

**THE CRITICAL ANALYSIS OF THE RIGHT TO FREEDOM OF EXPRESSION IN
UGANDA.**

BY

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DECLARATION

I, Bwambale Donus solemnly declare that this dissertation is my original research work both in substance and in style and that to the best of my knowledge it has never been submitted in any academic institution for any academic award.

I further declare that all materials cited in this dissertation which are not my own have been fully acknowledged.

Signature


.....

Date

28/10/2016
.....

APPROVAL

This dissertation has been done under my guidance and supervision as the appointed university supervisor.

Supervisor's Signature

Date

.....
Mr. Kakona Joel

Supervisor's Name

28/05/2016

DEDICATION

This work is dedicated to my parents for seeing me through school, especially my mother Mrs. Kabugho Grace Hope for making this dream come true.

Thanks to my family and friends for the encouragement and moral support. Great thanks to the Lord who has enabled this work with the gift of faith and hope.

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ABSTRACT

The right to freedom of expression is an important right in the functioning of a democratic society. Freedom of expression entails the right to hold opinion without interference and the rights to impart, seek and receive information and ideas, regardless of form, content, or source. It is an essential means by which citizens can influence their government and leaders.

Freedom of expression is crucial for the development of a full democracy particularly in Uganda's revived multi-party system like 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 five years and more. 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, analysis and discussion. In addition, the prevailing economic pressure on the media industry compromises independence of the media. Journalists are even poorly paid and often depend on government or civil society support to reach news centers.

Restrictive legislation governing the operation of the media and provision criminalizing particular acts by the media several restrict journalists' and broadcasters' freedom and right to seek, receive and impart information and the public right to access such information. This in turn harms individual ability to fully exercise their rights and responsibilities in a multiparty democracy.

CHAPTER ONE

1.0 General introduction:

The right to freedom of expression is a crucial right in a country that helps in the functioning of a democratic society.¹ Freedom of speech goes hand in hand with freedom of expression and it is the concept of the inherent right to voice one's opinion publicly without fear of censorship or punishment. Freedom of expression entails the right to hold opinions without interference and the right to impart, seek, and receive information and ideas, regardless of form, content or source². It is an essential means by which citizens can influence their government and leaders.

On the same note, several international and national instruments guarantee freedom of expression. For instance, the right is preserved in the United Nations Universal Declaration for Human Rights and is granted formal recognition by the laws of most nations. Nevertheless, the degree to which the right is upheld in practice greatly varies from one nation to another. Article 19 (2) of the ICCPR and Article 9 of ACHPR recognize the right to freedom expression³.

In order for individuals to fully realize their right to freedom of expression, individuals and media outlets must be able to function freely without unreasonable government interference even in the case of government owned media outlets. In this case we shall picture most on the press and media groups and journalists since they are the targeted groups and the expressers of freedom of expression, it is their field.

Freedom of expression in Uganda has been subjected to a number of restrictions since colonial period to date. However, in 1986 when the NRA government under the leadership of Y.K Museveni came to power, there was some good shift to a more liberal approach to the enjoyment of this freedom. A new constitution was promulgated which guaranteed the right to freedom of expression and right of access to information in the possession of the state⁴. However one might argue that these provisions were domesticated into Ugandan law as a result of ratification international covenants. These freedoms have however been restricted especially when media, both the electronic and print have engaged government in political debate, dialogue air criticism, These constitutional guarantees have been restricted by the enactment of punitive laws and creation of institutions meant to suppress media houses and restrict access to information. This has created a situation of self-censorship among the media houses as opposed to their primay role of dissemination of information and watch dog to government excesses, a cornerstone to their contribution to democracy. This work therefore seeks to discuss the historical evolution of this freedom in Uganda and examine the legal regime governing press freedom and identify the legal and other practical limitations to the enjoyment of this right.

¹ United Nations Declaration for Human Rights Program, report of 19th may 1994

² Article 19 of the ICCPR

³ United Nations Universal Declaration for Human Rights status report, 2007 pp4-5

⁴ The 1995 Constitution of Uganda.

1.1 Historical Background of the Study

Freedom of expression is considered the rock of democratic rights and freedoms. From its very beginning in 1946 before any human rights declarations or treaties had come up, the UN General Assembly adopted resolution 59(1) stating “freedom of information is a fundamental human right and the cornerstone of all the freedom to which the United Nations is consecrated⁵.

Freedom of expression is crucial in enabling democracy into play and public participation in decision making. Citizens can never exercise their right to effectively vote or take part in any public decision making if they do not have free access to information and ideas and are not able to freely express their views. Freedom of expression is therefore not only important for individual dignity but also for participation, accountability and democracy. Violations of freedom of expression often go hand in hand with other violation, in particular the right to freedom of association and assembly⁶. In free and democratic societies, the press and other forms of media are essential tools of governance. They investigate research into and publish all that is good or bad in society. They alert and educate citizens whether rulers or the governed, but the right and wrong paths in the manner and style, respective governments are behaving and acting in the running and administration of public affairs.

In this regard. The independence and freedom of the press and other media together with the ethics and courage of the proprietors, journalists and reporters who work for and in them are of crucial importance.

The interplay between press freedom, restraints on the part of publishers and the ethics and courage of journalists creates the necessary balance for acceptable standards and behavior in publishing and governance. In such countries of monolithic, authoritarian, or personalized regimes, the role of the press is either severely restricted or constantly challenged, but also its importance has never been greater or greatly needed. Generally, the media is adversely affected by the law, policies and practices of the people in power.

In the result, the accuracy, integrity and credibility of the media both in print and electronics are seriously fatally compromised. Where journalists and reporters are intimidated or persuaded to “cooperate,” and become good boys and girls in the judgment of those they are minded to support unconditionally, the truth of what they write or report in the press and other media becomes suspect, their stories are mainly in support of the government and often uninformed or misinformed, un researched and boring. And perhaps only their reports on international news and events exhibit some grains of truth and interest to readers or listeners.

Yet as the court of South Africa said that: “The role of the press in a democratic society cannot be underestimated. The press is on the front line of the battle to maintain democracy. It is the function of the press to scrap off corruption, dishonesty and graft wherever it may occur and to expose the perpetrators. The press must reveal such dishonesty, mat and inept administration. The press must

⁵ United Nations Declaration for Human Rights status report, 2008 pp7-8

⁶ Uganda Human Rights status report, 2005 pp6-7

also contribute to the exchange of ideas. It must advance communication between the governed and the governing. It must also act as the watchdog of the government.”⁷ However, I would personally go further and say that the press must go beyond the role of a watchdog. They must also act as the bloodhounds against corruption, abuse of power and mis-governance.

The freedoms of expression and information are equally of fundamental importance for the recognition and protection of other basic human rights and fundamental freedoms. Before being pre-occupied with other governmental pastimes, the NRM in its hey days of administration good governance was acutely aware of the role the media plays in a free and democratizing society, it entertained dialogue with members of the press and accepted the constitutional provisions about freedom of information. It initiated the media bill which came to be enacted into law. Thus Article 29 of the 1995 Constitution of Uganda provided that: 29(1) every person shall have the right to;

- Freedom of speech and expression, which shall include freedom of the press and other media.
- Freedom of thought, conscience and belief which shall include academic freedom in institutions of learning.
- Freedom to practice any religion manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organization in a manner consistent with the Constitution.
- Freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and
- Freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organizations.

(2) Every Ugandan shall have the right:

- To move freely throughout Uganda and to reside and settle in any part of Uganda.
- To enter, leave and return to Uganda.
- To a passport or other travel documents.”⁸

In relation to the press. Article 41 thereof has the subject of numerous judicial applications. enforcement and interpretation which is equally important. It provides that; 41(1) “Every citizen has a right of access to information in the possession of the State or any other person or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person.”

However, parliament has to enact a law classifying the categories of information that are likely to prejudice the security or sovereignty of the state as clause (2) of the above Article emphasizes that

⁷ Government of the Republic of South Africa v Sunday Time Newspaper

⁸ The 1995 Constitution of Uganda (Article 29)

“(2) Parliament shall make laws prescribing the information referred to in clause I of this Article and procedure for obtaining access to that information.” Generally, the freedom of includes the right to speak, write or publish whatever one chooses and only subject to c of the State.⁹

This freedom includes the right to conscience and worship and right to give and receive information and ideas through any media. This is the freedom that includes several aspects of Constitutional importance like the absolute freedom of speech in parliament, the immunity and protection of the persons and proceedings in courts of law.

The right to express and propagate political view and ideas including those which are in opposition to those propagated by the leaders and government of the day.

The freedom of speech and preys be exceeded by the publication of treasonable, seditious, defamatory, blasphemous or obscene matter or inciting mutiny or disaffection in security forces. It is also an offence to exercise this freedom for the purposes of contempt of court or of parliament or a breach of the Official Secrets Act. These offences are of a criminal nature, but defamation may also be a civil wrong if it deliberately and falsely exposes any person about whom it is published to hatred, ridicule or contempt, or cause him or her to be shunned or avoided by other reasonably disposed citizens.

Therefore though there are some hindrances, freedom of expression is being secured in recent years. New opportunities are emerging for greater freedom of expression with the internet and worldwide satellite broadcasting. However, threats are emerging too, for instance, with global media monopolies and pressures on independent media outlet.

1.1.1 Rights at stake.

i. The right to freedom of expression, speech and opinion.

The right to freedom of expression includes the right of all to express their views and opinions freely¹⁰. This is an essential right that should be promoted to a bigger extent possible given its critical role in democracy and public participation in political life. There may be certain extreme forms of expression which need to be curtailed for the protection of other human rights. Limiting freedom of expression in such situations is always a good balancing act. One particular form of expression which is banned in some countries is the “hate speech.”

In this regard, there may be some views which incite intolerance or hatred between groups. This raises the debate about whether such hate speech as it is known, should be restricted. An example of this is the use of the mass media to promote genocide or racially-motivated attacks such as the role played by Radio-television Libre des Mule Collines in the Rwandan genocide in 1994 and the Kangura newspaper¹¹. In some countries hate speech laws have been introduced to outlaw such

⁹ Article 41 of the 1995 Constitution of Uganda

¹⁰ Uganda Human Rights Report 2006 pp4-5, Freedom of speech- Wikipedia, the free encyclopedia/en.wikipedia.org/./Freedom of speech.

¹¹ Rwandan Stories report

expression. There is a fine balance between upholding the right to freedom of expression and protecting other human rights. The success of such laws has been often questionable and one of the consequences has been to drive hate speech underground. While it may be necessary to ban certain extreme forms of hate speech and certainly to make its use by the state prohibited, parallel measures involving the promotion of a pluralistic media are essential to give voice to counter viewpoints.

ii. The right to impart, seek and receive information and ideas.

This upholds restrictions on journalists. The freedom to impart information may come under attack in a variety of ways particularly which infringe on the freedom of the press. Therefore pressure on journalists shows a very significant threat, yet all these are condemned worldwide, for example Article 19 of the ICCPR¹².

Informal censorship that refers to a variety of activities by public officials ranging from telephone calls and threats to physical attacks designed to prevent or punish the publication of critical material. The right of journalists to protect their sources is also important in ensuring the free flow of information on matters of public interest. International and national human rights mechanisms have asserted that journalists should never be required to reveal their sources except under certain circumstances (it is necessary for a criminal investigation or the defense of a person accused of a criminal offence; they are ordered to do so by court after a full opportunity to present their case; and necessary implies that the information cannot be obtained elsewhere, that it is of great importance and that the public interest in disclosure significantly outweighs the harm to freedom of expression from disclosure).

Privacy laws¹³ can impede investigative reporting aimed at exposing corrupt and illegal practices. Whereas privacy laws are important in protecting the private affairs of individuals, they should not be misused to deny discussion of matters of public concern. Should only be put where there are clear safety concerns. Elections are sometimes a victim when the freedom of the press to provide balanced and impartial information becomes critical and more vulnerable to repression by political actors. Structural restriction on the press; these call into question whether the media is free from political control at an institutional level. Restrictions can take the form of press laws which allow the government interference in the media, or which impose unwarranted restrictions on published content. All bodies with regulatory authority over the media, print or broadcast, should be fully independent of government. Processing of license applications should be open and transparent, with decisions about competing applications being made on the basis of pre-established criteria in the interest of the public's right to know. In addition, the powers of broadcast of regulatory bodies should be limited to matters relating to licensing and complaints.

Media monopolies is another way in which the right to receive information from a variety of sources is restricted. State broadcasting monopolies do not serve the public interest but then in some

¹² International Covenant on Civil and Political Rights (ICCPR) Art.19

¹³ Privacy Laws- Wikipedia, the free encyclopedia for example in Australia they have the privacy Act 1988 which regulates the handling of personal information.

smaller markets, a monopoly newspaper may be the only way to provide access to local news. Rules on monopolies need to be carefully designed to promote plurality of content, without providing the government with an opportunity to interfere in the media.

Other examples of “structural censorship” that is to say use of economic measures by governments to control information, include preferential allocation of government advertising, government control over printing, distribution network or newsprint and selective use of taxes.

Access to information held by public authorities is another aspect of freedom of information debate.¹⁴ International/national human rights mechanisms have asserted the public’s right to know and urge governments to adopt legislation along the following lines; the legislation should be guided the principle of maximum disclosure, public bodies should be under an obligation to publish key information, public bodies should actively promote open government, exceptions should be clearly and narrowly drawn and subject to strict ‘harm’ and “public interest” tests, individuals should have the right to appeal against a refusal to disclose information to an independent administrative body which operates in a fair, timely and low-cost manner, the legislation should provide protection for “whistleblowers” who release information on wrong doing¹¹.

New technologies such as internet, satellite and digital broadcasting offer unprecedented opportunities to promote freedom of expression and information. Action by the authorities to limit the spread of harmful or illegal content through the use of these technologies should be carefully designed to ensure that any measures taken do not inhibit the enormous positive potential of these technologies. The application of rules designed for other media such as the print or broadcast sector may not be appropriate for the internet. Obviously, limitations and such technologies will be a fine balancing act between defending the freedom of expression and information and ensuring protection from abuses for example the spread of child pornography.

iii. These rights can only be restricted in certain circumstances; to protect the rights and reputations of others or protect national security, public order and public health or morals¹⁵.

Restrictions are also put in place because such freedoms can be violated in the name of public order and national security. These however can often be excessively broad and vague. The international and national bodies have said that such restrictions should only be imposed where there is a real risk of harm to a legitimate interest; meaning there must be a significant risk of eminent danger, the risk is of serious harm; that is to say violence or other unlawful action; there must also be a close casual link between the risk of harm and expression, in that the expression must be made with the intentions of causing the harm. Otherwise criminal sanctions accompany such restrictions. Often the expression in question may not pose a clear risk of serious harm to public interest and still it is subjected to penal sanctions including imprisonment. For example the recent acts of Ugandan police where a police vehicle knocked a civilian in a seemingly intentional manner, among other inhuman

¹⁴ Human Rights Watch Report 2010 pp.1-2 and in respect of the Access to Information Act of 2005 and Art.41 of the constitution of Uganda.

¹⁵ Human Rights Watch report 2010 pp9-10 Uganda Constitution: Chapter 4- Disability Rights Education

acts, these are being heavily condemned by the law and the human rights defenders and the international law, this has led to the summoning of the police chief Gen. Kale Kayihura in courts of law (Makindye court). However, international human rights mechanisms on freedom of expression have concluded that imprisonment should not be imposed except in the very most extreme circumstances where there is intentional incitement to eminent and serious lawless action.

Civil defamation laws can also be misused to censor criticism and debate concerning public issues. International/regional human rights bodies have said that civil defamation laws should observe the following principles; public bodies should not be able to bring defamation action, truth should always be available as a defense, politicians public officials should have to tolerate a greater degree of criticism, publications regarding matters of public interest which are reasonable in all circumstances should not be considered defamatory, damage awards should be proportionate to the actual harm and should take into account alternative remedies such as apologies and corrections.

Courtroom restrictions are yet other repressions; there are various laws falling under the contempt of court rubric which restrict the flow of information in order to protect the administration of justice. Some restrictions exist to ensure a fair trial and to avoid a "trial by the media." Other restrictions are more to do with protecting court from being 'scandalized.' However, there are increasing questions as to whether freedom to criticize the judiciary should be limited in this way. Having cameras in courtroom has become a lively area of debate in recent years. More so, as with many other questions to do with the freedom of expression, there is a fine balance to be struck between the desirability of opening up the judicial system on one hand and protecting the privacy of victims and their families on the other hand.

1.2 Statement of the Research Problem.

The main problem in this research is to find out as to how the freedom of speech and expression has been violated and what recommendations are being enforced to curb the violation of freedom of speech and expression and what has already been done but has not been effective.

There are legislations both national and international in place which protects the public against the violation of this right but it seems these legislations are not being effectively basing on what is happening to both the press and the media. The situation in Uganda today is appealing because of the way the media freedom is being violated.

From here therefore, the paper shall make a critical review of current laws like the 1995 constitution and finally this paper shall make recommendation as to which laws should be amended in order to facilitate smooth protection of the public for the violation of their freedom of speech and expression.

1.3 Objectives of the Research.

- To give the concept of freedom of expression
- To analyze effectiveness of the legal framework in regard to promotion and protection of the right to expression in Uganda.

- To establish the challenges in relation to freedom of expression in Uganda and then give recommendations for improvements.

1.4 Significance of the Study / justification

The study is very important especially to developing countries like Uganda whose political life and network needs extreme revision and reinstatement due to swift violations and infringements by the existing authorities concerned.

In order to put the policy goals and objectives into practice and to provide a legal framework for implementing the policy, regulation in promoting the rights of rioters and journalists has been incorporated in various statutes including the Uganda Police Act, the policy will be strengthened by supplementary laws specifically addressing issues of rights of rioters and journalists in Uganda, with this, security institutions like police and the Army undergo education about human rights.¹⁶

The study will further help policy makers, legislators and relevant institutions in their decision making process when it comes to promotion of the rights of demonstrators and journalists in Uganda¹⁷. This will help such authorities observe the recommended principles in implementing the legal framework in curbing the violations of rights of journalists and demonstrators in Uganda.

The study will also boost the literature of Kampala International University Library (The Iddi Basajjabalaba Memorial Library) and be a good source of reference to potential future researchers in a similar field of research.

1.5 Scope of the Study

1.5.1 Subjective scope

This study will covers freedom of expression and speech more so in relation to the media group and its effectiveness, identifying the challenges facing the media in its independent nature and how this affects the human rights environment in Uganda and drawing up a conclusion in that capacity, and also making recommendations that would provide alternative solutions to the existing state of affairs.

1.5.2 Time scope

This will cover a brief history from the colonial period indicating how freedom of expression was upheld to the promulgation of the 1962 Ugandan Constitution. The study will further cover the period from the promulgation of the 1995 Ugandan Constitution 2016.

1.5.3 Geographical Scope.

Uganda is the main limit as far as geographical scope is concerned, though the media group in relation to freedom of expression will be compared to other countries in one way or another.

¹⁶ Uganda Human Rights report 2005 pp.1-8

¹⁷ Foundation for Human Rights Initiative annual report 2005pp.2

1.6 Literature Review.

As far as this topic is concerned, there are wide numbers of literatures which specifically strive to evolve around in Ugandan libraries. The freedom of expression is widely known in Uganda specifically rotating around the media circle, it is a recent problem and as a result of a long time struggle of the media.

Weak Cyber laws fail to protect internet freedom and privacy¹⁸ (this report published on 20th May 2016) gathered information on freedom of expression in that period and used available work towards better policies that advance fulfillment of human rights obligations in Uganda.

Civil Rights Defenders and the Ugandan NGO Unwanted Witness provide a joint analysis on cyber laws in Uganda and their failure to protect online freedoms and the right to privacy. The analysis is an assessment of Ugandan cyber laws from a human rights perspective that reflects on the compatibility of the provisions with Uganda's own 1995 Constitution and International Human Rights Standards.

A report prepared by the International Gay and Lesbian Human Rights Commission¹⁹ for the United Nations Special Rapporteur on the promotion and protection of the Right to freedom of opinion and expression and the special representation of the Secretary General for Human Rights Defenders, and was submitted on October 30th 2007.

Government of Uganda Violates LGBT Freedom of Expression; In August 2007, Deputy Attorney General Fred Ruhindi and Minister of Ethics and Integrity Nsaba Butoro called for enforcement of criminal law against homosexuals. This followed a press conference in the country's capital Kampala by the lesbian, gay, bisexual and transgender (LGBT) coalition, Sexual Minorities in Uganda (SMUG), to launch its Let us Live in Peace Campaign calling for understanding and respect of sexual minorities. The press conference prompted an anti-gay rally drawing more than one hundred demonstrators, including several government officials who demanded official action against LGBT people. The rally also for the deportation of an American experiences of gays and lesbians in the country. The tactic of shutting down public debate on issues of homosexuality is not a new one in Uganda. In October 2004, Radio Simba was fined for broadcasting a show on HIV²⁰. A case in point is that the country's broadcasting council also suspended Capital One radio presenter Gaetano Kaggwa in August 2007 for broadcasting a show that about lesbians. The council decided that a guest on the show had used language that breached "broadcasting ethics."²¹

The International Gay and Lesbian Human Rights Commission (IGLHRC) has developed this report to contribute to the information gathered by the Special Rapporteur on Freedom of Opinion

¹⁸ Weak Cyber Laws, privacy Laws report of 20th may 2016

¹⁹ This report was written and prepared by Adrian Cornan, Justin Ellis, and Sarah Tobias at the International Gay and Lesbian human rights commission

²⁰ Daily monitor October 2004

²¹ New vision August 2007

and the Special Rapporteur on Human Rights Defenders in preparation of their 2007 annual report. The report highlights conceptual issues related to the rights to free expression assembly and association as they concern sexual orientation, gender identity and gender expression and includes information on the status of these rights during the past year.

In this report. Sexual orientation refers to “each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender.”²² Gender identity refers to “each persons deeply felt internal and individual experience of gender, including dress, speech and mannerisms.”²³ Unlike sexual orientation and gender identity, gender expression is eminently social in nature. It refers to a person’s “manner of dressing, mannerism, speech and appearance,” and other social aspects not covered by the term gender identity, which in many places are regulated by law, including by criminal law.²⁴

As they show in this report. People are often targeted for human rights abuses on the basis of this L. Hgender identity and gender expression. And so they believe that the Special Rapporteurs on freedom of Opinion and Human Rights Defenders could usefully address these issues in their annual reports.

As per the Human Rights Standards, the rights to free expression, assembly, and association, are in international human rights laws as universal rights. Specific populations are not excluded from these rights. The most significant human rights treaties and resolutions, both at the UN level and within regional human rights mechanisms in the Americas, Africa, and Europe recognize these rights and specify that they are intended to be enjoyed by everyone and to nondiscriminatory in application. Several binding decisions make it clear that LGBT²⁵ people are part of this universal vision.

For instance, in *Toonen V. Australia* (1994), the Human Rights Committee affirmed that existing protection against discrimination in Articles 2 and 26 of International Covenant on Civil and Political Rights (ICCPR) includes sexual orientation as a protected status. In *Baczowski and Others V. Poland* (2007), the European Court of Human Rights found Poland to be in violation of the European Covenant on Human Rights for authorizing a LGBT pride match in Warsaw. (Violations of Article 11 on freedom of association and assembly; Article 13 on the Right to an effective remedy; and Article 14 on non-discrimination.)

²² Yogyakarta principles

²³ Ibid

²⁴ Mauro Cabral and IGLHRC, gender expression and human rights, IGLHRC, April 2007

²⁵ LGBT- Lesbian, Gay, Bisexual and Transgender is a term used predominantly in the west to refer to: people with non-conforming sexuality or gender. They are employing this term herein, acknowledging that in some parts of the world people define themselves differently.

The Rights monitoring and Policy Advocacy Project²⁶ and the Foundation of Human Rights Initiative²⁷ in its report “freedom of expression,” (report for the period June — 30th November 2007)” gathered information on freedom of expression in that period and used available data

demonstration as case studies. According to him, there are three issues affecting the freedom of expression in Uganda, namely;

The barbaric provisions of our statutes that continue to defy and retard the democratization process in the country, a case in a point is the sedition law.

More so an analysis of the performance of the media council and the weakness of the regulatory mechanisms employed in the regulation of the media. As evidenced in the Mabira demonstration and the vagina monologues, the new and emerging challenges fuelled by globalization which call for corresponding new prescriptions.

Hon. C.J Bart Katureebe addressed journalists on Sunday April 2015 and informed them to remain neutral as we approach the 2016 general elections while at the Uganda National Journalism Awards organized by The African Centre for Media Excellence (ACME) in Kampala²⁸.

Civil Rights Defenders strongly condemn the Ugandan Polices raid of a workshop for Lesbian. Gay, Bisexual or Transgender (LGBT) activists in Kampala and the harassment and intimidation of LGBT activists in general and urge the Ugandan government to fulfill its responsibility to protect human rights defenders against intimidation because of their human rights work²⁹.

Also section 50 of the Penal Code Act which criminalized publication of a false statement, rumor or report which is likely to cause fear and alarm to the public or to disturb the public peace was declared inconsistent with Article 29(a) of the constitution in the leading judgment of the case of Onyango Obbo versus Attorney General³⁰.

1.7 Hypothesis of the Study.

Freedom of expression and speech have not only been hard but remained a beautiful dream to the disadvantaged and poor Ugandans especially the media due to a number of reasons.

Firstly, the barbaric provisions of our statutes that continue to defy and retard the democratization process in the country, an example of which is the sedition law.

²⁶ The rights monitoring and policy advocacy project documents, human rights practices in order to promote dialogue and respect for human rights and democratic development in Uganda.

²⁷ The Foundation for Human Rights Initiative report “ freedom of expression” for June-30th November 2007.

²⁸ Daily monitor, 12th April 2015

²⁹ Civil Rights Defenders report 2012, the report was written and prepared by Adrian Coman, Justin Ellis, and Sarah Tobias at the International Gay and Lesbian Human Rights Commission.s

³⁰ Onyango Obbo and Another V Attorney General (constitutional petition no.15 of 1997) [2000] UGCCU (21st july 2000)

Firstly, the barbaric provisions of our statute democratization process in the country, secondly. Secondly, the performance of the media council and its weaknesses in the regulatory mechanisms employed in the regulation of the media, as evidenced in the Mabira demonstration and the vagina monologues, the new and emerging challenges fuelled by globalization which call for corresponding new prescriptions.

1.8 Synopsis.

Chapter two will cover the historical development of the press and media freedom of expression in Uganda covering all the stages of development in details.

Chapter three will cover the legislative and regulatory framework of the media and how this legislation affects the freedom of speech and expression.

Chapter four will cover the advocating for free expression in Uganda. The regime today as regards freedom of speech and expression will be discussed and in this case, the sedition law will be covered in details and also the case studies of the vagina monologues and the Mabira demonstrations will be discussed in details.

Chapter five will cover the recommendations and suggestions for improvements of the freedom of speech and expression in the current regime and thereby make a final conclusion.

1.9 Research Methodology.

The researcher used secondary data content analysis in conducting this research. In this method both International and regional human rights instruments were analyzed, writings of leading scholars, publicists and newspaper reports of relevant events were reviewed. Information obtained from different media houses or organizations was also analyzed. In this respect, the research was not responsible for collection of original data but only analyzed conclusions and findings of the authors.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF PRESS AND MEDIA FREEDOM OF EXPRESSION IN UGANDA

2.0 Introduction

This chapter discusses the historical development of media and press freedoms. The chapter specifically examines the historical development as handled in Uganda in different regimes right from the colonial period as different regimes have handled these freedoms in different ways. It will also analyze the major incidents, where media freedom of expression has been interfered with in Uganda up to the present.

2.1 General perspective of freedom of expression worldwide in relation to the press.

Press freedom is one of the fundamental human rights that have existed as long as human life³¹. In the European states the press played a major role in community and national development. This would be achieved through writing articles, designing radio and television programs that would foster community participation and community development.

In America, the media is the actual fourth arm of government, which is seen as the national watchdog. There is also a greater law that protects this media in order to execute its duties freely without any interference and restriction.

The media in Germany has a greater historical importance that other countries have continuously referred to as far as emphasizing the strength of the media is concerned. During the world war era of the 1940's, the Germans [NAZI] employed the power of the media to propagate propaganda towards the enemy and eventually winning them.

In Asia the media gained greater importance in the political and economic reconstruction period. The Asia government successfully used the media to mobilize the masses to participate in community and national development programs. Such programs included agriculture, politics and education among others. This led to what we see today as 'Asia Tigers'.

The media in Africa is not something new. In broad sense it is something that has existed as long as human life. Pre-colonial media in Africa was in the form of storytelling around fire places by the elders as they would impart knowledge to their children preparing them for what they would be expected to do if they grew up into adults. Following the changing trends, as the world is globalizing, the media has played a great role. These changes cannot be avoided but a need to devise means of protecting the media so that it can freely execute its role without any restrictions is paramount.

³¹ Christian Journal Taber Charles 2002, p.20

2.1.1 Origin of the press and press freedom in Uganda as per freedom of expression

The origin of the press in Uganda as we know it can be traced from the late 19th century when missionaries began to publish newspapers that were basically meant to foster evangelism³². Uganda's press has had a rather checkered history from its beginning in 1897 when the British colonial Administration set up the royal Gazette, the fore runner of the state owned media; this was followed by the Mengo notes of the church missionary society in 1900³³.

Needless to say, the growth and development of the press in Uganda has not been an easy task. We know that the seeds of press development were sown during the difficult days of colonial rule. This was at the time of struggle for self-governance. Politicians made use of the press and this created awareness. Some examples included the Uganda Eyogera, published by the Uganda national congress [IJNC], Muwereza, by the Democratic Party [DP].³⁴ Colonial rule was antipathetic to any meaningful freedom. Frequently, the colonial administration used all methods to stop freedoms of expression and use of the law was found to be the most effective to press freedom³⁵.

2.1.2 Freedom of Expression in Colonial Period

Colonial regime reacted harshly and decisively against criticisms and political agitation by the press. The press censorship and correction ordinance,³⁶ and sections 49 and 53 of the penal code³⁷ on sedition and seditious publications were, extensively used to harass and limit the activities of the press. When the Second World War broke out press censorship constituted a major part of the colonial policy of administration³⁸. The colonial regime came down sharply on the press to curtail publication of sensational and critical commentary on colonial regime and its agents, the chiefs mainly in Buganda³⁹.

The British used the repressive laws to suppress the anti-colonial struggles, as was professor Peter Takirambudde's description of social press law in Uganda was that:

[Part] of the legal regime imposed upon Uganda was the press law; the press law, which was publication⁴⁰.

³² A.E.A.MBAINE, The challenges to Press freedom: A paper presented at Uganda Human Rights Commission Seminar 12/4/1999

³³ Amos Kajoba: The state of the media in Uganda fighting corruption in Uganda, Mengo notes, p.2

³⁴ Lent.1987 p.22

³⁵ Supra

³⁶ No.13 of 1948

³⁷ Penal Code Act of Uganda, now cap 120

³⁸ The first laws on press censorship had been formulated early in 1910 (the newspaper ordinance 1910), the press censorship ordinance (1915) and the penal code

³⁹ ZIE GARIYO; The press and democratic struggles 1900-1962 in Uganda studies in the living conditions popular movements and the constitutions p.2

⁴⁰ James Namakajo, president of UJA quoting professor Peter Tikirambudde in a paper presented at a UJA discourse in Kampala in October 1990

In the events of 1949, Munyonyozi, Mugobansonga and Gambuze newspapers were banned from publication and circulation under the emergency regulations and the press censorship and correction (Amendment) ordinance.⁴¹

Earlier on in 1948 the editor and publisher of Gambuze Mr. Luyima and Mr. J. N. Tabula were arrested and charged on four counts for publishing a telegram from Mulumba to the colonial governor, the publication which if believed could not fail to bring into hatred any contempt the person of her majesty's representation in Uganda as well as being circulated to raise discontent and dissatisfaction both against the administration of justice in the protectorate as well as amongst the inhabitants.⁴²

The beginning of the 1950's saw the emergency of new newspapers, which were very critical of the colonial regime. The Uganda post and Uganda express which started publishing in 1957 and 1953 respectively, were among the newspapers of the 1950's, which took a vehemently critical stand against both the colonial regime and the Buganda government. Thus Ivan Kiwanuka and Uganda post bitterly criticized the Buganda Katikiro, Paulo Kavuma, for banning European dances with violation of the Buganda; he was arrested and charged with violation of the Buganda customs by publishing defamatory matters against the Katikiro.⁴³

Kiwanuka was fined 1,000 shs and a few months later he was charged with publishing seditious material intended to 'bring confusion and hatred among the people against the government'.⁴⁴

On May 13, 1954 the colonial government banned three newspapers, Uganda post, Uganda express and Uganda Eyogera which were harshly critical of the deportation of the Kabaka under Emergency regulations⁴⁵ also Peter Ssali editor of Uganda mirror and Musa Mukiibi editor of Doboozi Iya Uganda were arrested on June 14- 1954 on 'Trumped up charges of receiving stolen property and on May 25, 1954 they were sentenced to 9 and 12 months respectively with hard labor by a magistrates court.⁴⁶

Apparently the laws that were enacted during the colonial period⁴⁷ were meant to check any newspaper that could be established by Africans and therefore expose the wrongs of the colonial administration, as succinctly stated by Robert Mukhooli that:

*To allow free expression in the colonial circumstances was to invite valid criticism of colonial expression and incitement against the colonial establishment*⁴⁸

⁴¹ No.13 of 1948

⁴² E.A Law report Vol.XVI 1949

⁴³ Uganda post January 23 1953, p.1

⁴⁴ Gambuze of May 1st 1953

⁴⁵ Ebifa mu Uganda June 1st 1954

⁴⁶ Ebifa mu Uganda June 15th 1954

⁴⁷ Surety Ordinance 1910, the Press censorship ordinance 1915s

Thus journalists during colonial period were harassed, this harassment increased during the independence struggle, it was hoped that the post independence government would allow it to blossom and play its role in the development of society. But in Uganda, like in all African countries this remained wishful thinking.

It should be noted that all post- independence governments have used all methods, nearly in equal measures against press freedom⁴⁹.

2.1.3 Freedom of Press in Post- Independence Uganda under Obote I Regime-1962-1971

on 9th October 1962, Uganda attained self-governance or independence and the future of the media looked rosy. This saw the birth to both the electronic and print media and also marked the beginning of enjoyment of press freedom. The national radio [Radio Uganda], the national television [UTV] and the leading daily national newspaper [Uganda Argus] owned by Lonrho began operating. This paper had a wide circulation of over 6, 000, because people were richer and there was very good transport, so papers reached the whole country.

Between 1962 and 1966, a reasonable degree of press freedom existed until the Mengo crisis in 1966, when Obote then executive Prime Minister toppled President Kabaka (king) Edward Muteesa II, abrogated the constitution and declared Uganda a Republic with himself as a president. Obote's idea of the presidency was that the first citizen controlled everything.

Immediately after this, timidity set in and the Uganda media started on a first track down the sewers. Even the journalists became party activists- operatives of the ruling Uganda People's congress (UPC). There were no schools of Journalism. One had to go to Britain or learn on Job learning by making mistakes. But many didn't live long enough mistakes to learn sufficiently to make the grade.

The regime of Obote was characterized by government intervention into the Media coverage and tight government ownership was in the hands of the state only. Private media was not allowed to operate in the country then.

The regime viewed the media as the only means an enemy could overthrow the incumbent government by announcing over the radio and television that 'the current government or president has been overthrown'. The Newspapers at that time were subject to security by state agencies before any article or story would be published.

Using the same position, the then colonel Idi Amin Dada, commanded the attack on premises of the only and national radio station [Radio Uganda] in the absence of President Obote, and announced in the similar words that the then Obote government had been overthrown. In his own words, Amin said:

⁴⁸ Robert Mukhooli Kabushenga(1994) quoted in the challenges to press freedom. A critique to anti-press laws 12.4.1999 by A.E.A.MBAINE.

⁴⁹ A.E.A.MBAINE, The challenges to press freedom: A critique to Anti-laws, paper presented at a Human Rights Commission Seminar 12.4.1999

"From today, L Idi Aniin Dada, is (sic) the full president of the republic of Uganda."

As earlier mentioned, because the press was one of those institutions that were supportive of the independence struggle, it was hoped that the post- independence governments would allow it to blossom and play its role in the development of society. But in Uganda like all African countries, this has remained wishful thinking. All post — independence governments have used all methods nearly in equal measures against press freedom.⁵⁰

Immediately after independence in 1962, parliament enacted the newspaper and publication Act in 1964⁵¹ that in itself was a collection of the entire colonial anti press laws into one Act. At the same time the press censorship and correction Act 1948, also remained on the statute books⁵², Governments also evoked laws that did not directly affect the media to "tame" journalists, like deporting foreign journalists in 1965 for violating the Secrets Act.⁵³

Even when a new constitution came into force in 1967, press freedom was the subject of several claw backs like public morality, national security and all other nebulous forms of public interest. So right from the constitution, press freedom remained unchartered for though the law as Obote I regime continued to progress into a dictatorship, Journalists also continued to have a tough time. Many were imprisoned for example Rajat Neogy, editor of the Transition and Abu Mayanja⁵⁴ and the passing of public order and security Act made the job of public watch dog a bigger nightmare⁵⁵.

2.1.4 Freedom of expression Press in Amin's Regime - 1971-79

When Amin came to power, among the 18 (eighteen) reasons as to why he ousted Obote was reason number 3 (three) which stated that during Obote's regime there was lack of freedom to air political views. The media then thought that the new leader would bring total democratic rule and of course press freedom to the country but to their dismay, the situation worsened day by day.

Immediately, Amin ordered foreign journalists to be deported to their respective countries. The Ugandan re-known journalists such as Ilakut Ben Bella⁵⁶ also fled the country for their dear lives, as they were the next targets.

Murder and terror of those persons who did not agree with the president ideologically characterized the regime. This regime was brutal for over eight years. The former president Obote waged a serious war against the dictatorial regime of the then brutal Arnin and overthrew it in 1980.

⁵⁰ Ibid

⁵¹ A historical overview of press and media freedom roles, limits and challenges in democratization by Dr. Henry Onoria, Ph.D. An article of a paper presented to the Makerere debating club on Friday 8.12.2002 at the senate conference room

⁵² Supra

⁵³ Amos Kajoba, President of Uganda News paper editor and proprietors Association presented on June 3rd 1996

⁵⁴ Uganda V Rajat Neogy and Abu Mayanja (the transitional case) 1st feb 1968

⁵⁵ Supra

⁵⁶ Once a dean of faculty of mass communication of Uganda Christian University

In Idi Amin's regime one could not say anything other than what the regime wanted to hear like every other dictatorship. Amin's government revolved around him. For eight years — the longest eight years in the country's history — Uganda was in the hands of megalomaniac whose word was the law and whose dreams, hallucinations and mood swings determined and shaped government policy. If Idi Amin would not feature on the front page, editors would be summoned to explain why.

Malyamungu, Amin's hatchet man, was always nearby to pose unpleasant questions to the unfortunate editor, he was one time quoted for having said in his words posing questions to one journalist that:

What issue was so important that it could eclipse the If president? And just who do you think you are, to disregard the man whom God has so miraculously chosen to lead this' country? Do you think we do not know you are an Obote apologist? Did you think you were going to get away with it? Watch out, bwana, we are watching. And when we finally decide to deal with you, you will see.

It should be noted in line with the above that, Idi Amin's take over in 1971 made a bad situation even worse. The Argus newspaper was nationalized in December 1972 after the expulsion of the Asians. It became the Voice of Uganda under department of the ministry of information, with the ministry's under-secretary as administrator. However Voice of Uganda became part of the political system and took on purely propagandist identity. But however it was not long that all pretences at democracy and related liberties like press freedom were thrown to the wind, journalists were harassed and mostly killed. The media were only left to do propaganda for government in which they suffered a huge credibility crisis.

Interestingly, Amin also found it convenient to rely on the law to decisively deal with the press. For example the press censorship Act which forms the basis of censorship in Uganda came into force in 1972, it was amended again to become Decree No 35 of 1972, this gave the minister discretion to ban any paper, it was invoked in 1974 and 1975 to ban the sale and distribution of all imperialists papers in Uganda.⁵⁷ Amin banned both local and foreign newspapers e.g. The Nation (of Kenya) was banned from coming into Uganda in 1975, The peoples newspapers was banned and journalists such as Semei Katerega, sports editor of the Voice of Uganda and Bagenda Mpiima after he criticized the Ujamaa villages in Tanzania were arrested and detained.

Some journalists lost dear lives during Amin's regime by reporting on what the government did not want for example Reverend Father Kiggundu of Munno newspapers was killed after the newspaper carried an article written by somebody criticizing the Amin's regime, James Bwogi, Chief News Editor of Radio Uganda was also killed. The arrest and detention of Bob Kitimbo and Jimmy Luyima led to the closure of Munno in 1976⁵⁸.

⁵⁷ Amos Kajoba, the role of the media, the state of the media in Uganda, part six, fighting corruption in Uganda

⁵⁸ Idid

Even during the time of liberation war in 1978, the government controlled media never gave accurate reports about the war, the best it did was to announce that the situation was under control and the president for life would teach Tanzania a lesson it would never forget.

2.1.5 Freedom of expression and the Press in Obote II Regime.

Under the Obote II regime, the situation remained the same by numerous insecurity all over the country from 1980-1985. Those journalists who have lived beyond that time, Ilakut Ben Bella, Wafula Ogutu, Sam Katwere, Drake Sereba, and others can testify to what was happening. Again the law features here prominently, in addition to killings, in government's effort to restrict, even obliterate press freedom.

Four newspapers were banned during Obote II regime in 1980 for reporting about the Uganda rigging of elections⁵⁹. The editor of Munnansi, Anthony Sekweyama, was frequently arrested and detained. His arrest was after munansi had critically monitored the human right's abuses by the army of which Anthony was the editor. It is also noted that the editor of the Uganda Times was detained after he had written an article about massacre in northern Uganda, then anybody else could and as such this greatly hindered press freedom as it threatened the journalists very much.

2.1.6 Freedom of expression and the Press during NRM era 1986 to the Present (2016)

When the NRM came into power in January 1986, a whole new situation in the political, economic, social and cultural life seemed to have descended on the country.

According to the legal notice 1 of 1986 the NRM political agenda was enshrined in the ten-points program this was the pointer and guide in changing Uganda. This change was termed as the "fundamental change,"⁶⁰ in all aspects of national life for the betterment of the citizens unlike the other regimes, which were truly dictatorial.

Point 1, of the ten-point program stated, 'the establishment of democracy'

Point 9, of the ten-point program stated. 'Co-operation with other African countries in defending human and democratic rights'.

Since the NRA/NRM leaders had ridden to power on the back of propaganda through the media, they consequently recruited high powered and skilled communicators into their team mainly for propaganda purposes dissemination and for misinformation so as to hide the NRA atrocities and clinging to power and establishing a one-party state.

The NRA, NRM, government introduced a program to liberalize the media as opposed to the past regimes. With so many newspapers on the media front, it didn't take long for some papers to show negative trends like sensationalism and disregard of professional ethics.

⁵⁹ Banned newspapers: Ag. Africa, weekly topic, the citizen and the economy page 20

⁶⁰ Yoweri Museveni; Ten Point programme, 1986

Of particular interest to this discussion was the view that freedom of press had finally arrived⁶¹. The NRM 20 years have been the longest period the press has entered some freedom⁶². The NRM seemed to have followed press freedom because of the following:

- a) The Luweero war that had brought it to power had been fought on a human rights platform and government did not want to be seen to quickly shut out these freedoms.
- b) Government calculated that the ban on politics would find less agitation if there was press freedom.
- c) The government thought they had good cadres who could handle criticism in the newspapers, moreover from less learned sections of the population like most of the journalists of the time.
- d) The character of president Museveni, tolerant if the work of the group does not immediately threaten his hold to power.

The Museveni government subscribes to a liberal press theory for two reasons: to run the country in an ideal manner and as a reward to journalists who were few and most of these were freelance, poor, and untrained.

The broadcast media was the monopoly of government and both Uganda television and Radio Uganda which were no more than a government public relations division, were seen to be a joke. The media therefore presented no serious threat or so Museveni thought.

Part of Museveni's idea was that if people chose to speak against government, they should use the newspaper rather than resort to forming political parties — Museveni's greatest nightmare.

It should be instructive on the attitude of the NRM government to press freedom that the laws, which had been used to harass media professionals, have been on our statute books since 1986, and these very laws have worked well for even the Museveni administration.

During this era many papers sprung up with literally no restriction in their path, many journalists and non-journalists alike set up papers. At one time we had as many as 40 publications on the street although their mortality rate was as high as the birth rate.

The late Kajoba⁶³ at one time said:

The rise and fall of newspapers and magazines bathers me occasionally for a simple reason that it gives certain signals for instability in a profession which has a vital and powerful role to play in moving forward. Otherwise how does one explain the collapse of Munno and topic at the time when the media has had the longest uninterrupted period of press freedom?

⁶¹ Supra

⁶² Supra

⁶³ Late Amos Kajoba, president of Uganda newspapers and proprietors association on 6.3.1996

With so many papers on the media landscape it did not take long for some papers to show negative trends like sensationalism and disregard of professional ethics, this led to public criticism and a call for control, guidance and discipline of the media. Leading the attack were government officials including key personalities like president Museveni, his ministers and some members of the public.

After the initial honeymoon of the two years after the ascendancy to power by the NRM the signs of 'old governments' conduct in relation to press began to show. In June 1986, the weekend digest was banned exactly under the law that Idi Amin banned *Munno* in 1976 and Obote banned the weekly *Topic* in 1981, in March 1986 Sully Kiwanuka Ndiwalana, the editor of *Focus* a Muslim owned news paper was charged with sedition for reporting that the National Resistance Army (NRA)⁶⁴ had found the going tough in war against the Uganda Liberation Army (UNLA) of general Tito Okello⁶⁵. In June 1986, the weekend Digest was banned and its editors, Jesse Mashat and Wilson Wandera, charged for publishing a story that the Democratic Party was plotting to overthrow the NRM government. In December Francis Odida was arrested and charged with seditious publications and publishing false news. Odidas' problem was to escalate when; in December 1987 he was again arrested and charged with sedition for publishing articles of mock interviews regarding Alice Lakwena leader of the holy spirited movement, a rebel in the northern and northeastern parts of the country in the Sunday review' in November 1987. He was charged with treason and was released after 7 months in Luzira prison. On December 1987, John Kakooza acting editor of "citizen" was arrested and charged with sedition, the story complained of stated that opposition guerrillas controlled tracts of territories in the Teso region, a commentary on the implication of the Lakwena rebellion, a line drawing of president Museveni that was deemed disrespectful.⁶⁶

These arrests continued even after the NRC had its parliamentary mandate extended for a second term in 1989. In 1989, Joseph Kiggundu, editor-in-chief of the Citizen newspaper was arrested and charged with criminal libel for publishing an article about how Dr. Kisekka, then prime minister, had been thrown out of NRM government.

In 1991, even the electronic media was liberalized in a wave of liberalization engineered by the World Bank and International Monetary Fund (IMF). But the introduction of the Mass Communications degree at Makerere, the improvement of the Uganda Management Institute School of Journalism and a general media revival basking in the newfound freedom, produced amazing results.

For the first time, the Uganda media started the ideal path. Newspapers started delving into analysis of political issues. Corruption was exposed, in most cases involving high-ranking government officials and resulting in many resignations.

⁶⁴ Now the UPDF

⁶⁵ ZIEGARIYO; the media, constitution and democracy in Uganda, quoting from amnesty international report of 1989, Uganda human rights record 1986- 1989

⁶⁶ Ibid p.40-43p

In its attempt to control the press, the government indicated its intention to introduce the mass media bill way back in 1987; this bill saw the coming and falling of four ministers of information and Attorney general. It kept traveling within the Ministries of information and Justice, Cabinet and the NRC.

This was basically due to the fight put on by the journalist against the oppression bill. In between the state continued to fight the media. What was dramatic was the arrest of three journalists Alfred Acari of the News Desk Magazine, Festo Ebongu, of the New Vision newspaper and Hussein Abidi the BBC Swahili correspondent in Uganda after a press conference in January 1990 for asking the ex-president of Zambia, Kenneth Kaunda “embarrassing” questions. The charges preferred against them related to offences under section 51⁶⁷. The journalist won their freedom after a rigorous court battle with the government in which attempts to interfere with the independence of the judiciary during the hearing of the case have been cited⁶⁸. Many and more other journalists were arrested and detained.

When the government started to feel uneasy about reportage on corruption and other forms of Misadministration had to introduce the offence of sectarianism through section 42(a)⁶⁹. It is this offence that the editor of the crusade George Lugambi was charged in December 1998. To be fully insulated against un-sanctioned press reports of war. Government prohibited the publication of war related information e.g. military installation, equipment troop movement and locations through section 39 (a)⁷⁰.

In 1995 Government thought enough was enough to and brought the media bill, the bill consolidating the number of laws relating to publications and other modes of transmission information while including, emphasizing and consolidating the repressive aspects of Eventually the print media was separated from the electronic media. This has been a tendency regard the press as a medium through which the government may reach the people rather than one through which the people may reach the government.

The journalist put up a spirited fight but in the end lost, the print media bill was passed and it is now the press and journalist Act⁷¹. The most important thing that was achieved is the recognition of the journalism as a profession, journalist are majority of the media council and control the professional body. The National Institute of Journalist of Uganda (NIJU) - their professional body. The Act overlooked the fact that the majority of Media personnel who have kept the media running did not meet the qualifications set out in the Act and did not give them a grace period.

⁶⁷ Penal code Act cap 106 now 120

⁶⁸ SYLVIA TAMALE BALABA, Press freedom and the law in Uganda today.. the alpha and omega, a paper presented at the seminar for Makerere mass communication association, July 1991

⁶⁹ Penal Code Act, cap 106, now 120

⁷⁰ Penal Code amendment statute No. 9 of 1983

⁷¹ Press and Journalism Statute 1999

Although the press in particular has never really recovered in terms of circulation to the level it was at independence (combined circulation does not reach 120000), Uganda today has a wider media spectrum. There is more freedom and better quality reporting and analysis of issues, as well as relatively wide latitude in which to operate. Although in the face it looks like the media is in control, there are a lot of loopholes through which government interfere. The situation is explained as:

*He who has the right to give has the right and the power to withdraw.*⁷²

Whereas on one hand the freedom of expression including the freedom of press is guaranteed by Article 29(1) of the constitution this freedom has been taken away on the other hand by the press and journalist Act and also the provisions of penal code which are out dated and un constitutional are still taken as good laws and have been unleashed against the free place.

It is therefore submitted that from colonial period to date, because the place was one of those institution that were supportive of the independence struggle. It was hoped that the post independence government would allow it to blossom and play its role in the development of society. But in Uganda like all African countries this has remained wishful thinking. All post independence governments have used all methods nearly in equal measures against press freedom.

2.1.7 Other restrictions and interferences on Freedom of Expression after 1995 to the present. (2016)

In 1996, John Ken Lukyamuzi, the fire-brand politicians and environmentalist, together with Central Broadcasting Service (CBS) presenter Mulindwa-Muwonge, were detained in police cells. Officers from the Criminal Investigation Department (C.I.D) have on numerous occasions' subjected editors from The Monitor and critical newspapers to rigorous interrogation.⁷³

In October 1997, the monitor's Charles Onyango Obbo and Andrew Mwenda were charged with publication of false news. The charges stemmed from publication of an article entitled 'Kabila paid Uganda in gold'.⁷⁴

In November 1999, two voices of Tororo radio journalists Joseph Kasimbazi and Frank Bagonza were also arrested and detained for three days at Muhooti barracks. The station had run a story that ADF rebels killed 30 people in Hakibale Sub County, Kabarole district.

In October 2002 three journalists, from the Monitor Frank Nyakairu, Wanyama Wangah and Charles Onyango Obbo were charged for allegedly publishing false news and information prejudicial to national security. The charges stem from articles the paper ran in 2002 alleging that the LRA had shot down an army helicopter and on 10 October 2002 a large contingent of in The

⁷² Amos Kajoba (supra)

⁷³ See C.I.D Chief Grill Monitor Editor over four reports, The monitor, feb 14th 1997. The editors were quizzed over stories like, Museveni Jets into paris in style aboard concorde, The monitor, feb.12, 1997, and angry Museveni wants press, MPS Published, the monitor, jan 9th 1997

⁷⁴ Says report in the 21st sept 1997 edition of the Sunday monitor.

swoop by officers from the Criminal Investigation Department (CID) and regular police was prompted by a story published in the 10 October 2002 edition of the newspaper about an army helicopter that allegedly crashed in the Adiganga area of Pader district in Northern Uganda, a report the army spokesman had denied. The matter had never been resolved and was the cause of a court action against the paper and three editors.⁷⁵

"News staffers inside both buildings were not allowed to leave, and no one was allowed to enter while security personnel rummaged through desks, seized cell phones, and conducted body searches of the Staff", said eyewitnesses.

Most of the confiscated phones were personal and belonged to non — editorial staff. Officers removed the hard drives from a dozen computers and seized the main office server. They took off the computers and the whole system was interrupted and required repair. Some computers remained confiscated a week after the closure.

Meanwhile, on 15 October, 2002, the C.I.D interrogated three Monitor editors, Charles Onyango Obbo, Joseph Were, and Wanyama Wangah, about publication of false news and broadcast of information prejudicial to national security.

In another incident related to the freedom of the media, Jimmy Higenyi, a journalism student at the United Media consultants and Trainers (UMCAT) Institute, was shot dead by a bullet fired by police in Kampala on January 12, 2002. The journalist was covering a demonstration organized by the Uganda People's congress (UPC) in the streets of Kampala. His report was for a student project. The government had banned the march under Article 269 of the Ugandan constitution, which outlaws all political activity in the country. The police, overwhelmed by the crowd, began firing live bullets to break up the demonstration.

A few days later, the Inspector General of the Uganda Police, Major- General Katumba Wamala as he then was, announced that an officer and two constables had been arrested in connection with the murder of Jimmy Higenyi. 'The police assume full responsibility' in this affair, the Ugandan police chief stated this during press conference.⁷⁶

However, no in- depth and impartial investigation was carried out so that those responsible could be identified and punished. Action seems to have commenced and ended at the arrest of three police officers. Those who authorized the officers to employ real bullets during a demonstration should also be arrested and prosecuted.

On the same day, three journalists — James Akena from The New Vision, Archie Luyimbazi and Andrew Mujema from WBS television station and several leaders of the UPC were detained at Kampala's Central Police Station (CPS) for a few hours and later released.

⁷⁵ Quote in New vision, 11th oct, 2002,pg.1

⁷⁶ New vision, 18th October,2002 pp.1-2

June 22 2003, Police raided Catholic Church-owned Radio Kyoga Veritas in Soroti; closing down the station for more than two months, Government said the station had been airing interviews from former LRA captives, contrary to a June 17/ 2003 directive by minister for Refugees and Disaster preparedness, Christine Amongin Aporu.⁷⁷

November 2003, Government went to court seeking an injunction banning the Monitor, banning the paper from publishing details of a leaked report, in which the Constitutional Review Commission had rejected a Cabinet proposal to lift the two-term limit on the presidency. On December 8 High Court Judge Justice Patrick Tabaro ruled that The Monitor should wait for the CRC to submit its final report to the government before publishing its details.

August 11 2005, the Broad casting Council shut down 93.3 KFM and withdrew its license over remarks made during Andrew Mwenda lives talk show the previous day. The council claimed the station had failed to meet minimum standards in broadcasting⁷⁸.

On August 12 2005, Andrew M. Mwenda, Daily Monitor's Political Editor and host of Tonight with Andrew Mwenda live talk show on KFM was arrested and detained on charges of sedition⁶⁷.

Uganda Record" journalist Timothy Kalyegira was charged with sedition over a story about a bomb blast. Kalyegira, who was summoned on 29 July 2010, was arrested on 2 August at the Kibuli Criminal Investigations Department (CID) headquarters and released on bond.

"Uganda Record", one of Uganda's online magazines, established in July 2009, allegedly published stories on both 12 July and 16 July under the title "Who set off the Uganda bomb?"

On the 10th and 11th of September 2009, the government switched off Ssuubi Fm, Radio Two(locally known as Akaboozi), the catholic based Radio Sapientia, and the Buganda Kingdom's 88.8 and 89.2 Central Broadcasting Services(CBS),18 other presenters got fired from different media houses namely; government owned Uganda Broadcasting Service, Vision Voice, Radio Sapientia, Radio Simba, Radio One, Record TV, Radio Buddu, WBS TV, Radio Two and Ssuubi fm amongst those fired were Kalundi Robert Sserumaga, Anthony Kibuuka, Herbert Yawe Kabanda, Peter Kibazo, Charles Odongotho, Rose Namwogerere, Omulangira Ndaula Jjuuko, Aloysius Matovu, Irene Kisseka, Ben Mutebi, Andrew Benon Kibuuka and Kivumbi a.k.a. Manyimatono. Others who lost their jobs under duress were Chris Ssemakula, Basajja Mivule - though later reinstated with conditions, Kazibwe Bashir Mbaziira, Deo Walusimbi, Eddie Mukwaaba Katende and Mark Walungama Although some media practitioners secretly returned to their respective duties, it was only Sserumaga who was charged with sedition which was later nullified by the constitutional court leaving others being persecuted for their work. A case that would have brought back sanity challenging the actions of the Broadcasting Council was filed more than six months ago by the aggrieved journalists but was not taken off⁷⁹. To crown on the above,

⁷⁷ Daily monitor, 24th June 2003 pp.1-3

⁷⁸ Daily monitor, 13th August 2005 pp1-2

⁷⁹ Daily monitor, 12th September 2009 pp.2-4

when in 1986 Yoweri Kaguta Museveni was sworn in as President of the NRM, he promised Ugandans a 'fundamental change'⁸⁰ Ugandans hoped for renewed era of governance characterized inter alia, by the enjoyment of their rights and freedoms of expression, assembly and association. Journalists hoped that press freedom had received a new surge of life and that they had at last secured an honest partner in the NRM with whom to build the nation. Indeed a number of newspapers with varying political viewpoints emerged and this was followed by the liberalization of the electronic media.

In spite of these developments, and regardless of the fact that guarantees for media freedom and freedom of expression are enshrined in the 1995 constitution of the Republic of Uganda, the NRM government is systematically moving towards greater censorship. Since 1986 the NRM has employed various tools designed to essentially to kill the press including the use of draconian laws such as sedition and criminal libel. Journalists have been subjected to arbitrary arrest and detention, intimidation and harassment as discussed above and anyone who opposes the government's policies like Dr. Kizza Besigye.

⁸⁰ National Resistance Army, 10 point Agenda 1986

CHAPTER THREE

THE LEGISLATIVE AND REGULATORY FRAMEWORK OF THE MEDIA AND FREEDOM OF EXPRESSION

3.0 Introduction;

Uganda is obligated to respect the right to freedom of expression of all persons under international law and Uganda's constitution.⁸¹ However, several of its national laws are inconsistent with these obligations. As Human Rights Watch has documented in this report, the Ugandan government uses these laws to revoke or suspend broadcasting licenses, bring charges against individuals restrict the number of people who can lawfully be journalists, and practice other forms of repression of the media.⁸² If the government presses on with its current plans to amend the Press and Journalist Act, Ugandan media law will move still farther away from international free speech standards.

3.1. Uganda's international obligations.

International legal instruments take the form of a treaty (also called agreement, convention, or protocol) that binds the contracting states to the negotiated terms. When negotiations are completed, the text of a treaty is established as authentic and definitive and is signed" by the representatives of states. A state can agree to be bound to a treaty in various ways. The most common are ratification or accession. A new treaty is ratified by those states that have negotiated the instrument. A state that has not participated in the negotiations may, at a later stage, accede to the treaty. The treaty enters into force, or becomes valid, when a pre-determined number of states have ratified or acceded to the treaty.⁸³

When a state ratifies or accedes to a treaty, that state may make reservations to one or more articles of the treaty, unless reservations are prohibited by the treaty. Reservations may normally be withdrawn at any time. In some countries, international treaties take precedence over national law; in others a specific law may be required to give a ratified international treaty the force of a national law. Practically all states that have ratified or acceded to an international treaty must issue decrees, change existing laws, or introduce new legislation in order for the treaty to be fully effective on the national territory.

Uganda is a party to the International Covenant on Civil and Political Rights (ICCPR)⁸⁴, which under article 19 imposes legal obligations on states to protect freedom of expression and information: Everyone shall have the right to hold opinions without interference; Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart

⁸¹ The 1995 Constitution Uganda

⁸² Human Rights Watch status Report, 2007 pp.8 and other support materials, journal for peace and Human Rights vol.2

⁸³ International Covenant on Civil and political rights (ICCPR), adopted December 16th 1966

⁸⁴ International Covenant on Civil and Political Rights (ICCPR), adopted December 16.1966, G.A. Res.2200A (XXI),21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 71, entered into force March 23rd 1976, acceded to by Uganda June 21st ,2005, Art.19.

information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or any other media⁸⁵.

The ICCPR permits governments to impose certain restrictions or limitations on freedom of expression, if such restriction is provided by law and is necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (order public), or of public health or morals⁸⁶.

The UN Human Rights Committee, which monitors state compliance with the ICCPR, has stated that “the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multiparty democracy, democratic tenets and human rights⁸⁷”.

Uganda is also a party to the African Charter on Human and Peoples’ Rights (ACHPR)⁸⁸, which in article 9 states “every individual shall have the right to receive information⁸⁹” and “every individual shall have the right to express and disseminate his opinions within the law.⁹⁰” The African Commission’s 2002 Declaration of Principles on Freedom of Expression in Africa sets out regional norms guaranteeing free expression⁹¹. The African Commission has held that government should not enact provisions which limit freedom of expression “in a manner that override constitutional provisions or undermine fundamental rights guaranteed by the [Charter] and other international human rights instruments⁹²”.

Ugandan authorities regularly state that broadcasts are “inciting the public to commit violence” as the rationale for why suspensions and closures are necessary. The tension between the right to free expression and information on the one hand, and national security on the other, has been the subject of much inquiry by courts, international bodies, and scholars. A group of experts in international law, national security, and human rights issued the Johannesburg Principles on National Security, Freedom of Expression and Access to Information on October 1, 1995⁹³.

⁸⁵ Ibid, Art.19

⁸⁶ Ibid, Art. 19(3)

⁸⁷ *Womah Mukong V. Cameroon*, Communication No.458/1991, U.N. Doc. CCPR/C/51/D/458/1991 (1994)

⁸⁸ African [Banju] Charter on Human and Peoples’ Rights, adopted June 27th 1981, OAU Doc. CAD/LEG/67/3 rev. 5,21 I.L.M.

⁸⁹ Banju Charter, Art.9

⁹⁰ Ibid, (right to receive information and express opinions).

⁹¹ Uganda is a member of the Africa Union, the successor to the Organization of African Unity (OAU), whose commission adopted the 2002 Declaration of principles on freedom of Expression at its 32nd Ordinary Session in Banjul, the Gambia, from October 17th-23rd, 2002

⁹² *Constitutional Rights Project and Civil Liberties Organization V. Nigeria*, African Commission on Human and Peoples’ Rights, Comm. No.102/93(1998)

⁹³ The Johannesburg Principles set out standards for the protection of freedom of expression in the context of national security laws. They were adopted on October 1st 1995, by a group of experts in international law, national security,

Over time, these Principles have come to be widely recognized as an authoritative interpretation of the relationship between these rights and interests, reflecting the growing body of international legal opinion and emerging customary international law on the subject. The principles set out guidelines on restrictions on free speech, including the principle that governments must use the least restrictive means possible in prohibiting speech that is contrary to legitimate national security interests⁹⁴. According to the principles, national security interests do not include “protecting a government from embarrassment or exposure of wrong doing”⁹⁵.

Some restrictions on free speech such as criminalizing incitement to violence are permitted under international law in the context of protecting national security, but such restrictions must meet ,

- a) First, restrictions must be prescribed by law, and they must be accessible, clear, narrowly drawn, and subject to judicial scrutiny⁹⁶.
- b) Second, the restriction must have both the genuine purpose and the demonstrable effect of protecting national security⁹⁷.
- c) Third, the restriction must apply only where the expression poses a serious threat, is the least restrictive means available, and is compatible with democratic principles⁹⁸.

Various human rights bodies and courts around the world have determined that protection of freedom of expression must include tolerance from public officials regarding open criticism⁹⁹. As the African Commission stated, “People who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens; otherwise public debate may be stifled altogether”¹⁰⁰.

3.2. Ugandan national laws

Uganda’s constitution guarantees every person the right to freedom of speech, including “freedom of the press and other media”¹⁰¹. Article 43 of the constitution states that, limitations on human

and human rights convened by Art.19, the international centre against censorship, in collaboration with the centre for applied legal studies of the University of the Witwatersrand, in Johannesburg. They have been endorsed by the U.N special rapporteur on freedom of opinion and expression and referred to by the Commission in their annual resolution on freedom of expression every year since 1996. Johannesburg Principles on National Security, freedom of expression, and access to information (Johannesburg Principles), adopted on October 1st 1995

⁹⁴ Johannesburg Principles, pri.1.3

⁹⁵ Ibid, prin.2

⁹⁶ Ibid, prin. 1.1

⁹⁷ Ibid, prin. 1.2

⁹⁸ Ibid, prin. 1.3

⁹⁹ European Court of Human Rights, *Lingens V. Australia*, judgment of July 8th, 1986, application No.981/82

¹⁰⁰ Media Rights Agenda, Constitutional Rights Project, Media Rights Agenda and Constitutional Rights Project V. Nigeria Nos. 105/93, 128/94, 130/ 94, 152/96

¹⁰¹ Constitution of Uganda 1995, Art.29(1)(a)

rights must be acceptable and demonstrably justifiable in a free and democratic society¹⁰². However, several criminal laws in Uganda claw back those constitutional protections. Uganda's Penal Code Act criminalizes certain conduct by journalists, such as the crimes of sedition¹⁰³, journalists in Uganda are most often brought on these grounds¹⁰⁴. Under the 2002 Anti-Terrorism.

Act, a journalist may be imprisoned for up to 10 years if found guilty of publishing or airing information that is deemed to promote terrorism. Under the act, coverage of opposition politics, dissidents and rebels is potentially criminal¹⁰⁵. Critics have said that the overly broad definition of "terrorism" in the statute prevents journalists from accurately reporting on clashes between the government and rebel groups without risking imprisonment and potentially implicates those whose views are in opposition to those of the government¹⁰⁶.

The definitions of the crimes as set out in the penal code are vague and overly broad and therefore have little predictive value for what speech is or is not permissible. Statutes that are overly broad can ultimately lead to abusive prosecutions of legitimate political speech. For example, the statutory definition of promoting sectarianism is "any act which is likely to degrade, revile or expose to hatred or contempt ... or promote in any other way, feelings of ill will or hostility among or against any group or body of persons on account of religion, tribe or ethnic or regional origin¹⁰⁷." There is no explicit requirement that the speaker actually intend to degrade when speaking. The crime of sedition, currently being challenged before the Constitutional Court¹⁰⁸, includes conduct committed with the intent to "bring into hatred or contempt or to excite disaffection against the person of the President, the Government as by law established or the constitution."¹⁰⁹

These definitions cover an impermissibly broad range of conduct and have been used to target journalists who are critical of government officials (see Annex). Vague provisions such as these are susceptible to a wide interpretation by both authorities and those subject to the law. As a result, they can lead to abuse as authorities may apply them in situations that bear no relationship experts have noted, "vague provisions also fail to provide sufficient notice of exactly what conduct is prohibited or prescribed. As a result, they exert an unacceptable chilling effect on freedom of expression as

¹⁰² Ibid, Art. 43

¹⁰³ Penal Code Act, 1950, sec. 40. The constitutionality of this charge is pending before the constitutional court

¹⁰⁴ Follow up of the riots in September 11th-12th, 2009,

¹⁰⁵ 2002 Anti- terrorism Act.

¹⁰⁶ See Judge S.B. Bossa and Titus Mulindwa, The Anti-Terrorism Act, 2002 (Uganda); Human Rights concerns and Implications, a paper presented on September 15th 2004 to the International Commission of Jurists.

¹⁰⁷ Penal Code Act, 1950, sec. 41

¹⁰⁸ See East African Institution and Andrew Mwenda V. Attorney General, 2005. A section of the Penal Code outlawing publication of false news was overturned by a 2004 Supreme Court ruling declaring the provision unconstitutional. See Charles Onyango Obbo and Andrew Mwenda V. A.G, Constitutional Appeal No. 2 of 2002, February 11th, 2004, challenging section 50 of the Penal Code Act.

¹⁰⁹ Penal Code Act, 1950, sec. 39

individuals stay well clear of the potential zone of application in order to avoid censure¹¹⁰.” These criminal provisions leave journalists and their editors in a constant guessing game as to what will or will not antagonize the government or specific members of that government and in the process deprive the public of its right to receive critical information. The laws impacting media freedom are discussed in detail below.

3.2.1. Laws Impacting on Media Freedom in Uganda

In addition to the laws directly governing the media, there are several other statutes, like the Penal Code, the Anti-Terrorism Act 2002, the Parliamentary and Presidential elections Acts 2005 which have a direct impact on the media and its operations.

3.2.1.1 Penal Code Act, Cap 120

The Penal Code Act contains several provisions that impact on media operations and criminalize various actions. Several of these provisions are quite restrictive. Not only do a number of these provisions restrict media freedom, they “(either in total or in very significant part), are manifestly unconstitutional, [and].... almost all relics of the colonial epoch¹¹¹.”

Under the Penal Code Act, the Minister in charge of information may, if he deems it to be in the public interest, prohibit the importation of publications. The definition of “public interest” is left up to the Minister’s discretion. Anyone who contravenes the provision is subject to imprisonment for up to two years or a fine up to two thousand shillings¹¹².

The Penal Code also governs the content of published material. It outlaws the publication of information regarding “military operations, strategies, troop location or movement, location of military supplies or equipment of the armed forces or the enemy¹¹³.”

According to the Uganda Media Development Foundation, during the conflict with the LRA in Northern Uganda, this provision would strongly hinder a journalist’s ability to accurately and objectively report on the conflict.

The Penal Code Act further prohibits the publication of seditious material which material includes any material with intention “to bring into hatred or contempt or to excite disaffection against the person of the President, the Government as by law established or the Constitution... [Or] to subvert or promote the subversion of the Government or the administration of a district¹¹⁴.” The penalty for sedition is imprisonment of up to five years or a fine not exceeding fifty thousand shillings. Courts

¹¹⁰ The Supreme Court of Gambia, civil suit No.5/2005, written comments submitted by Art.19, Global Campaign for free expression, and the open society institute justice initiative regarding the national media commission Act of Gambia, 2002

¹¹¹ Joe Oloka-Onyango, “the limits of free expression under Museveni,” Uganda journalism Review, No.1/1999, pp.

¹¹² Sec.34 Cap.120 of the P.C.A.

¹¹³ Penal Code Act Cap. 120 laws of Uganda, sec.37

¹¹⁴ The P.C.A Cap .120, sec.39

are granted the power to confiscate printing machines on which seditious material was printed and to prohibit the production of the publication for up to one year¹¹⁵.

The Penal Code also criminalizes the publication of material that is likely to promote sectarianism and imposes a penalty of up to five years' imprisonment¹¹⁶ and outlaws the publication of material deemed to be defamatory: "likely to injure the reputation of any person by exposing that person to hatred, contempt or ridicule¹¹⁷."

Sections 49, 51, and 52 respectively make it a crime, to publish material that in anyway advances the cause of a boycott outlawed by the Minister¹¹⁸, incites violence, or encourages the public to refuse or delay payment of a tax. The punishment for these crimes is imprisonment of up to six months, three years, and three years, respectively.

The offending provisions of the Penal Code, taken together, severely curtail a journalist's or broadcaster's ability to fully exercise his or her right to freedom of expression. Further, they encourage a climate of self-censorship which is significantly damaging to press freedom because as a self-imposed restriction, it is difficult to measure or document.

The penal provisions mentioned above have at various times been used against media practitioners in both print and broadcast media. There are several cases pending court determination which were brought against various journalists under the penal code.

In August 2005 Andrew Mwenda was arrested for making seditious statements against President Museveni and his government relating to the government's alleged role in the death of Sudanese First Vice President John Garang¹¹⁹. He was charged with sedition and promoting sectarianism under the Penal Code. He later filed a petition in the Constitutional Court challenging the constitutionality of the law against sedition as well as the law against promoting sectarianism¹²⁰.

The petition was merged with a similar petition from the East Africa Media Institute Limited (EAMIL) in October 2006.⁷³ The Constitutional Court is yet to make a ruling on it.

In June, 2006, James Tumusiime, editor, and Ssemujju Ibrahim Nganda, political editor, of The Weekly Observer, were charged with promoting sectarianism for having reported in December 2005 on FDC accusations that the President and high ranking military officials were targeting

¹¹⁵ The P.C.A Cap.120, sec.40,42

¹¹⁶ Sec.41 of the P.C.A Cap.120

¹¹⁷ Sec.180 of the P.C.A Cap.120

¹¹⁸ Sec.49 of the P.C.A Cap.120

¹¹⁹ HWR, "Uganda: New Government Threatens Free Press," March 16th, 2006, and FHRI Uganda: Human Rights Status Report 2005, pp. 11-12

¹²⁰ The charge of sectarianism referred to the article published in 2005 in the daily monitor regarding anti-Bairu remarks. US Department of State, Bureau of Democracy Human Rights and Labour, country reports on human rights practices, 2006, Uganda

Kizza Besigye for ethnic reasons¹²¹. Tumusiime and Ssemujju continue to report to court monthly based on the sectarian charges¹²². The trial is on hold pending a ruling on Mwenda's petition challenging the constitutionality of the law against promoting sectarianism¹²³.

The Editor in Chief of the Red Pepper, Richard Tumusiime was charged with sedition on February 16, 2007, after the publication the previous day of a story alleging that the State House had paid the Kabaka of Buganda \$1 million to fire the Katikiro Dan Muliika. Mr. Tumusiime was released on bond¹²⁴.

On September 30th, Chris Obore and Henry Ochieng were summoned to the CID for interrogation of a story that appeared in the Sunday Monitor of September 30th that army officers were being trained to take over top positions in the police.

These penal provisions mentioned are archaic and a relic of colonialism. They have no place in modern legislation, democratic dispensation and human rights era. They only serve to enhance intolerance and subdue other people's opinion. As Justice Mulenga famously remarked the 'best way to react to falsity is by providing the truth.'

3.2.1.2 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.

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 convicted¹²⁵. It outlaws the disclosure of information that may prejudice an investigation concerning terrorism¹²⁶. 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

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 stories¹²⁷.

¹²¹ Milton Oluput and Hillary Nsambu, "Mwenda Petition merged," The New Vision, October 13th 2006

¹²² FHRI Uganda: Human Rights Status Report 2006, pp. 66

¹²³ FHRI Report on freedom of Association, pp. 65

¹²⁴ Hillary Kiirya and Edward Anyoli, "Court Suspends Observer Trial," The New Vision, June 23rd, 2006

¹²⁵ FHRI The Right to Freedom of Association and Assembly, Human Rights Status Report for the period January-May 2007, pp. 66

¹²⁶ Section 11 thereof

¹²⁷ Section 12, the Anti Terrorism Act

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.

*Semujju 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 conflict*¹²⁸.

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.

3.2.1.3 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. 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"¹²⁹.

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 images¹³⁰.

Further, both legislation 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 knowingly or without reasonable grounds for believing it to be true¹³¹.

¹²⁸ FHRI Interview with Nasser Kayanja, Senior Reporter, radio Simba, June 25th, 2007

¹²⁹ FHRI Interview with Ssemujju Ibrahim Nganda now M.P Kiira municipality, The weekly Observer, June 15th, 2007, and Frank Nyakairu, conflict and Human Rights Reporter, The Daily Monitor, June 25th, 2007

¹³⁰ State-owned media include radio and television under the Uganda Broadcast corporation and The New Vision and its local language subsidiaries

3.2.1.4 Uganda Communications Act 1997

In 1997, Parliament passed the Uganda Communications Act, which lays out additional — and seemingly duplicative — requirements for radio broadcasters. The Act stipulates that “No person shall, without a license issued under this Act (a) establish or use any radio communication station, possess radio communications apparatus, or provide radio communications services; (c) manufacture, possess, install, connect or operate any radio communications apparatus or interference Causing apparatus¹³².” Likewise, telecommunications stations and service providers are required under Section 24 to obtain a license from the Uganda Communications Commission (UCC) to operate¹³³. Similar to licenses under previous statutes, licenses issued pursuant to the Uganda Communications Act carry a fee and are subject to consideration whether the granting of the license is in the public interest¹³⁴.

3.3.1 Broadcasting council

The government’s direct control over private broadcasting owners deserves the closest scrutiny, especially because of the critical importance of radio for informing Uganda’s citizens. As the preamble to the 2002 Declaration on Freedom of Expression in Africa notes, radio has a

“capacity to reach a wide audience due to the comparatively low cost of receiving transmissions and its ability to overcome barriers of illiteracy.... Oral traditions, which are rooted in African cultures, lend themselves particularly well to do radio broadcasting”.

The structure and broad legal powers of the Broadcasting Council are a serious impediment to the protection of freedom of expression in Uganda, in particular its direct subordination to the minister of information with no guarantees of independence. The world’s four special rapporteurs with specific mandates on freedom of expression publicly jointly declared that Regulation of the media ... is legitimate only if it is undertaken by a body which is protected against political and other forms of unwarranted interference, in accordance with international human rights standards¹³⁵.

The Broadcasting Council’s requirements for an annual broadcasting license and the grounds for revoking a license are unclear in law and are open to abuse¹³⁶. A one-year license is a serious burden on owners who have invested significant financial capital to function. One year is considerably shorter than the license duration permitted in several other African countries. For

¹³¹ The Parliamentary Election Act, 2005, sec. 22.

¹³² Uganda communications Act, Cap.106 Laws of Uganda, Sec.23

¹³³ The Uganda Communication was created under the Uganda Communications Act and is discussed below in Sec.2.3.3.1

¹³⁴ Cap. 106, sec.33 thereof

¹³⁵ Joint Declaration on diversity in Broadcasting, signed by the UN Special Rapporteur on freedom of opinion and expression, the organization for security and co-operation in Europe’s representative on freedom of the media, the special rapporteur on freedom of expression of the organization of American States, and the special rapporteur on freedom expression and access to information of the African Commission on Human and Peoples’ Rights, December 12th, 2007

¹³⁶ Electronic Media Act, 1996, sec.6(3)

example, South Africa, Malawi, Tanzania, and Zambia allow between 10 and three years¹³⁷. Kenya currently permits indefinite licenses¹³⁸.

Under the terms of Ugandan law, the Broadcasting Council also has complete discretion when granting licenses as long as “such conditions as it [the Broadcasting Council] may deem fit” are met¹³⁹. This catch-all standard is systematically unfair and arbitrary. Owners cannot predict what conditions may be required, and those conditions can change at any time.

The Broadcasting Council also has wide powers under the law to “confiscate any electronic apparatus which is used in contravention” of the Electronic Media Act¹⁴⁰. The Council can and does make its own determination as to who has contravened the Act, and seizes equipment without any hearing. It is a criminal offense for any person to attempt to stop the council from confiscating the equipment¹⁴¹. The person whose equipment is confiscated has no clear recourse set out in law to challenge the seizure and to reclaim the confiscated items. The powers of the council to confiscate equipment without due process violates several “rights enshrined in the constitution and in international human rights law, including the right to free speech¹⁴², the right not to be arbitrarily deprived of property¹⁴³, and the right to a fair hearing.¹⁴⁴”

Under the minimum standards, broadcasters must also present programs that are “balanced to ensure harmony¹⁴⁵.” The law is silent on the definition of harmony, which body has powers to determine it, or how council decisions regarding these standards may be appealed.

¹³⁷ In South Africa, broadcasting licenses for commercial radio stations are renewable every 10 years and for community radio stations every after five years. Human Rights Watch telephone interview with Independent Communications Authority of South Africa, March 29th, 2010. Malawi Communications Act 1998, sec.51. In Tanzania, a broadcasting license for radio stations is renewable every three years. Human Rights Watch telephone interview with Tanzania Communications Regulatory Authority, April 1st, 2010. Tanzania broadcasting services Act, 1993, sec.12. Tanzania Communications Regulatory Authority Act No.12 of 2003 Regulation, sec. 18, first schedule. Zambia’s broadcasting licenses are valid for seven year. Human Rights Watch telephone interview with Zambian Ministry of Information and Broadcasting Services, March 31st, 2010. Zambia National Broadcasting Corporation Amendment Act of 2002

¹³⁸ In Kenya, licenses currently last indefinitely, but under a pending amendment bill, this may be reduced to five years for commercial radio stations and three years for community radio stations. Human Rights Watch telephone interview with Communications Commission of Kenya, March 29th, 2010; Kenya Information and Communications Act, 1999, sec.36; and Kenya Communications Commission Amendment Bill, 2008

¹³⁹ Electronic Media Act, sec.6(2)(b)

¹⁴⁰ Ibid, sec.25

¹⁴¹ Electronic Media Act, sec.25(4)

¹⁴² Constitution of Uganda, 1995, Art.29(1&2); International Covenant on Civil and Political Rights (ICCPR), adopted December 16th, 1966, G.A. Res. 2200A(XII), 21 U.N. GAOR Supp. (No.16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23rd, 1976, acceded to by Uganda June 21st, 1995, Art.19

¹⁴³ Art.26 of the Constitution of Uganda; and Art.19 of the ICCPR

¹⁴⁴ Art.42 of the Constitution of Uganda and Art.14 of the ICCPR

¹⁴⁵ Electronic Media Act, First Schedule, Minimum Broadcasting Standards

The Broadcasting Council is not subject to adequate controls or procedural safeguards in issuing determinations on the suspension or revocation of licenses or applying fines and penalties. By drafting terms and conditions to vest itself with the power to cancel broadcasting licenses, the Ministry of Information has acted outside its powers. Parliament, not ministries, should make laws in a transparent process with public consultation for the enforcement of rights and freedoms under the Ugandan constitution. Broad powers, not set out in clear laws, to interfere with freedom of expression violate Ugandans' constitutional rights¹⁴⁶.

3.3.2 Uganda Communications Commission (UCC)

The Uganda Communications Act 1997 establishes the UCC. By statute, the UCC regulates the national communications sector, setting and ensuring compliance with national communications standards, encouraging research, private investment and competition, and promoting consumer interests as regards quality and equitable distribution of services¹⁴⁷.

As the body charged with implementing the objectives of the Uganda Communications Act, the Commission is in charge of enhancing and expanding coverage and variety of communication services and products as well as establishing and administering a fund for rural communications development¹⁴⁸.

Much like the Broadcasting Council, however, the UCC is also responsible for licensing and regulating communication services and allocating and licensing the use of radio frequency spectrum¹⁴⁹. In the case of a radio communications system, these conditions and terms will include "the position and nature of the station, the purpose for and circumstances in which and the persons by whom the station may be installed or used¹⁵⁰." The Commission has similar powers regarding specifications of telecommunications licenses.

According to Section 27 of the UCC Act, ". . . to ensure the orderly development and efficient operation of radio communications in Uganda, the Commission shall be the exclusive authority to issue (a) licenses for radio communications apparatus and spectrum use. . ." and Section 28 states, "Notwithstanding any other law, the Commission shall have the exclusive duty to (a) plan, monitor, manage and allocate the use of radio frequency spectrum."

Like the Broadcasting Council, the Uganda Communications Commission's appointed inspectors are empowered to "enter and inspect at any reasonable time any place owned by or under the control of an operator in which the inspector believes on reasonable grounds to be any document, information, or apparatus relevant to the enforcement of this Act and examine.. .or remove it for

¹⁴⁶ Constitution of Uganda, Art.50(4)

¹⁴⁷ Cap.106 Laws of Uganda, sec.2,4

¹⁴⁸ Ibid

¹⁴⁹ Cap.106 of Laws of Uganda, sec.4, 23, 26, 27

¹⁵⁰ Cap. 106 Laws of Uganda, sec.34

examinations or reproduction....¹⁵¹ The same power applies for "any place in which the inspector has reasons to believe that there is any radio apparatus or interference-causing apparatus, and examine any radio apparatus, logs, books, reports, data, records, documents or other papers, and remove the information, document, apparatus, or equipment for examination or reproduction...."¹⁵²

The UCC Act however does not specify how the Uganda Communications Commission and the Broadcasting Council are to interact. However, as stated above, under Section 6 of the Electronic Media Act, broadcasters must obtain a license from the Broadcasting Council, and according to Section 10, the Broadcasting Council is "responsible for the standardization, planning and management of frequency spectrum.. . and [the] allocate [ion of] such spectrum resources...." Despite arguments by the BC to the contrary, the powers granted to the UCC duplicate the powers bestowed on the Broadcasting Council as it relates to licensure of radio stations and allocation of frequency. Any difference is a matter of rhetoric and much confusion remains regarding the specific powers of the two bodies¹⁵³.

In this regard, broadcast media owners have voiced frustration with and criticism of the seeming overlap in the roles of the UCC and the Broadcasting Council¹⁵⁴. As stated earlier, the Attorney General also acknowledged the ambiguity of the division of powers between the two. In discussions with FHRI, Fred Otunnu, Corporate Affairs Officer with the Uganda Communications Commission argued that the laws need to be reviewed and revised with an eye towards merging the Broadcasting Council and Uganda Communications Commission. Such a merger, similar to that in other countries, would establish a one-stop centre for the provision of communication services and regulation of broadcast media¹⁵⁵.

Under Section 5 of the Uganda Communications Act, the UCC may "arbitrate disputes arising between operators and consumers...", while the BC under Section 10 is empowered "to arbitrate, in consultation with the Media Council on disputes between... (b) The public and operators of broadcasting stations..." Such overlap creates duplication of government effort, misallocation of resources, and undue burden on media operators to comply with duplicate procedures. It also creates confusion regarding responsibility and accountability of Government as it relates to regulation of the media in as far as the UCC is responsible for advising the Government on communication policies and legislative measures in respect of the provision and operation of communication services, much like the Broadcasting Council advises Government on all matters relating to broadcast policy.

¹⁵¹ Cap.106 Laws of Uganda, sec.54

¹⁵² Cap.106 Laws of Uganda, sec.54

¹⁵³ FHRI Interview with Godfrey Mutabazi, Chairman, BC, June 19, 2007

¹⁵⁴ BBC Monitoring Research, February 2007

¹⁵⁵ FHRI Interview with Fred Otunnu, Corporate Affairs Officer, UCC, June 18, 2007

3.3.3 Media council

The Press and Journalist Act 1994 establishes the Media Council as the primary regulatory body; tasked with regulating the conduct, ethical standards, and discipline of; journalists and the media at large.

The Media Council's powers also violate international human rights standards by severely restricting access to the profession of journalism. In Uganda, all journalists must hold certificates issued by the Media Council in order to "practice journalism"¹⁵⁶. The definition for "practicing journalism" is very broad: "A person is deemed to practice journalism if he or she is paid for the gathering, processing, publication or dissemination of information; and such person includes a freelance journalist"¹⁵⁷. In addition, journalists must renew their licenses on an annual basis and pay fees¹⁵⁸. It is also a criminal offense to practice journalism without a license¹⁵⁹.

There is a disciplinary committee, a sub-group of the executive committee of the Media Council, which issues decisions on complaints against journalists. The disciplinary committee can admonish a journalist, force the journalist to issue a public apology, and/or suspend the journalist from working for up to six months; the same committee can force the journalist's employer to pay damages to an injured party¹⁶⁰. After suspension, a journalist may appeal the disciplinary pending¹⁶¹.

Deprivation of livelihood is prohibited in Article 40(2) of the Ugandan constitution, which guarantees every person in Uganda "the right to practice his or her profession and to carry on any lawful occupation." Journalists can be subjected simultaneously to an array of proceedings for the same act—a complaints proceeding before the Disciplinary Committee, criminal prosecution, and a civil suit if sued by an aggrieved party. The powers of the committee to suspend a journalist from working or to award compensation to aggrieved parties do not have the same safeguards of due process in court proceedings.

By law, one must be a member of the National Institute of Journalism of Uganda (NIJU) in order to practice journalism¹⁶². One must have a university degree in journalism or mass communications or in another discipline with additional qualifications in journalism, plus a year of experience as a journalist in order to be a member of NIJU¹⁶³. When faced with similar situations, the Zambian High Court and the Inter-American Court of Human Rights determined that membership in such unions as a requirement to be a journalist violates free speech rights¹⁶⁴. In Uganda, journalists'

¹⁵⁶ Press and Journalist Act, sec. 27(3).

¹⁵⁷ Ibid., sec. 27(5).

¹⁵⁸ Press and Journalist Act, secs. 16(1), 27(1), and 27(2).

¹⁵⁹ Ibid., sec. 27(4). Practicing journalism without a certificate is punishable by a fine of up to 300,000 Ugandan shillings (about US\$150) and in case of failure to pay the fine, imprisonment up to three months.

¹⁶⁰ Ibid., sec. 33. This mechanism exists in law but so far, it has never sanctioned a journalist

¹⁶¹ Ibid., sec 34

¹⁶² Ibid, sec. 13

¹⁶³ Press and Journalism Statute, sec 15

failure to fulfill education requirements comes under scrutiny when they have committed other media offenses¹⁶⁵.

3.4 The 2010 Draft Amendments to the press and journalist Act

A January 2010 draft amendment to the Press and Journalist Act threatens to codify into law even more restrictive requirements, extending to print media the government's arbitrary rule over broadcasts. The three major English local newspapers criticized a leaked draft of the amendments in a March 15, 2010 common editorial stating that the amendments "seek to destroy critical and independent journalism by giving the government the power to determine what is fit to print and what is not"¹⁶⁶.

Thus far the government has not released an official version of the amendments. Minister of Information Matsiko confirmed the existence of amendments to Human Rights Watch but would not share a copy of the draft, and said that there would be public discussion of the content of the bill at the appropriate time¹⁶⁷. She confirmed that the central legislative gap that government felt needed to be addressed is the lack of legal requirements for newspapers to be registered and licensed, and for government to have the power to hold newspapers to specific terms and conditions, or lose those licenses. She denied that the ongoing process of legislative amendment was in any way related to the 2011 elections.

The draft amendments require newspapers to be both registered with¹⁶⁸ and licensed by¹⁶⁹ the Media Council on an annual basis; failure to do either is punishable by up to two years imprisonment. Under the draft amendments, the Media Council has unlawfully broad discretion in granting licenses, which could lead to arbitrary and selective licensing. Among the vague criteria the council takes into account when issuing licenses are the "social, cultural and economic values of the news paper"¹⁷⁰. The council retains power to revoke newspaper's license for;

- a) Publishing material that is prejudicial to national security, stability and unity;

¹⁶⁴ Francis Peter Kasoma V Attorney General, High court of Zambia, 95/HP/29/59, August 22nd, 1997; Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism Case, Inter-American Court of Human Rights, 1985, judgment printed in human rights law journal, vol. 7. No.1 1986. See generally Art.19, Freedom subject to License: Attempts to License Journalists in Uganda, Zambia and other Commonwealth African Countries, March h

¹⁶⁵ Human Rights Interview with journalists, Masaka, February 22nd, 2010. For example, shortly after the September riots, the Broadcasting Council requested the curriculum vitae of program managers and presenters at radio Buddu in Masaka following the playing of a Buganda song and erroneous reporting that the Broadcasting Council was prohibiting Buganda songs from playing on air in Kampala. Shortly thereafter three staff members were fired.

¹⁶⁶ "Government must not kill free press," editorial appearing in the Daily Monitor, The New Vision, and The Observer, March 15th, 2010. It has also been criticized by international organizations working to protect freedom of expression. see Art. 19, "Memorandum of the Press and Journalism Act and the Press and Journalist (Amendment) Bill 2010 of Uganda, March 2010.

¹⁶⁷ Human Rights Watch interview with Hon. Kabakumba Matsiko, minister of information, April 9th, 2010

¹⁶⁸ The Press and Journalist (Amendment) Bill, 2010, sec 2.

¹⁶⁹ Ibid, sec 6.

¹⁷⁰ Ibid, sec 6.

- b) Publishing any matter that is injurious to Uganda's relations with new neighbors or friendly Countries
- c) Publishing material that amounts to economic sabotage; and
- d) Contravention of any condition imposed on the license¹⁷¹.

By operation of the final clause, (d), the Media Council can reserve the right to revoke licenses under virtually any circumstance.

This kind of content-based limitation on print media licensing violates international standards. The Declaration on Freedom of Expression in Africa states that "any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression¹⁷²." Registration of print media should be automatic once owners have complied with technical requirements administered by a body fully independent of government. As international experts in freedom of expression have stated, "Periodicals should not be subject to a licensing regime; anyone

The draft amendments make editors criminally liable for two new crimes—publishing material that is "prejudicial to national security or stability and unity or utterances that are injurious to relations between Uganda and her neighbors or friendly countries" and publishing material that "amounts to economic sabotage¹⁷³." These crimes are punishable by up to two years imprisonment.

These definitions of crimes are overly vague and fail to meet international standards for national security-related restrictions on speech as set out in the Johannesburg Principles¹⁷⁴. According to the Johannesburg Principles, criticism of one's own government is protected speech, as is criticism of other governments¹⁷⁵. The creation of new speech crimes is unnecessary and must in any event meet the high hurdles set out in the Johannesburg Principles to be permissible restrictions on free speech according to international law.

Therefore the meaningful participation of the governed in their own governance, which is the hallmark of democracy, is only assured through optimal exercise of the freedom of expression¹⁷⁶. The regulatory framework for the media can serve as the guardian of press freedom. However, without streamlining, the overlap of functions particularly between the UCC and the BC will continue to hinder the right to free expression. Likewise, the multiple licensure, registration and certification requirements and fees create undue burdens that further hinder press freedom. Legislation governing the operation of the media and provisions that criminalize particular acts by the media, particularly the Penal Code, severely restrict journalists' and broadcasters' ability and

¹⁷¹ The Press and Journalism (Amendment) Bill, 2010, sec.6

¹⁷² The Declaration on Freedom of Expression in Africa, sec. VIII, (1).

¹⁷³ The Press and Journalist (Amendment) Bill, 2010, sec 9

¹⁷⁴ Johannesburg Principles, prin. 1.

¹⁷⁵ Ibid, prin.7

¹⁷⁶ Justice Mulenga in Const. Appeal No.2 of 2002.

right 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/her choice¹⁷⁷.” This infringement in turn restricts the public’s freedom to access information and thereby hinders their ability to fully exercise their rights as well as responsibilities in a multiparty democracy.

¹⁷⁷ ICCPR, Art.19(2).

CHAPTER FOUR

ADVOCATING FOR FREE EXPRESSION IN UGANDA

4.0 Introduction.

In September 2010, Freedom House led a four-day International Joint Partnership Freedom of Expression mission to Uganda to examine the country's freedom of expression environment in light of a proposed amendment to the Press and Journalism Bill and upcoming general elections. The mission sent President Museveni a letter in advance about its concerns, and although the mission did not meet with the president, the government did provide wide access to speak with officials¹⁷⁸.

While Uganda boasts a relatively open and diverse media sector by regional standards, media practitioners, journalists, cartoonists, and activists in Uganda face grave and pervasive systemic and legal challenges and are forced, especially those in the countryside, to carry out their work in an environment of widespread impunity and under constant pressure from the authorities. Since September 2009, when deadly riots rocked Uganda and several radio stations were subsequently closed, journalists have engaged in greater self-censorship. In a move applauded by international observers, a Ugandan law against sedition was scrapped in August 2010, but journalists and other free speech advocates continue to face other challenges. Violence against journalists continues, as two journalists were killed in three days in September; the Electronic Media Act and Anti-Terror Act give the government broad authority to shut down stations and otherwise infringe on journalism; and many media outlets are owned by politicians, creating dangerous conflicts of interest.

In its report, the group made 13 recommendations including repealing laws that do not adhere to constitutional protections for free speech; fully implementing and funding the Access to Information Act; ensuring the Broadcasting Council follows due process in sanctioning media outlets and re-open CBS radio without further delay; and all cases against journalists be carried out in accordance with due process and the presumption of innocence. Just weeks later, CBS was allowed to resume broadcasting.

The government of Uganda has systematically moved to oppress and muzzle media freedom and freedom of speech using draconian laws and institutions. The media are disturbed by the proposed legislation. They are disturbed by the proposed legislations such as the Press and Journalists (amendment) Bill 2010, and the Electronic Media Act which directly affect press freedom. Similarly the unchecked use of government agencies to censure media content is unacceptable.

The laws on the media and other laws have given state agencies to act with impunity as witness in September 2009 when the broadcasting council using the Electronic Media Act closed 5 radio stations, caused the suspension of journalists without giving them a fair hearing and banned open air broadcasts (Ebimeza). We also note with concern the use of penal laws such as criminal sedition and offences relating to publications have continued unhindered. Various journalists face criminal

¹⁷⁸ Advocating for free expression in Uganda – Freedom House, September 15th 2010, and the 13 points recommendations were made.

charges because of their work. All this has helped cripple media freedom and the freedom of speech.

Since the beginning of the year, media freedom has progressively been eroded by government and its agencies, through draconian laws and state agencies acting with impunity. Several journalists have been charged with offences relating with their work and violating media freedom. On 29th January 2010 the Press and Journalists Amendment Bill 2010 was introduced to cabinet for debate. Similarly on the 15th March 2010, the minister in charge of communication made a directive to have the Uganda Communications Commission and the Broadcasting Council merged following a cabinet decision. An act that violates democratic principles of separation of powers between parliament and the executive and is likely to lead to increased muzzling of media freedom. On the 26th April 2010 the state order media houses to apologize for hosting opposition politicians. The above developments have serious consequences for media freedom and the enjoyment of human rights in Uganda.

4.1 Key issues of concern in media freedom in Uganda; the Press and Journalist Amendment Bill 2010

The Press and Journalist Bill 2010 seek to increase state control over media houses through setting up regulatory mechanisms which are aimed at muzzling the operation of print media in Uganda¹⁷⁹. The proposed Bill has provisions that reduce the participation of professionals in the control and discipline of journalist and puts such a role in the hands of persons appointed by the minister, the Bill provides for a person to prove that he/she has technical capacity before he/she is licensed to run a newspaper such a move is intended to limit the number of new entrants in the print industry and violates the freedom of speech and press as set out under article 29(1) (a) and (b) of the Uganda constitution and article 20 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). Under the Bill every newspaper has to be registered and is required to renew its license on a yearly basis. The bills also provide that the Media Council can cancel a license for a newspaper if the publications of the newspapers are considered to be promoting immorality, economic sabotage or a conflict with Uganda's neighbors.

HURINET -U was concerned that this was likely to violate freedom of press since the same law does not set standards as to what amounts to morality or economic sabotage. The provisions for licensing media houses and controlling content on what should be published directly affects the freedom of speech, media, association, right to access information all guaranteed under the Uganda constitution.

4.1.1 The merger between the Uganda Communications Commission (UCC) and the Broadcasting Council (BC)

There is also concern that on the 15th of March 2009, the Minister of Information and Communication Technology ordered a merger of the UCC and the BC two bodies established by

¹⁷⁹The Press and Journalism Bill 2010, Paul Kimumwe 1 page Media Regulation and Practice in Uganda Amendment 4 Art.19

law in Uganda. The merger brings about legal and constitutional issues with significant effect to the rule of law and media freedom¹⁸⁰.

The merger did not follow the amendment of the Uganda Communications Commission Act and the Electronic Media Act which provide for the two bodies. The Minister was in effect amending two laws -an act that violates article 79 of the Uganda constitution which lays out the principle of separation of powers¹⁸¹. The merger also makes the new transitional body an investigating and complaint handling body for matters in the industry which compromises its neutrality and is likely to violate the right to fair hearing established under articles 28 and 42 of the Constitution and the provisions of fair hearing under the UDHR and ICCPR.

4.2. A critique of the sedition law in Uganda

Sedition is provided for as an offence under sections 39 and 40 of the penal code Act¹⁸². The provisions respectively provide for seditious intension and the offence of sedition. Though largely notorious for its application as a tool for immunization of the person of the president against adverse or serious criticisms, the law on sedition is far broader than most people would seem to agree. According to section 39, seditious intentions include the intention to bring into hatred or contempt or to excite disaffection against the person of the president, the government or the constitution; to excite any person to unlawfully attempt the alteration of any matter in government possession; to bring into hatred or to excite dissatisfaction against the administration of justice; and to subvert or promote the subversion of the government or the administration of the district.

This formulation of the law raises serious legal issues in light of Article 43(2) (c) of the constitution. The challenges particularly arise when one considers the rather limited range of the available defenses. According to section 39(2), the defenses include instances where the publication or speech was intended to;

- a) Show that the government was misled or mistaken in its measures;
- b) Point out errors or defects in various government organs with a view to remedying the same and
- c) Persuade anyone to procure alteration of any matter in government's possession through lawful means.

In Uganda's experience, only a small part of the sedition law remains in use. As in many other countries where the provision remains alive, only the part relating to the causing of dissatisfaction against the person of the president and the government continues to be commonly invoked by the process of the prosecution. Even in the latest glaring, the eyebrow raising attack on the judiciary by some members of the Forum for Democratic Change (FDC) who accused two prominent judges for

¹⁸⁰ Uganda Communications Report, 2009. 15th March 2009, minister of information and communication technology.

¹⁸¹ The Constitution of Uganda, Art. 79.

¹⁸² Cap.120, Laws of Uganda.

taking bribes, the director of public prosecutions (DPP) did nothing in the name of sedition. Indeed one wonders what more would have been required to satisfy the seditious intention of bringing into hatred or excitement or dissatisfaction against the administration of justice to justify some action from the DPP's office.

On the contrary, Uganda's history is a rife with examples of swift action by the police, together with the DPP, to place charges in cases involving serious criticisms of the person of the president'¹⁸³. In order to determine whether Uganda's sedition law is constitutional or otherwise, we must ask whether our sedition law is based on justifiable legislative objective for overriding their fundamental rights; whether it is overboard in its statement; whether it is selective and whether its effect on the right to freedom of expression is excessive or disproportionate.

4.2.1. Assessing the legislative objective of sedition.

The co-existence of the protection and limitation of fundamental rights is a clear recognition of the competing interests that characterizes the concept of fundamental rights in a democracy. Thus Mulenga J, rightly observes, "Where there is a conflict between the two interests, the court resolves in having regard to the different objectives of the constitution". He further observes that 'protection of the guaranteed rights is a primary objective of the constitution. Limiting their enjoyment is an exception to their protection, and is therefore a secondary objective". Accordingly, the dominant primary objective can only be impaired or overridden in instances where there is a pressing social need.

The objectives of the Ugandan sedition law are not quite clear but suffice it to note that the provision was first introduced into Ugandan laws during the colonial era. It will thus perhaps be helpful to consider the historical origins of the sedition law to fairly establish what its underlying objectives could be. Thus in the Nigerian case of *Arthur Nwankwo V The state*¹⁸⁴, the Nigerian Supreme court noted that the main objective for the law on the offence of seditious libel was to protect the kings or monarchs whose powers were deemed to be divine.

The offence of sedition was imported to most African states along with the advent of colonialism, which equally lacked notions of accountability on the part of leadership to the subjects. In either case, whether under the colonial rule or the rule of the monarchies, it would indeed seem plausible for one to contend that any form of criticism of the leadership by those the ruled must have been unacceptable.

Eric Barendt supports the view, expressed in the Nwankwo case when he notes;

The classic definition of sedition reflects a traditional, conservative view of the correct relationship between the state and society. Governments and public institutions are not to be regarded as

¹⁸³ Haruna Kanabi V A.G 977/95 (unreported)

¹⁸⁴ INCR336(1983)

*responsible to the people, but in some mystical way, as under the doctrine of the Divine Right of Kings, are entitled to the respect of the subjects*¹⁸⁵.

However the world has since changed. In a democratic dispensation, accountability on the part of the leadership to its subjects is a critical requirement. It is through such accountability that the electorate can make informed decisions for the purposes of casting their votes. It therefore follows without debate that leaders under a democratic dispensation cannot afford to shield themselves from adverse criticisms. As a mechanism for immunization of the leadership to adverse criticisms by their subjects, sedition can therefore only be maintained where the goals of the leadership are to stifle accountability and promote graft, inefficiency, and all sorts of political decadence. Indeed, as was noted in the case of *Government of the Republic of South Africa V the Sunday Times*;

*The role of the press is in the frontline of the battle to maintain democracy. It is the function of the press to ferret out corruption, dishonesty and graft wherever it may occur and to expose the perpetrators. The press must reveal dishonest, mal and inept administration. It must advance communication between the governed and those who govern. The press must act as the watchdog for the governed*¹⁸⁶.

Harry Kalvern equally correctly joins in the criticism of the sedition law when he argues that the concept of seditious libel is inimical to democratic governance. As he puts it, "the concept of seditious libel strikes at the heart of democracy. Political freedom ends when the government can use its powers and its courts to silence its critics"¹⁸⁷. He rightly concludes;

Defamation is an impossible notion for democracya society may or may not treat obscenity or contempt by publication as legal offences without altering its basic nature. If however, it makes seditious libel an offence, it is not a free society, no matter what its other characteristics.

Owing to its well recognized inconsistency with democratic principles, many democracies, law jurisdictions, including Canada, England, Australia, India, and Kenya, their sedition laws, or have simply ceased to apply them.

¹⁸⁵Brendt, 2007 at 165

¹⁸⁶ (1995)1 LRC 165, 175-6

¹⁸⁷Kalvern, 1964 at 205

4.2.2 Depth and breadth; is sedition overly broad?

Pursuant to article 43 of the Uganda constitution, a limitation of fundamental freedoms can be justified if it infringes upon other fundamental rights or on public interest. In any case, and as that requirement is qualified by what Mulenga J referred to as the "the limitation upon the limitation". In other words, over and above the requirement to found a limitation on upon the limitation on fundamental rights upon legitimate and compelling legislative objectives, it is critical that any such limitation does not unnecessarily diminish the enjoyment of the right in issue, as well as infringe upon other rights. According to the authoritative judgment in *Obbo's* case, the standard to be met in ensuring that the limitation is not caught by the doctrine of over breadth is one of proximity (causality) between the intended objective and the potential effect of the limitation.

In *Gooding V Wilson*¹⁸⁸ the United States Supreme Court ruled that a criminal statute prescribing speech suffers unconstitutional over breadth when the standards employed to convict create a real and substantial risk to punish constitutionally protected conduct. The critical question would, as professor Ely articulates, "therefore seem to be whether the harm that the state is seeking to avert is one that grows of the fact that the defendant is communicating, and more particularly out of the way people can be expected to react to his message." In accord with these authorities, the Indian Supreme Court decision in *Rangarajan V Ram* is worth quoting in part;

*Our commitment to freedom of expression demands that it cannot be suppressed unless the situations created by the allowing freedom are pressing and the community's interest is endangered. The anticipated danger should not be remote, conjectural or far fetched. It should have proximate and direct nexus with the expression. The expression should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a spark in a powder keg*¹⁸⁹"

The Ugandan law on sedition would certainly fail this principle of constitutionality. In targeting the intention of the author of any communication and his or her message, the sedition provision makes unfortunate assumptions that create a real and substantial risk punishing constitutionally protected conduct, particularly in form of viewpoints. In the first place, the provision seems to assume a homogeneity of the audience in form of the audience in form of how they interact and perceive any given communications. Secondly the provision also seems to be premised on the rather unfortunate assumption that the leaders must always be highly regarded by the public. To the contrary, as already stated, not only do studies "in cognitive psychology and behavioral economics indicate that individuals operate with significant persistent perceptual biases", but it

¹⁸⁸ [405]US 518,520[1920]

¹⁸⁹ [1989] (2) SCR 204

also deserves reiterating the point that the traditional, conservative view of the relationship between the governed and the governors has no place in a democracy.

It is for instance dangerously misleading for one to assume that the public is readily willing to agree to any viewpoints expressed by the people who are believed to identify the particular political ideologies or parties. For example, it would be foolhardy of any one to expect the supporters of the ruling National Resistance Movement (NRM) to readily believe and take for the truth any claims made by those who are known or believed to belong to the different opposition parties. In other words, even if the intended objective of the sedition law were to be accepted, which of course cannot be, the law would still fail the constitutionality principle of over breadth for as long as it is incapable of being applied or interpreted without unnecessarily implicating otherwise protected conduct of expressing unfavorable view points. Moreover as already noted, it is almost impossible to imagine how credulous the public would be in a democratic dispensation to necessarily believe whatever contemptuous communication they happen to interact with. It would be dangerously misleading to argue that once one makes any contemptuous comment against the person of the president, for instance, and then the public takes all that which is said for the truth.

In *Virginia V Black*¹⁹⁰, the US. Supreme Court also dealt with the issue of view points in a democratic dispensation. In its ruling, the court made it clear that under the first Amendment, the U.S constitution extends its protection of its speech to all forms of view points by operation of "the bedrock principle" that the government may censor speech simply because of society's abhorrence of the ideas expressed. In particular *Black* is commendable for reaffirming the speech elective principle "that even when speech can be regulated because it creates substantial evil such as intimidation, the state may not suppress it merely because it has that tendency". Applied to the Ugandan law of sedition, the foregoing analysis leads to the conclusion that the law lacks a legitimate legislative objective. Moreover, owing to its ambiguity, Uganda's law on sedition also extends its paws far beyond whatever the intended legislative objective by being capable of seeking to punish unfavorable view points perse. The law would thus miserably fail the proximity or causality test.

4.2.3. The question of proportionality.

An assessment of the effect or proportionality of any limitation on any freedom of expression must be undertaken in view of the effect of such limitation would have on the proper functioning of the media. As a critical *component* the recognized role of criticizing the government, among others, any measures taken by the *government to restrict the media* with extreme restraint largely because of the power imbalance characteristics of two. Indeed, as the European court of human rights *rightly* ruled in the case of *and Ozdemir V Turkey*¹⁹¹, the

¹⁹⁰ 538 US 343 (2003)

¹⁹¹ European Court of Human Rights, No.23927/97 and 24277/94, 8th July 1997

government must always "exercise restraint in resorting to proceeding, particularly where other means are available for replying to the : attacks and criticisms of its adversaries". In the same case, where turkey had sought the criminalization of publications about terrorist organizations, including writings the "territorial integrity of the republic of turkey or the indivisible unity of the as proportionate, the court further ruled that the public had a right to be informed of a respective on the political situation in south east turkey "irrespective of how: that perspective may be for them".

To ensure proportionality in the regulation of fundamental freedoms, both clarity in the law and justifiable objective regulation are as critical as the effect of the measures chosen to ensure such limitation or regulation. As already noted, the court in *R V Oakes*¹⁹², which was cited with approval by the supreme court of Uganda in obbo's case, elaborately articulated the test for determination of, among others, the proportionality of a limitation of fundamental freedoms;

To establish that a limit is reasonable a demonstrably justifiable in free and democratic society, two central criteria must be satisfied. First, the objective.....second... ..the party invoking the limitation must show that the means chosen are reasonable and demonstrably justified. This involves "a form of proportionality test".... There are three important components of the proportionality test. First the measures adopted must be carefully designed to achieve the objective of the question. They must not be arbitrary, unfair or based on irrational considerations. In short they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair "as little as possible" the right or freedom in question.....third, there must be a proportionality between effects of the measures which are responsible for limiting the charter right or freedom, an the objective which has been identified as of "sufficient importance ".

In Uganda there are quite a number of alternative remedies for the protection of the reputation of public figures, which include suits in defamation and libel. However the Ugandan government continues to invoke the seditious law in dealing with unfavorable in dealing with favorable comments or publications by the media. Like ten years ago, Andrew Mwenda, a local journalist working with the monitor newspaper was charged with sedition for alleging that Sudanese vice president Dr. John Garang's death was caused by Uganda's negligence.

Besides the lack of restraint in invoking criminal measures for the regulation of freedom of expression in Uganda, the sedition law also miserably fails the *Oakes case's* standard. To begin with, there is actually no known objective with sufficient importance to justify the limitation of freedom of expression that underlies the law on sedition. Secondly, the provision on sedition is

¹⁹² [1986]1 SCR. 103

too vague to warrant an examination of "minimal impairment" principle. Speaking to the characteristic vagueness on the law of sedition, the supreme court of Canada articulately observed; "as is frequently mentioned in the authorities, probably no crime has been left in such vagueness of definition as that with which we are here concerned¹⁹³". The use of such subjective term as 'hatred', 'contempt', 'discontent', 'feelings of ill-will' and 'dissatisfaction' without any the law on sedition too vague. Coupled with the chilling effect of criminal and penalties, the law on sedition is thus extremely disproportionate.

4.2.4 Selectiveness and discrimination

Equal liberty of expression, as earlier noted is a core principle of freedom of expression. Because the value or truthfulness of any speech is accorded equal force at law does make perfect sense. It is among others, against this background that any measures that might chill the exercise of freedom of expression is considered in much the same light as those that seek to ensure prior restraint of expression¹⁹⁴.

Having noted the dangers of criminalizing certain forms of speech on the right to freedom of expression it is equally important to examine whether any such measures are non selective or biased. In *R.A.V. V City Of St Paul*¹⁹⁵, an ordinance that banned certain symbolic conduct, including cross burning, when done with the knowledge that such conduct would arouse anger, alarm or resentment in others on the basis of race, color, creed, religion or gender was found to be in violation of the principle of personal liberty of expression and thus declared unconstitutional. According to the U.S Supreme Court, the ordinance was unconstitutional because it targeted only individuals who provoke violence by means of speech that conveys ideas specifically disapproved of in law but not those who wish to use fighting words in connection with other ideas to express hostility, for example on the basis of political affiliation, union membership, or homosexuality.

Perspective that runs contrary to the democratic dispensation. notably missing from the ambit of immunity from the adverse criticism under the Ugandan provision on sedition are the leaders of the opposition, who equally play a significant role in the democratic system. It follows therefore that only members of the opposition and their sympathizers are the ones bound to be victimized by the law on sedition, as they are the ones most likely to engage in adverse criticism of those in power. On the contrary, the members of the ruling party together with its sympathizers would hardly be affected by the same provision of the law if they chose to engage in adverse, contemptuous criticism of the members of the opposition. No wonder then that the law on sedition has actually earned itself the notorious reputation of being regarded as already political tool of the ruling party for the purpose of oppressing the opposition. Against the

¹⁹³ Boucher V The King [1951] SCR at 295

¹⁹⁴ The Observer and The Guardian V United Kingdom (spy catcher case) 26th November 1991, 14 EHRR 153 Para 60.

¹⁹⁵ 505 U.S 377.

background provided, it is possible to turn to our case studies, viz, the angina monologues and the demonstration against the attempted giving away of the Mbairi forest.

4.3 The case studies for the freedom of expression

Whereas the foregoing discussion on the sedition law in Uganda serves to illustrate the challenges posed by pre-existing legal provisions to legal reform efforts through with specific regard to media law, this section seeks to address the related but different types of challenge; the need for new legal rules to address emerging challenges¹⁹⁶. The wave of technological innovations in communications and information, together with the transformation of older technologies, which together have generated a functioning global infrastructure, has engendered complex cultural interactions with boundless legal challenges. pornography and nude dancing for instance, though hardly new developments in western cultures, are posing legal challenges to the development world whose legal systems are traditionally more conservative. Likewise the wave of economic liberalization that swept the developing world in the early nineties under the auspices of the IMF and World Bank Structural Adjustment Program policies has led to increased direct foreign investment which, in turn, has socially altered the demographic figures between the locals and the foreigners. In the result, racial tensions which were perhaps hitherto at significant cultural diversity such as the United States of America, Canada, United Kingdom, and the like. In dealing with these new challenges, as will Shortly be demonstrated, the need for some action with respect to the law regarding freedom of expression, whether in the form of further regulation, deregulation, or a general review, cannot be over emphasized.

Indeed only two years ago, Uganda's commitment to the promotion of freedom of expression was seriously tested when some women activists attempted to stage the vagina monologues, a play that portrays women suffering but which was also said to glorify lesbianism and homosexuality. Not long after the banning of the staging of the play in its original form by the media council, yet another challenging test to Uganda's commitment to freedom of expression presented itself. In what has since earned itself the tag "mabira demo", environmentalists mobilized a massive demonstration on Kampala streets against the intended sale of the mabira forest to Sugar Corporation of Uganda Ltd (SCOUL). The company is co-owned by the government and the Metha family who were meant to destroy it and use the land for sugar cane cultivation. Suffice to note that the Metha family is of Indian origin. Although the mabira issue has not received significant academic attention with respect to its link to freedom of expression, this part of the working paper examines whether some of the seemingly racially motivated hate speech expressed during the demo was within the acceptable forms of free expression. In the same connection, the discussion seeks to examine whether the ban of the vagina monologues by the media council could have been justifiable under any acceptable limitations to the freedom of expression.

¹⁹⁶ 2010 Country Reports on Human Rights practices published on 4th August 2016.

4.3.1. The vagina monologues

According to Apollo Makubuya, the media council was justified in banning the staging of the play because its message was offensive to Uganda's public interest;

I form the considered view that the decision of the media council in asking the organizers to expunge offending material [particularly lesbianism, prostitution, obscenity] was proper and lawful with the provisions of article 43(1) of the constitution and the press and journalist Act¹⁹⁷ consider the offending parts to fall within the acceptable legal exceptions of freedom of expression. This is essentially because every society has a threshold or a bottom-line of acceptable standard or behavior, values or morals¹⁹⁸.

Makubuya could well be right about the above expressed view especially in view of the fact that every country determines for itself the parameters of its public policy. Regrettably, his analysis fails to provide any guidance as to how such alleged threshold ought to be determined. As earlier noted, there are fairly well settled principles for the determination of the constitutionality of any limitation on any fundamental right in a free and democratic society. The mere fact that "every society has a threshold or bottom-line of acceptable standard or behavior, values or morals" cannot per se warrant the limitation of fundamental freedoms under Article 43(1) of the Ugandan constitution.

The extent to which Makubuya would like us to allow intrusive regulation of the freedom of expression in the promotion of national public policy or morality invites a number of questions. For instance, can mere speech, however abhorrent it may be, be the subject of a constitutional limitation? Orm differently put, as Counsel Gary commenced his submissions in *R.A. V. V City of St. Paul*; to what does abhorrence of anything justify banning of free expression on it¹⁹⁹.

To be precise, the argument that the staging of the vagina monologues posed a threat to Uganda's public policy certainly fails to recognize the compelling preposition already noted herein above that human beings operate with significant persistent perceptual biases that skew their interaction with information. In other words it would be quite speculative to conclude that the mere granting of free expression on any abhorrent matters- be it lesbianism or homosexuality would necessarily promote such abhorrent practice. In any case, as professor Jjuuko rightly observes, the media council's finding that the glorification and promotion of prostitution and lesbianism would be contrary to Uganda's law is not only wrong but also largely speculative; thus he states:

¹⁹⁷ Makubuya, 2005 at 170, also "the vagina monologues", ruling of the media council, 16th Feb. 2005, pp.2-6. For a discussion and criticism of the media council's ruling in the context of the freedom of expressions

¹⁹⁸ Ibid.

¹⁹⁹ Transcript of Oral Argument, R.A.V. (NO. 90-7675), 1991 WL63263 at pg. 3

The media council finds that the content promotes acts and ideas that affect Uganda's policies and laws without stating precisely what these policies and laws are and without demonstrating how the play actually promotes these acts and ideas. The council also mentions in the same breadth cultural values and public morality. It also mentions the glorification and promotion of prostitution and lesbianism which is contrary to Ugandan laws. It is not clear whether it is the glorification and promotion of these activities that are contrary to the laws, or prostitution and lesbianism which are²⁰⁰.

The claim that the granting of expression on prescribed matters is likely to produce socially counterproductive results is a dangerous invitation to unjustifiable intrusion on the freedom of expression. Suppose, for that matter, a law prescribing any debate on polygamy in the United Kingdom because polygamy is outlawed in that country. It would be a formidable stretching of the mind to imagine that the reason polygamy is not practiced in the U.K is mainly because people do not know much, about it?

Prescription of free expression, as opposed to conduct cannot be consistent with the values of a free and democratic society largely because so to do would likely have the effect of influencing the public debate. The principle of equal liberty of speech, which precludes government for attempting to influence public debate on the basis of the presumed social utility inquires that all speech whether favorable or not abhorrent or popular ought to be treated alike. Whatever the public policy or morality of Uganda, the media council needed to draw a nexus between of the play and the likelihood of infringing the policy or morals in issue. Absent of a demonstration of proximity between the staging of the play and the infringement of such values, the conduct of the media council can only be described as arbitrary and constitutionally unjustifiable.

The fact that the media council would do such an incompetent job raises questions about the very justification for its establishment sec 9 of the press and journalist act, provides for the functions of the media council. The second clause to the section, which grants the powers to ban, states ; "in carrying out its functions under subsection 1 (e) the council may refuse a film , video tape or apparatus to be shown , exhibited or acted for public consumption".

The functions of the media council do not raise as much controversy as the nature of the entity its self. The issue is not really whether the media should be regulated or not. The issue, however, is how such regulation ought to be conducted. Specifically the nature of the Uganda media council, for being an establishment of parliament raises a question as to whether the media should regulate its self or be subjected to regulation by another entity established by the government (parliament). The problem with the notion of governmental regulation of the media as Jjuuko instructively notes is that "it tends to represent the authoritarian normative theory on media performance; it certainly rejects the social responsibility theory that entails self-regulation of the media." Indeed, as examples from other democracies suggest, media

²⁰⁰ Jjuuko, 2005 at 174. Emphasis added. Also see the ruling reproduced at 161-164

regulation is largely recognized as an exclusive responsibility of the media itself in the exercise of its right to self regulation. Only about a year ago, the parliament of Swaziland successfully rejected government attempt to establish a media council for the regulation of the country's media. In a report to attempts by the responsible ministry to establish a government controlled media council, the portfolio committee of the public service and information ministry warned the ministry against plotting such a law. Its report was aptly summed up; "in its report to parliament submitted on 19th July, the committee felt that despite the 10-year delay in setting up the MCC, the media should still be allowed to establish the MCC on their own without government's threats or interference, as per the recently adopted government media policy and the country's constitution".²⁰¹

4.3.2 Hate speech and the Mabira forest demonstration

A demonstration that started peacefully soon erupted into running fights and confrontations between police and demonstrators, and led to the loss of some lives. Most people who witnessed or read about the demonstration in the papers are likely to only recall the deaths that occurred, the targeting of Indians by the demonstrators, the closing of Indian shops and the arrest of some of the prominent mobilizers who included members of parliament. Critical but unlikely to be recalled was the nature on communication (the posters especially) which were show alongside the stories. Words such as "do u want another Amin?" and "Amin was right" will ring a poignant bell. In casting themselves as such, several among the demonstrators showed that they had directed their anger against Ugandans of Indian origin for the unrelenting desire by SCOUT (which is Indian owned) to take and destroy mabira forest for the sole purpose for sugarcane farming.

A member of the expressions made during the now infamous mabira demo call for dose constitutionality scrutiny. The question to be asked: would the expressions made against the Indian community of Uganda shush as "Mehta do u want another Amin"²⁰², and "Asians should go"²⁰³ " constitute practicable hate speech? The question is of importance both with respect to the domestic situation, but also on account of the heightened sensitivity of the international community to this question in light of the genocide in Rwanda and the role of radio television *libre des Mille collines* (RTLM). Indeed, the international criminal tribunal in the case of the *prosecutor V Nahimana et al (2003)* ruled that speech promoting ethnic hatred falls beyond protected speech and constitutes a crime against humanity of persecution.

Hate speech as Orentlicher defines it "connotes speech that incites its audience to racial discrimination or hatred, even when it does not entail incitement to violence"²⁰⁴. According to

²⁰¹ International freedom of expression exchange, "parliament reject government move to impose media regulation' July 27th 2006

²⁰² The daily monitor, Friday April 13th 2007 at p. 3

²⁰³ The new vision, Friday April 13th 2007 at p.2

²⁰⁴ Orentlicher, at <http://www.wcl.American.Edu/hr/brief/hatespeech.pdf?rd=1>

ICTR's trial chamber judgment in Nahimana, "hate speech creates a lesser status not in the eyes of the group members themselves but also in the eyes of others who perceive them and treat them as less than human. The denigration of persons on the basis of their ethnic identity or other group membership in and of itself, as well as in its other consequences, can be an irresistible harm." Hate speech, according to Nahimana, is not dangerous in the sense of inciting violence, but by virtue of its impact on the victims.

*The crime of persecution is defined also in terms of impact. It is not a provocation to cause harm. Accordingly, there need not be a call to action in communication that constitutes persecution. For the same reason, there need be no link between persecution and acts of violence*²⁰⁵.

The history of Indians in Uganda suffered much during the Amin regime when they were ruthlessly expelled from the country, in being targeted as Indians, Asians of Indian origin suffered extreme discrimination. With the overthrow of Amin, the government of Uganda took remedial measures which, among others, include the enactment of a law that provide for their right to return compensation for property lost, and repossession of the existing properties²⁰⁶. Against that background, one wonders whether the utterance of threats reminiscent of suffering when they were discriminated against, would not amount to practicable hate speech.

The Uganda Penal Code Act provides no clear provision of what amounts to hate speech in other jurisdictions. The closest to hate speech prescription provision in the code is the offense of sectarianism, but cannot suffice. The offence of sectarianism is committed when a person prints, publishes, makes, or utters any statement or does any act which is likely to; a) degrade, revile, or expose to hatred or contempt; b) create alienation or despondency of; c) raise discontent or disaffection among; d) promote, in any other way, feelings of ill will or hostility among or against, any group or body of persons on account of religion, tribe or ethnic or religion origin. To begin with, the section is too broad to withstand a constitutionality scrutiny with particular respect to the principle of proportionality. Such terminology as ill will, discontent, disaffection and contempt are too hard, vague and indeed, flimsy to justify the limitation, of a fundamental right. Secondly, the section recognizes only a limited range of categories of justifiable groups, which, for instance, excludes race, nationality, *ET cetera*.

In the United States, where the debate on hate speech has been common since the end of slave trade, the jurisprudence on the matter is quite extensive. In *Virginia V Black*²⁰⁷, where the court considered the constitutionality of the act of cross-burning, a form of expression historically associated with hatred against black people by sections of the white race, the supreme court reasoned that not all acts of cross burning were unconstitutional, since to do so would be too

²⁰⁵ Nahimana, ICTR-99-52 (at) 1072.

²⁰⁶ The expropriated properties Act, cap. 37, see Sections 1, 3 & 12

²⁰⁷ [2003] 538 US 343

broad and in violation of the equality principle. In rejecting the principle, the argument advanced by the state of Virginia that cross burning can have but one intent- the intent to intimidate, the court noted that cross burning is sometimes engaged in with other intentions such as the communication of an ideology, though an ideology of hate. Even upon the conclusion that cross burning is a symbol of hate, the court carefully proceeded to the rule that only when it is engaged in with the intent to intimidate should it be proscribed. On what amounts to that intent, the courts noted;

"intimidation the constitutionality practicable Sense of the word is a type of true threat requiring proof that the speaker means to communicate a serious expression of intent to commit an act of violence to a particular individual or group of individuals."

viewed differently, black is commendable "for its implicit reaffirmation to speech protective principle that even when speech can be regulated because it creates a substantial evil such as intimidation, the state may not suppress it merely because it has that tendency". In defense of its selective proscription of particular forms of cross burning, the court hastened to add that that particular expression was singled out because of its historically established recognition as "a particularly virulent form of intimidation"²⁰⁸.

In Canada, section 319(1) of the criminal code provides for incitement and hatred. The offence is committed when one incites hatred against any identifiable group by communicating statements in any public place, where such incitement is likely to lead to a breach of peace, or (2) where one, by communicating statements, other than in private conversation, willfully promotes hatred against any identifiable group. As explained by the Canadian Supreme Court in *Mugesera V Canada (minister of citizenship and immigration)*²⁰⁹, the section creates two distinct offences; "under subsection (1), the offence is committed if such hatred is incited by communication, in a public place of statements likely to lead to the breach of peace". On the other hand, the second offence under subsection (2) is committed by willfully promoting hatred against an identifiable group through the communication of statements other than in private conversation.

4.4 Conclusion

While the campaign for the increased deregulation of the right to freedom of expression ought to continue unimpeded, note ought to be taken that sight of acceptable limitations to the proper functioning of the society not to be lost. While banning of the staging of the vagina monologues reminds us of how far we are prepared to embrace true freedom of expression, which should not be mistaken with the promotion of favorable views, the expressions targeted at the Indian community that were made during the mabira demo should awaken us to the lurking dangers of unbounded freedom of expression.

²⁰⁸ [2003]538 U.S. 363

²⁰⁹ [2005]2 SCR 100

CHAPTER FIVE

WHAT SHOULD BE DONE

5.0 Introduction

The media deals with important issues affecting the country and it is one avenue where government is subjected to public scrutiny and accounts to the people. Freedom of expression is a key prerequisite of a democracy and the state is expected to ensure that it prevails. The ongoing onslaught on the media affects its professionalism as it demands media publications to conform to regime interest as opposed to truthful reporting. Matters of state security are of concern to everyone and therefore it is the duty of the press to expose weaknesses in them so that the organs of the state can improve.

The Broadcasting Council (BC) has lost its moral purpose of overseeing and promoting the media work. It is now serving interests of the state as a result of the delayed justice from the court. A case in point is where the BC chairman Eng. Godfrey Mutabazi directed a private : red radio -Voice of Lango to suspend two presenters (Akena Patrick Ronex and Joe Orech) for hosting Uganda People's Congress (UPC) president Dr. Olara Otunnu on 12th April 2010. Another case was filed in a bid to reverse Broadcasting Decision that banned the open space talk shows commonly known as 'Ebimeeza' but has been stagnant and referred to constitutional court to interpret the law used to file the case. The case was brought to court under, 'notice of Motion' Eng. Mutabazi has used his office to acquire radio frequencies and licenses. He owns two radio stations including Voice of Kamwenge. This makes it difficult for him to fulfill his statutory duties due to conflict of interest. "Eng. Mutabazi has been biased in his work and he is not accountable to the membership (electronic media) but the state. Human Rights Network for Journalists-Uganda (HRNJ-Uganda) Programmes Coordinator Geoffrey Wokulira Ssebaggala said. He added that, "No member of Broadcasting Council knows how the money collected from annual license is utilized. We have more than 150 operating electronic media houses in Uganda and each pays five million shillings (5,000,000/=) annually. How does this money benefit the various stakeholders at the end of the day?"

This full year also comes at a time when the media freedom in Uganda is facing a lot of challenges ranging from suffocative legislation, police harassment, murder, judicial sanctions,

and public statement to attacks committed by politicians and members of the public against journalists with impunity. The government did not only lose a case it brought against the Central Broadcasting Service in which it was accusing the radio of being responsible for them over 30 people who died and the loss of property lost by the public during the three day riots but the law on sedition which was barring the media and the public auditing the performance of government. This notwithstanding, the government seems very reluctant to re-open the radio despite efforts by the various stakeholders to prevail upon it to re-instate the it. The year also falls when the quality of discussion and debate on pertinent issues especially governance and corruption has extremely gone down for fear of falling prey to government's wrath and possible closure. At Ssuubi FM which remained closed for almost five months, political and current affairs programmes were replaced by musical and entertainment ones while Kazibwe Bashir Mbaziira - deemed to be a critical journalist was laid off under unclear circumstances. So there is an immeasurable amount self censorship in the media today. This greatly affects the populace negatively because they never get to participate in most of the topical governance issues following the banning of their popular forums 'Ebimeeza', so they are bound to making uninformed decisions. It can be summed up that since the September 11th 2009; the media in Uganda is going through very challenging times with extremely limited space to operate in a free and friendly environment.

5.1 Order for radio stations to apologize for hosting opposition politicians

On the 26th April 2010 the state ordered media houses to apologize for hosting opposition politicians. The order was directed to radios in Northern Uganda that hosted Olara Otunnu a leader of the opposition who is said to have claimed that President Museveni was responsible for the war in northern Uganda. Government threatened to take punitive action against the radio stations if no public apology is given. There was concern by HURINET –U²¹⁰ that the move to warn radio stations to apologize is aimed at intimidating media houses from hosting opposition politicians as we head to national elections in 2011 hence affecting equal participation in the democratic process.

²¹⁰ Human Rights Network (HURINET) Uganda, report of 14th August 2010 pp.8

There was also concerned that the move would see radio stations punished for acts and omissions done by people not under the control of the media. This violates the principle of fair trial as laid out in Article 28 of the Uganda constitution. Particularly the move violates the presumption of innocence, the principle that no person can be charged of an offence committed by another person and the freedoms of speech, media and association.

It should be noted that media practitioners and agencies deserve to operate independently in a good environment supported by the state as laid down in the National, Regional and International laws that Uganda has ratified.

The foregoing analysis has focused principally on three issues affecting the freedom of expression in Uganda.

First the archaic provisions in our statute books which continue to defy and retard the democratization process in the country, an example of which is the sedition law. Thus on Wednesday 26th august 2010 the outdated sedition law was scrapped by Uganda's constitutional court in Kampala on grounds that it limited peoples' freedom of speech and expression.

The judgment was read by the Registrar of the Constitutional Court, Asaph Ntengye who said, "The panel of five judges of the constitutional court has ruled that the law on sedition is unconstitutional since it limits peoples' freedom of speech and expression."

The ruling follows a court petition by East Africa Media Institute in which the petitioners challenged some provisions of the Penal Code Act on sedition saying that the provisions bar freedom of expression as guaranteed by the 1995 Constitution of Uganda.

Expressing satisfaction, a veteran Ugandan journalist, James Amooti said "We have won the battle. The bad law is no more. We have been working under fear of being arrested under that law."

Secondly, as evidenced through the analysis of the performance of the media council, the weaknesses of the regulator's mechanisms employed in the regulation of the media council.

Third, as examined through the analysis on the mabira demo and the vagina monologues, the new and emerging challenges fuelled by globalization which call for corresponding new prescriptions, ample regard to the constitution, must form the baseline principle in the meaningful transformation of the legal regime on the freedom of expression

To wrap it all up, below are the recommendations

5.2. Recommendations

Government of Uganda should:

- 1) Restructure the Media Council to comprise primarily of professionals within the industry, with minority government representation.
- 2) The government should look at the media as a partner in governance and development of this country and put in place environment that safeguards it.
- 3) The government should honor all the international conventions and treaties in respect to freedom of speech and expression to which Uganda is a signatory.
- 4) Propose amendments to the Uganda communications Act 1997 and the Electronic Media Act 1997 to streamline the powers of the UCC and the BC to prevent the overlap duplication of functions.
- 5) Review and define the powers and functions of the Media Center vis the Media Council.
- 6) Withdraw the proposed amendment to the Press and journalist Act since these constitute additional threats to media freedom in Uganda.
- 7) The government of Uganda and its agencies should respect freedom of speech and expression which include freedom of press and other media as provided for in the Uganda constitution and other international human rights instruments.
- 8) The government of Uganda should recognize and respect its duties and obligations imposed upon it by Article 20(2) of the Constitution: "The rights and freedoms of the individual* and groups enshrined in the Constitution are to be respected, upheld and promoted by all groups and agencies of government..."

- 9) The government of Uganda should respect the autonomy of the media practitioners and institutions as this forms the basis of an open society which is pertinent in fostering a democratic society.
- 10) The government of Uganda, Civil Society Organizations and the Media should work together to develop self regulatory systems for the media industry to promote a free and profession media in Uganda.
- 11) Parliament of Uganda should Repeal and amend laws that are inconsistent with media freedom. Specifically the government should repeal penal code provisions on raise news, sedition, publication of false news and all sections curtailing media freedom-The restrictive and suffocative laws aimed at muzzling the media should be abandoned.
- 12) The government should take extra punitive measures to punish errant public and security personnel who harass, intimidate or torture journalists.
- 13) The Presidential Guard Brigade should desist from arresting and detaining journalists at police station for days without taking them to courts of law where they can defend themselves.
- 14) The civil society, international agencies and the media should advocate for fair media laws and join campaigns to call upon the government of Uganda to withdraw the proposed amendment and to comply with media freedom standards acceptable in a free democratic society.
- 15) The European Union Delegation in Uganda and all members of the European Union should use their relation with the government of Uganda to demand for respect of media freedom and protection of journalist as human rights defenders as required of them by the EU guidelines on the protection of human rights defenders

5.4 Conclusion

The role of the freedom of expression to the democratization process cannot be over emphasized. For fledgling democracies, the challenges remain high, as the principles that govern the proper regulation of the right to freedom of expression are subtle and ever difficult to exhaust. In Uganda where the provisions of the constitution and the legislative provisions affecting the freedom of expression remain in tension, attainment of a reasonable standard of enjoyment of the right in issue is some distance from realization. The measure of the true enjoyment of freedom of

expression is not the number of media houses in given country, but the existence of an enabling legal regime and an appropriate political climate for free expression.

Human rights and media watchdog advocates have expressed concern that as a result of the intimidation, there is now a high degree of self-censorship by Ugandan journalists, including a reduction in the level of public debate on the radio. At the same time, media outlets continue to operate independently and report critically on the government and public officials. Even subjects the government warns is taboo, most notably its war with the Sudanese-backed ERA, remain a subject for media reports.

The government should therefore streamline the mandate for its myriad media regulatory bodies. Laws governing the operation of the media and those that unfairly criminalize certain acts by the media must be repealed to improve the operating environment. The Access to Information Act (ATIA) 2005 represents a positive step in the promotion of transparency and accountability in governmental institutions. The government, however, must fully implement ATIA, ensure that information is provided quickly and both the public and government agencies should act in tandem to promote freedom of expression.

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