offence, commits an offence.

(2) The offence to be facilitated under subsection (1) (b) may be one committed by the person referred to in subsection (1) or by any other person.

(3) It is immaterial for the purposes of this section whether the act under this section is committed on the same occasion as the offence under section 12 or on any future occasion.

(4) A person who commits an offence under this section is liable on conviction to a fine not exceeding two hundred and forty currency points or imprisonment not exceeding ten years or both.

Section 14 provides for unauthorized modification of computer material.

(1) A person who (a) does any act which causes an unauthorized modification of the contents of any computer; and (b) has the requisite intent and the requisite knowledge at the time when he or she does the act, commits an offence.

Section 15 provides for unauthorized use or interception of computer service.

(1) Subject to subsection (2), a person who knowingly (a) secures access to any computer without authority for the purpose of obtaining, directly or indirectly, any computer service;

(b) intercepts or causes to be intercepted without authority, directly or indirectly, any function of a computer by means of an electro-magnetic, acoustic, mechanical or other device whether similar or not; or (c) uses or causes to be used, directly or indirectly, the computer or any other device for the purpose of committing an offence under paragraph (a) or (b), commits an offence and is liable on conviction to a fine not exceeding two hundred and forty currency points or to imprisonment not exceeding ten years or both; and in the case of a subsequent conviction, to a fine not exceeding three hundred and sixty currency points or imprisonment not exceeding fifteen years or both ²²⁵.

²²⁵ Computer Misuse Act, 2011

(2) If any damage is caused as a result of an offence under this section, a person convicted of the offence is liable to a fine not exceeding one hundred and sixty eight currency points or imprisonment not exceeding seven years or both.

(3) For the purposes of this section, it is immaterial that the unauthorized access or interception is not directed at (a) any particular program or data; (b) a program or data of any kind; or (c) a program or data held in any particular computer²²⁶.

Section 16 provides for unauthorized obstruction of use of computer.

A person who, knowingly and without authority or lawful excuse (a) interferes with or interrupts or obstructs the lawful use of, a computer; or (b) impedes or prevents access to or impairs the usefulness or effectiveness of any program or data stored in a computer, commits an offence and is liable on conviction to a fine not exceeding two hundred and forty currency points or to imprisonment not exceeding ten years or both; and in the case of a subsequent conviction, to a fine not exceeding three hundred and sixty currency points or imprisonment not exceeding fifteen years or both.

Section 17 provides for unauthorized disclosure of access code (1) A person who knowingly and without authority discloses any password, access code or any other means of gaining access to any program or data held in any computer knowing or having reason to believe that it is likely to cause loss, damage or injury to any person or property, commits an offence²²⁷.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine not exceeding two hundred and forty currency points or to imprisonment not exceeding ten years or both; and in the case of a subsequent conviction, to a fine not exceeding three hundred and sixty currency points or imprisonment not exceeding fifteen years or both²²⁸.

Section 18 provides for unauthorized disclosure of information.

(1) Except for the purposes of this Act or for any prosecution for an offence under any written law or in accordance with an order of court, a person who has access to any electronic

²²⁶ Computer Misuse Act, 2011

²²⁷ *ibid*

²²⁸ *ibid*

data, record, book, register, correspondence, information, document or any other material, shall not disclose to any other person or use for any other purpose other than that for which he or she obtained access²²⁹.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and forty currency points or imprisonment not exceeding ten years or both.

Section 19 (1) provides for Electronic fraud A person who carries out electronic fraud commits an offence and is liable on conviction to a fine not exceeding three hundred and sixty currency points or imprisonment not exceeding fifteen years or both. (2) For the purposes of this section “electronic fraud” means deception, deliberately performed with the intention of securing an unfair or unlawful gain where part of a communication is sent through a computer network or any other communication and another part through the action of the victim of the offence or the action is performed through a computer network or both²³⁰.

Section 20 provides for Enhanced punishment for offences involving protected Computers.

(1) Where access to any protected computer is obtained in the course of the commission of an offence under section 12, 14, 15 or 16, the person convicted of an offence is, instead of the punishment prescribed in those sections, liable on conviction, to imprisonment for life.

(2) For the purposes of subsection (1), a computer is treated as a protected computer” if the person committing the offence knows or ought reasonably to have known, that the computer or program or data is used directly in connection with or necessary for (a) the security, defence or international relations of Uganda; (b) the existence or identity of a confidential source of Information relating to the enforcement of a criminal law; (c) the provision of services directly related to communications infrastructure, banking and financial services, public utilities or public key infrastructure; or (d) the protection of public safety including systems related to essential emergency services such as police, civil defence and medical services. (3) For the purposes of any prosecution under this section, it shall be presumed,

²²⁹ Computer Misuse Act, 2011

²³⁰ *ibid*

until the contrary is proved, that the accused has the requisite knowledge referred to in subsection (2)²³¹.

Section 21 provides for Abetment and attempts (1) a person who abets another person in committing an offence under this Act commits that offence and is liable on conviction to the punishment prescribed for the offence. (2) Any person who attempts to commit any offence under this Act commits that offence and is liable on conviction to the punishment prescribed for the offence²³².

Section 24 ²³³provided for Cyber harassment. (1) A person who commits cyber harassment is liable on conviction to a fine not exceeding seventy two currency points or imprisonment not exceeding three years or both. (2) For purposes of this section cyber harassment is the use of a computer for any of the following purposes (a) making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent; (b) threatening to inflict injury or physical harm to the person or property of any person; or (c) knowingly permits any electronic communications device to be used for any of the purposes mentioned in this section.

Section 25 provides for Offensive communication any person who willfully and repeatedly uses electronic communication to disturb or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication whether or not a conversation ensues commits a misdemeanor and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both²³⁴.

Section 26 provides that any person who willfully, maliciously, and repeatedly uses electronic communication to harass another person and makes a threat with the intent to place that person in reasonable fear for his or her safety or to a member of that person's immediate family commits the crime of cyber stalking and is liable on conviction to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both²³⁵.

²³¹ Computer Misuse Act, 2011

²³² Computer Misuse Act, 2011.

²³³ Computer Misuse Act, 2011.

²³⁴ Ibid.

²³⁵ Computer Misuse Act, 2011

Section 27 provides that Where a person is convicted under this Act, the court shall in addition to the punishment provided therein, order such person to pay by way of compensation to the aggrieved party, such sum as is in the opinion of the court just, having regard to the loss suffered by the aggrieved party; and such order shall be a decree under the provisions of the Civil Procedure Act, and shall be executed in the manner provided under that Act²³⁶.

Section 28(2) provides An authorized officer may seize any computer system or take any samples or copies of applications or data (a) that is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence, whether within Uganda or elsewhere; (b) that may afford evidence of the commission or suspected commission of an offence, whether within Uganda or elsewhere; or (c) that is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence.²³⁷

Section 28(7) provides that A person who obstructs hinders or threatens an authorized officer in the performance of his or her duties or the exercise of his or her powers under this section commits an offence and is liable on conviction to a fine not exceeding twelve currency points or imprisonment not exceeding six months or both²³⁸.

4.5 The Press and Journalists Act 1995

The Press and Journalists Act 1995 were established to ensure freedom of the press, to provide for a council responsible for the regulation of the mass media and to establish an institute of journalists of Uganda. The law provides for the right to publish a newspaper and access to official information relating to matters of national security, secrecy or confidentiality of information. It further requires the compliance with other laws, especially those on pornographic matters and obscene material. The law also requires the registration of the particulars of an editor, prescribes the functions of an editor and grounds under which the editor may be disqualified.²³⁹

²³⁶ Computer Misuse Act, 2011

²³⁷ *ibid*

²³⁸ Computer Misuse Act, 2011

²³⁹ The Press and Journalists Act 1995

The Act established a Media Council, which is responsible for the regulation and promotion of good ethical standards and discipline of journalists. This task involves arbitrating in disputes between the public and the media, as well the State and the media. The Council is also tasked with exercising disciplinary control over journalists, editors and publishers. It is authorized to censor films, videotapes, plays and other related apparatuses for public consumption among other functions. Despite the existence of the Council, which has an arbitrary role, there have been cases when the government has dragged media practitioners and institutions to court over unprofessional conduct.

Furthermore, the law established the National Institute of Journalists of Uganda (NIJU). The institute is tasked with establishing and maintaining professional standards for journalists, to foster professional fellowship among journalists, to encourage, train, and equip journalists, and to establish and maintain a mutual relationship with international journalist organizations. The Government has proposed the amendment of the Press and Journalists Act, 2001 so as to regulate the print media. An article by *The New Vision* quotes the then Minister of institution exists and operates outside ordinary public service structures²⁴⁰. Thus unlike the Media Council, the Media Centre is not established by a statute of law and its legal existence has been questioned by media critics and members of the opposition. The Centre has been viewed as a public relations arm of the ruling National Resistance Movement (NRM), which has the largest representation in Parliament. Among other functions, the Media Centre accredits foreign journalist.²⁴¹

In 2006, the Government was accused of refusing to renew the work permit of Canadian journalist Blake Lambert after it expired. According to an article by Human Rights Watch of March 13, 2006, the government is quoted to have said Lambert posed a security threat, but did not explain how or cite any of his articles as posing a danger. Lambert told Human Rights Watch that he never received an explanation about the refusal to renew his accreditation or His visa.²⁴²

²⁴⁰ See <http://www.mediacentre.go.ug/details.php?catId=10>, accessed on February 20, 2011

²⁴¹ See <http://www.mediacouncil.ug/accreditation.php>, accessed on July 20, 2012

²⁴² See <http://www.hrw.org/en/news/2006/03/12/uganda-new-government-threatens-freepress>, Accessed on March 1, 2011

4.6 The Electronic Media Act

The Electronic Media Act provides for the setting up of a Broadcasting Council to license and regulate radio and television stations, to provide for the licensing of television sets and to amend and consolidate for the law relating to electronic media. It specifically prescribes the requirements for the registration and licensing and of radio and television stations. It also states the functions of a proprietor or producer of a broadcasting station and conditions that would lead to the disqualification of a producer.

The Broadcasting Council is mandated to coordinate and exercise control over broadcasting activities. It is specifically responsible for the standardization, planning and management of the frequency spectrum and to allocate those spectrum resources in such manner as to ensure the widest possible variety of programming and optimal utilization of those spectrum resources. The Council is also required to coordinate communication on electronics media with the relevant national and international organizations, set ethical broadcasting standards and to arbitrate, in consultation with the Media Council, on disputes between operators of broadcasting stations; and the public and operators of broadcasting stations. The Broadcasting Council is also responsible for advising the government on broadcasting policy. The Act may be criticized for setting up institutions with duplicate roles²⁴³.

4.7 Uganda Communications Act 2013, Act 1

This law came into force on the 18th of January 2013 to consolidate and harmonise the Uganda Communications Act Cap 106 and the Electronic Media Act Cap 104; to dissolve the Uganda Communications Commission and the Broadcasting Council and reconstitute them as one body known as the Uganda Communications Commission; and to provide for related matters.

Section 3, through the Uganda Communications Commission is primarily concerned with developing a modern communications sector, which includes telecommunications, broadcasting, radio communications, postal communications, data communication and infrastructure by; establishing one regulatory body for communications in accordance with international best practice among other roles.

²⁴³ The Electronic Media Act

Section 5²⁴⁴ provides for Functions of the Commission

- (1) The functions of the Commission are (a) to implement the objectives of this Act;
- (b) To monitor, inspect, license, supervise, control and regulate communications services;
- (c) To allocate, license, standardize and manage the use of the radio frequency spectrum resources in a manner that ensures widest variety of programming and optimal utilization of spectrum resources²⁴⁵.

The Uganda Communications Act provides for the restructuring of the communications industry in Uganda by establishing the Uganda Communications Commission (UCC). It also provides for the Commission's functions and administration, the incorporation of Uganda Telecom Limited and Uganda Post Limited and to liberalize and introduce competition in the industry²⁴⁶.

The Uganda Communications Commission is mandated to monitor, inspect, license and regulate communications services. It is also assigned to allocate and license the use of radio frequency spectrum and to process applications for the allocation of satellite orbital locations. The Commission is required to make recommendations to the Minister on the issuance of licenses, supervise and enforce the conditions of the licenses, establish a tariff system to protect consumers from excessive tariff increase and avoid unfair tariff competition²⁴⁷.

It is clear in the objectives of this law that the draftsmen envisaged to promote freedom of expression and access to information, however, numerous provisions of the law lack the guarantees to freedom of expression, as seen in the subsequent sections of the below.

Section 7²⁴⁸ provides that the Minister may in writing give policy guidelines to the Authority regarding the performance of its functions. Clause 2 of the section further provides that the Authority shall comply with the policy guidelines given by the Minister under the clause.

Section 9(3)²⁴⁹ vests appointing powers of all the members of the Board of the Uganda Communications Commission in the hands of the Minister with approval of Cabinet. The composition of the Board however is arguable in as far as it does not constitute some relevant sections of the public whose views may not be adequately represented like Media owners or

²⁴⁴ Uganda Communications Act 2013, Act 1

²⁴⁵ The Electronic Media Act.

²⁴⁶ Ibid.

²⁴⁷ The Electronic Media Act.

²⁴⁸ Uganda Communications Act 2013, Act 1.

²⁴⁹ Uganda Communications Act 2013, Act 1.

media practitioners who are largely governed by the law. It is also critical that members to the board are appointed in an independent manner and protected by law against unwarranted dismissal.

Similarly **section 11 (2)**²⁵⁰ provides that the Minister shall determine that a member vacates office, **clause (3)**²⁵¹ provides that a member of the Board may resign from office in writing to the Minister, while **clause (4)**²⁵² mandates the Minister to appoint another person to replace a member who vacates the board within three months to hold office for the remainder of the term of the previous member.

Further, 16 (4) (d)²⁵³ provides that the Executive Director may be removed from office by the Minister on the recommendation of the Board and on vague grounds of misbehavior.

Section 13²⁵⁴ provides that the members of the Board may be paid remuneration or allowances approved by the Minister in consultation with the Ministers responsible for public service and finance.

Section 14(5)²⁵⁵ gives the Minister Powers to approve and determine allowances payable to members of board Committees appointed under the section.

Section 46 empowers the Uganda Communications Commission to institute inquiries; however, these powers are again usurped by the Minister who within the same clause can direct the authority to carry out inquiries.

The Minister's interference is further witnessed in **section 60 (5)** which oblige him to identify and appoint technical advisers to the tribunal. **Section 61 (b)**²⁵⁶ provides for the sources of funds of the tribunal to consist of grants, gifts, donations from Government or other sources acceptable to the Minister and the Ministers responsible for Finance. **Under section 63(2) & (4)**²⁵⁷, a vacancy of office of a member of the Tribunal or technical advisor shall be determined by the President on the recommendation of the Minister.

²⁵⁰ Ibid.

²⁵¹ Ibid.

²⁵² Ibid.

²⁵³ Uganda Communications Act 2013, Act 1.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ ibid

The funds of the Commission shall consist of loans, grants or donations from Government and other sources made with the approval of the Minister, the Minister responsible for finance and Parliament under section 67(1)(f) &(2)²⁵⁸ of the Act. In addition, the Commission is mandated to declare any surplus funds it may have at the end of the financial year and also to invest it in a manner determined by the Board with the approval of the Minister. This interference cannot protect the Commission from government interference in the activities of the commission.

4.8 The Anti-Homosexuality Act 2014

The law criminalizes what it terms promotion, aiding and abetting homosexuality. It seeks to punish anyone indulging in “participation in production, procuring, marketing, broadcasting, disseminating, publishing pornographic materials for purposes of promoting homosexuality; the funding or sponsoring of homosexuality or other related activities; the offering of premises and other related fixed or movable assets for purposes of homosexuality or promoting homosexuality; the use of electronic devices which include internet, films, mobile phones for purposes of homosexuality or promoting homosexuality”.

Persons found guilty of the ‘offence of promotion of homosexuality’ are “liable on conviction to a fine of five thousand currency points or imprisonment of a minimum of five years and a maximum of seven years or both fine and imprisonment”. In case the offender is a corporate body or a business or an association or a non-governmental organization, on conviction its certificate of registration shall be cancelled and the director or proprietor or promoter shall be liable on conviction to imprisonment for seven years.

This provision prohibiting the ‘promotion of homosexuality’ would most certainly criminalize the activities of the media fraternity that may engage in innocent publication and broadcast of issues concerning homosexuality for public debate. The provisions do not only threaten the work of individual journalists but can also lead to the closure of a media house if found culpable for the offence.

²⁵⁸ Uganda Communications Act 2013, Act 1.

The same provision criminalizes and counters the freedom to associate and assemble as provided for by the Constitution to any individuals that may seek to do so. Any organization or association whatsoever with any 'inklings' of homosexuality related advocacy can be dubbed to be a promoter within the wide ambiguous definition.

4.9 The Anti-Pornography Act 2014

The Act creates the offence of pornography; to provide for the prohibition of pornography; to establish the Pornography Control Committee and prescribe its functions; and other related matters.

Under Section 2²⁵⁹, pornography is defined as any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means of a person engaged in real or stimulated sexual activities or any representation of the sexual parts of a person for primarily sexual excitement. Under Section 13²⁶⁰, pornography is prohibited. The section provides that a person shall not produce, participate in the production or traffic in, publish, broadcast, procure, import, export, sell, and abet any form of pornography. Under Section 7²⁶¹, the Pornography Control Committee is mandated to develop and install software on electronic equipment such as computers, mobile phones and televisions for detection and suppression of pornography.

The Act encroaches on the freedom of expression in relation to cultural practices some of which are protected by the 1995 Constitution under Article 37²⁶² which provides to the effect that 'every person has a right as applicable to belong to, enjoy, practice, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others. The Constitution recognizes such customs, cultures and traditions for as long as they are not repulsive to natural justice or inconsistent with any of the provisions of the Constitution.

It is evident that a number of traditional or cultural practices in Uganda may portray state of undress or show body parts which are considered pornographic under the Act. Arguably, the enforcement of the Anti pornography Act will restrict regional cultural expression.

²⁵⁹ The Anti-Pornography Act 2014

²⁶⁰ *ibid*

²⁶¹ The Anti-Pornography Act 2014

²⁶² Constitution of the Republic of Uganda 1995.

Additionally, it uses ambiguous terms, in relation to the definition and constitution of pornography, publication and media rights, a loophole that can be abused easily to achieve ends counter to constitutionalism.

4.10 Anti-Terrorism Act, 2002

The global fight against terrorism has had an adverse impact on the freedom of the media. Uganda has sadly been no exception. The parliament of Uganda enacted the Anti- Terrorism Act in the wake of the September 11 attack on the USA. The Anti-Terrorism Act imposes additional burdens on the media, specifically related to coverage of any terrorist organization, and imposes a possible sentence of death on those found to have violated the law.

The Act criminalizes journalists' efforts to meet or speak with people or groups considered to be terrorists, again imposing a possible death sentence on the convicted²⁶³. It outlaws the disclosure of information that may prejudice an investigation concerning terrorism²⁶⁴. () Finally, the Third Schedule details information protected under legal privilege, but excludes from that journalistic material which a person holds in confidence and which consists of documents or of records other than documents.”

The Act seeks to compel journalists to disclose sources of information; this is vehemently opposed by media practitioners for discouraging their news sources from providing leads to stories²⁶⁵.

The Act does not provide a definition of a terrorist organization; instead of providing a definition of a ‘terrorist organization,’ the Act delineates a list of acts which, when committed “for purposes of influencing the Government or intimidating the public or a section of the public and for a political, religious, social or economic aim, indiscriminately without due regard to the safety of others or property....” The lack of a clear definition of what constitutes a terrorist group renders reporting on organizations doubly risky for journalists.

The Act makes reporting in conflict areas particularly difficult. Ssemujju Ibrahim Nganda of

²⁶³ Section 11, Anti Terrorism Act, 2002.

²⁶⁴ Ibid Section 12.

²⁶⁵ FHRI Interview with Nasser Kayanja, Senior Reporter, Radio Simba, June 25, 2007.

The Weekly Observer echoed this sentiment saying that, the Anti-Terrorism Act is perhaps the greatest affront to freedom of the media because it puts significant strain on media efforts to report those stories that originate from parties to a conflict. Mr. Nganda and Frank Nyakairu of *The Daily Monitor* both pointed out that the law most directly impacts media ability to cover the conflict in Northern Uganda and abuses committed by security personnel. As a result, Mr. Nganda argued, the law deprives the public of information vital for its understanding of the conflict²⁶⁶.

The Anti-terrorism Act should clearly define what terrorist organizations are and should make provisions for the protection of whistle blowers. Security concerns are legitimate but must not override the freedom of expression because the right is a primary right and any limitations can but only be secondary; it should not override the primary rights unless it is justifiable, not farfetched and has a clear nexus with the report in question.(Report for the Period June-November 2007 page 33)

4.11 The Presidential Elections Act 2005 and the Parliamentary Elections Act 2005

The Presidential Elections Act and the Parliamentary Elections Act 2005, detail candidates' rights to equal treatment and access to information and the media, and outline the responsibilities of media outlets related to campaigns and candidates. Under Section 24 of the Presidential Elections Act, all candidates are to be given equal treatment by State-owned media.²⁶⁷

Similarly, the Parliamentary Elections Act holds that "a candidate in an election shall not be denied reasonable access to and use of State-owned communication media"²⁶⁸. During campaigns, private electronic media outlets are prohibited from knowingly using the media or allowing it to be used to enable a candidate to make or use false, malicious, sectarian, derogatory, exaggerated or derisive statements, words, songs, poems, or images²⁶⁹.

Further, both legislations criminalize the publication of false statements regarding a candidate's illness, death or withdrawal for the purpose of securing the victory of another

²⁶⁶ FHRI Interviews with Ssemujju Ibrahim Nganda, *The Weekly Observer*, June 15, 2007, and Frank Nyakairu, *Conflict and Human Rights Reporter*, *The Daily Monitor*, June 25, 2007

²⁶⁷ The Presidential Elections Act, Section 66; and The Parliamentary Elections Act, Section 70

²⁶⁸ The Parliamentary Elections Act, 2005, Section 22

²⁶⁹ The Presidential Elections Act, Section 24; and The Parliamentary Elections Act, Section 22.

candidate, whether done knowingly or without reasonable grounds for believing it to be true²⁷⁰.

4.12 The following sections of the law also limit the enjoyment of the right to freedom of expression

4.12.1 Defamation

Chapter 17 of the Penal Code relates to defamation. Section 180 of the penal code defines defamatory matter as that which is, *“likely to injure the reputation of any person by exposing that person to hatred, contempt or ridicule, or likely to damage any person in his or her profession or trade by an injury to his or her reputation.”*²⁷¹

For a publication to be defamatory, the law stipulates that the matter is true and it was for the public benefit that it should be published or it is privileged. The clause further prescribes the conditions under which publication of defamatory matter is privileged. The Charge of defamation has been largely used by public figures and celebrities against media houses. The *New Vision*, *Daily Monitor* and the *Red Pepper* are also regularly dragged to court over defamation as has been discussed in the next chapter. The burden of proof in cases of defamation is on the defamed person, otherwise referred to as the plaintiff, and proving this has often been a challenge to parties who claim to have been defamed. Sometimes the cases are settled out of court but nevertheless the law of defamation has been costly to media houses in terms of the fines awarded, time spent attending court sessions and also in terms of the cost to their credibility.

4.12.2 Anti-Terrorism Act, 2002

The global fight against terrorism has had an adverse impact on the freedom of the media. Uganda has sadly been no exception. The parliament of Uganda enacted the Anti-Terrorism Act in the wake of the September 11 attack on the USA. The Anti-Terrorism Act imposes additional burdens on the media, specifically related to coverage of any terrorist organization, and imposes a possible sentence of death on those found to have violated the law.

²⁷⁰ The Presidential Elections Act, Section 66; and The Parliamentary Elections Act, Section 70

²⁷¹ Section 180 of the penal code Act CAP 120

The Act criminalizes journalists' efforts to meet or speak with people or groups considered to be terrorists, again imposing a possible death sentence on the convicted²⁷². It outlaws the disclosure of information that may prejudice an investigation concerning terrorism²⁷³. Finally, the Third Schedule details information protected under legal privilege, but excludes from that journalistic material which a person holds in confidence and which consists of documents or of records other than documents."

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The Act makes reporting in conflict areas particularly difficult. Ssemujju Ibrahim Nganda of *The Weekly Observer* echoed this sentiment saying that, the Anti-Terrorism Act is perhaps the greatest affront to freedom of the media because it puts significant strain on media efforts to report those stories that originate from parties to a conflict. Mr. Nganda and Frank Nyakairu of *The Daily Monitor* both pointed out that the law most directly impacts media ability to cover the conflict in Northern Uganda and abuses committed by security personnel. As a result, Mr. Nganda argued, the law deprives the public of information vital for its understanding of the conflict²⁷⁵.

²⁷² Section 11 thereof

²⁷³ Section 12

²⁷⁴ FHRI Interview with Nasser Kayanja, Senior Reporter, Radio Simba, June 25, 2007.

²⁷⁵ FHRI Interviews with Ssemujju Ibrahim Nganda, *The Weekly Observer*, June 15, 2007, and Frank Nyakairu, Conflict and Human Rights Reporter, *The Daily Monitor*, June 25, 2007

Despite constitutional guarantee of the freedom of expression, and enactment of domestic legislation that expand this right, restrictions and censorship of media still exist.²⁷⁶ The Penal Code Act for example links materials published by journalists to sedition, the Anti-terrorism Act prohibits promoting acts of terrorism through publication, and other laws which will be discussed in chapter four of this thesis. Based on the above domestic laws, over 30 journalists have pending cases in the court of law and yet their trials are regularly postponed.²⁷⁷ . Notably, the good laws are non-operational, and depending on the circumstances, the existing domestic media laws have stifled freedom of media.²⁷⁸ . Similarly, media houses continue to be attacked, intimidated and their equipment vandalized by state security²⁷⁹ . Raiding of media premises by security forces continues under the guise of looking for subversive materials, consequently leading to the temporary closure of media outlets

4.13 Conclusion

There are a number of laws that provide for the protection of the right to freedom of expression in Uganda however despite these laws that allow the enjoyment of this right there are a number of provisions that limit the enjoyment of this right and hence making it practically impossible to achieve as per the analysis above.

²⁷⁶ Sekagya, 2010; Amnesty International, 2000

²⁷⁷ HRNJ-U, 2011, P 5

²⁷⁸ Lugalambi 2010 P.29, 30.

²⁷⁹ HRNJ-U, 2011:5

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusion

This study analyzed the level of freedom of expression in Uganda; it looked at the hindrance to free enjoyment of this right; and how the both domestic and international legislations impacted on the level of freedom of expression within Ugandan Context. The international and national legislations and their clauses were reviewed from the contents of various legislations and it provided a basis for the analysis, discussions and recommendations of this study.

Using content analysis, the study produced various findings; restrictions of the right to freedom of expression in Uganda which takes various forms; ranging from legitimate and illegitimate provisions of the law , threats, intimidations, harassment, enactment of new sub laws, criminal charges. As discussed by this thesis.

The Ugandan Constitution is well streamlined with good clauses that are aligned along the international legislation, however; the challenge is the implementation of the law in practice. The action of the security organizations, the media regulatory bodies and the government at large has reduced freedom of expression Government attempts to ban or restrict freedom of expression through the introduction of many sub laws and the use of security agencies has instead ended up with a great negative impact on the enjoyment of the right to freedom of expression in Uganda.

The research findings still portray lack of freedom of expression in Uganda as highlighted in the analysis and discussions in chapter four. A concerted effort by both international bodies and civil society organizations is vital in reviving and promoting the enjoyment of the right to the freedom of expressions in Uganda.

5.2 Recommendations

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

States should ensure that individuals are able to freely seek and receive information or express themselves while respecting, protecting and promoting their right to privacy. Privacy and freedom of expression are interlinked and mutually dependent; an infringement upon one can be both the cause and consequence of an infringement upon the other.

Uganda should uphold and adhere to the international obligations which it ought to as a result of ratification of the various international conventions that provide for the protection of the right to freedom of expression

The Uganda communication Commission should be accountable to the public and not to the Minister because it is executing its duties for the people at large and not to an individual. The fact that the board of directors and a substantive Executive Director has never been appointed by the Minister. This way enjoyment of the right to freedom of expression in Uganda can be achieved

Parliament and all stake holders in the protection and promotion of human rights should review all media laws to assess their compliance with international human rights standards in order to improve law reforms that would improve the media regulatory environment.

Furthering the assessment of relevant international human rights obligations There is a significant need to advance international understanding on the protection of the right to privacy in light of technological advancements. The Human Rights Committee should consider issuing a new General Comment on the right to privacy, to replace General Comment No. 16 (1988). The Uganda Police Force should exercise its discretionary powers judiciously by respecting Article 221 of the 1995 Constitution of the Republic of Uganda, which makes it a duty of all law enforcement agencies to observe and respect human rights and freedoms in the performance of their functions;

The Uganda Police Force should desist from the use of excessive force and ensure punishment of errant security officers;

The public should understand that the freedom to assemble and demonstrate is not an absolute right and should be exercised with due regard to the rights and freedoms of others. Members of the public should fulfill their constitutional duties to obey lawful orders, desist from violent behavior during demonstrations and in the event that anyone feels aggrieved should seek redress through lawful avenues.

The Uganda Police Force, Uganda Human Rights Commission and other human rights defenders should urgently carry out country-wide sensitization of citizens on the contents of the new Public Order Management Act, 2013 or every stakeholder to understand their role in peaceful demonstrations;

The Uganda Law Reform Commission and Parliament should review other laws that have an impact on the public Order Management Act, 2013 such as the Police Act Cap 303 and Penal Code Act Cap 120 that provide for unlawful assemblies and dispersal of crowds so that they are brought in line with the Constitution and international and regional human rights instruments;

The Uganda Police Force should respect and implement court decisions in order to ensure promotion of the rule of law and avoid impunity in the country

The institutions of justice especially the Uganda Police Force, Director of Public Prosecution and the Judiciary would implement the Prevention and Prohibition of Torture Act, 2012 to bring to book perpetrators of torture.

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

The Parliament of Uganda should desist from passing laws that curtails universal freedom of human rights as declared by the United Nations in 1948. The domestic laws like the 2010 Press and Journalist Amendment Bills that are inconsistent with the constitution and the international legal instruments should be rejected by the parliament. The 2002 Anti-terrorism law should be aligned in a way that protects human rights including freedom of expression. Media law reviews by the parliament should take into consideration the principle of pluralism and diversity without offending the owners of the media outlets.

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