THE EFFICACY OF UGANDA POLICE FORCE IN ENFORCING THE RIGHT TO FREEDOM OF SPEECH AND EXPRESSION

BY

BIIRA EVANGIRINE

LLB/32850/102/DU

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M TACHTEO M. MARY
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DECLARATION

I declare that this thesis is the work of Biira except where due acknowledgement is made in the text. It does not include materials for which any other university degree / diploma has been awarded.

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APPROVAL

I certify I have supervised and read this study titled efficiency of Uganda Police Force in enforcing the right to freedom of speech and expression and that in my opinion it conforms to acceptable standards of scholarly presentation and is fully adequate. In scope and quality as a dissertation in partial fulfillment of award of a Degree of Bachelor of Law of Kampala International University.

Signature: ..... Date: 15-10-14

Kasim Balarabe

Name of Supervisor

DEDICATION

I dedicate this piece of work with lots of love and appreciation to God and my beloved parents Mr. Munaba Gabriel, Mrs. Kabugho Zeresi Koobe for their provisional support to see that I achieve my purpose of life and to brothers, sisters and friends most importantly to my good friend Katswera Julius your love and care inspires me to be the greatest person I can possibly be. May God bless you all.

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LIST OF ACRONYMS

NRM	National Resistance Movement
UHRC	Uganda Human Rights Commission
UDHR	Universal Declaration for Human Rights
ACPHR	African Charter on People's Human Rights
RDC	Resident District Commissioner
HURNET	Human Rights Network

CHAPTER ONE

1.0. General Introduction

The right to freedom of expression is an important right in the functioning of a democratic society. Freedom of speech is the concept of the inherent human right to voice one's opinion on publicly without fear of censorship or punishment. "Speech" is not limited to public speaking and is generally taken to include other forms of expression. In many nations, particularly those with relatively authoritarian forms of government, overt government censorship is enforced.

Censorship has also been claimed to occur in other forms and there are different approaches to issues such as hate speech, obscenity and defamation laws even in countries seen as liberal democracies. Freedom of expression entails the right to hold opinions 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.

Several international and regional human right instruments guarantee freedom of expression. For instance, the right is preserved in the United Nations Universal Declaration of Human Rights and is granted formal recognition by the laws of most nations. Nonetheless, the degree to which the right is upheld in practice varies greatly from one nation to another. Article 19 (2) of the ICCPR and Article 9 of ACHPR recognizes the right to freedom of expression.

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.

Freedom of expression in Uganda has been subject to a number of restrictions since colonial period to date. However, in 1986 when the NRM government under the leadership of Yoweri Kaguta Museveni came into power, there was a paradigm shift into a mere 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 state. One may safely argue that these provisions were domesticated into Ugandan law as a result of ratification of international covenants. Those freedoms have however been restricted especially when the media both electronic and print have engaged government in political debate, dialogue or 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 primary role of dissemination of information and watch dog to government excesses, a cornerstone to their contribution to democracy. This paper seeks to discuss the historical evolution of this freedom in Uganda and examine the legal regime governing press freedom and identity the legal and other practical limitations to the full enjoyment of the right.

1.1. Background

Freedom of expression is a cornerstone of democratic rights and freedoms. In its very first session in 1946 before any human rights declarations or treaties had been adopted, the UN General Assembly adopted resolution 59(1) stating "freedom of information is a fundamental human right and ..... the touchstone of all the freedoms to which the United Nations is consecrated".

Freedom of expression is essential in enabling democracy to work with public participation in decision making. Citizens cannot exercise their right to vote effectively or take part in public decision making if they do not have free access to information and ideas and are not able to express their views freely. Freedom

of expression is thus not only important for individual dignity but also to participation, accountability and democracy. Violations of freedom of expression often go hand in hand with other violations in particular, the right to freedom of association and assembly. In free with democratic societies, the press with 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 about 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 press and other media together with the ethics and courage of the proprietors, directors, journalists and reporters who work for and in them are of crucial importance.

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

In the result, the accuracy, the integrity and credibility of the media both in print and electronics are seriously if fatally compromised. Where journalists and reporters are intimidated or persuaded to "co-operate" 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 or other media becomes suspect, their stories are mainly in support of party or government often uninformed or misinformed, un-researched and boring perhaps only their reports on international news and events exhibits some grains of truth and interest to readers or listeners.

Yet as a court said in the case of government of Republic of South Africa V Sunday Times Newspapers, the role of the press in a democratic society cannot be underestimated. The press is in the front line of the battle to maintain democracy. It is the function of the press to torrent out corruption, dishonesty and graft whenever it may occur and to expose the perpetuators.

It must also contribute to the exchange of ideas. It must advance communication between the governed and those who govern. The press must act as the watchdog of the government. Personally, I would go further and say that the press and other media must go beyond the role of a watchdog. They must also act as the blood bounds against corruption, abuse of power and mis-governance.

The freedom of expression and information are equally of fundamental importance for the recognition and protection of other basic human rights and fundamental freedoms. Being preoccupied with other governmental pastimes, the NRM in its hay days of administration and good governance was acutely aware of the role of the press 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 provided that 29;

(1) Every person shall have the right to;

i. Freedom of speech and expression which shall include freedom of the press and other media.
ii. Freedom of thought, conscience and belief which shall include academic freedom in institutions of learning.
iii. Freedom to practice any religion and 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.

iv. Freedom to assemble and demonstrate together with others peacefully and unarmed and to petition and,

v. 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;

i. To move freely throughout Uganda and to reside and settle in any part of Uganda.

ii. To enter leave and return to Uganda.

iii. To a passport or other travel documents.

In relations to the freedom of the press, Article 41 of constitution which has been the subject of numerous judicial applications, enforcement and interpretation 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 21 of the same article emphasizes.

41(2) parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information. Generally, the freedom of speech includes the right to speak, write or publish whatever one chooses and any subject to other laws of the state.

This freedom includes the rights of conscience and worship and the right to give and receive information and ideas through any medium. This is the freedom that includes several aspects of constitutional importance such as the

absolute freedom of speech in parliament, the immunity and protection of the persons and proceedings in the courts of laws; the right to express and propagates political views and ideas including those which are in opposition to those propagated by the leaders and government of the day.

The freedom of speech and the press may be exceeded by the publication of treasonable, seditious, defamatory, blasphemous or obscene matters or of inciting muting 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 is deliberately and falsely exposes any person about whom it is published to hatred ridicule or contempt or causes him/her to be shunned or avoided by other reasonably disposed citizens.

Though progress has been made in recent years, in terms of security respect for the right to freedom of expression as seen above, efforts have been made to implement this right through specially constructed regional mechanisms. New opportunities are emerging for greater freedom of expression with the internet and worldwide satellite broadcasting. New threats are emerging too for example with global media monopolies and pressures on independent media outlets.

1.1.1. Rights at Stake

i) The right to freedom of expression and opinions

The right to freedom of expression upholds the rights of all to express their views and opinions freely. It is essentially a right which should be promoted to the maximum 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 fine balancing act. One particular form of expression which is banned in some countries is "hate speech".

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 extreme example of this is the use of the mass media to promote genocide or racially-motivated attacks, such as the role played by Radio-Télévision Libre des Milles Collines in the Rwandan genocide in 1994. In some countries hate speech laws have been introduced to outlaw such 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 often been 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

Restrictions on individual journalists: The freedom to impart information can come under attack in a variety of ways and particularly impinge on the freedom of the press. Pressure on journalists poses a very significant threat.

Informal censorship 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 flew of information on matters of public interest. International and regional human rights mechanisms have asserted that journalists should never be required to reveal their sources except under certain conditions (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 a court, after a full opportunity to present their case; 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 laws can impede investigative reporting aimed at exposing corrupt and illegal practices. Privacy laws, while important in protecting the private affairs of individuals, should not be misused to deny discussion of matters of public concern.

The media should be free to report on conflicts and public scrutiny in such situations is essential to controlling humanitarian and human rights abuses. Exclusion of the media is a very severe restriction on freedom of expression and information in this regard and restrictions should only be placed where there are clear safety concerns. Elections are other times when the freedom of the press to provide balanced and impartial information becomes critical and more vulnerable to repression by political actors.

Structural restrictions on the press: These call into question whether the media are free from political control at an institutional level. Restrictions can take the form of press laws which allow for 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 regulatory bodies should be limited to matters relating to licensing and complaints.

Media monopolies are 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 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" i.e. use of economic measures by governments to control information, include preferential allocation of government advertising, government control over printing, distribution networks, or newsprint and the selective use of taxes.

Access to information held by public authorities is another aspect of the freedom of information debate. International/regional human rights mechanisms have asserted the public's right to know and urged governments' to adopt legislation along the following lines: the legislation should be guided by 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 wrongdoing.

New technologies, such as the Internet, and satellite and digital broadcastings, 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 sectors, may not be appropriate for the internet. Obviously, limitations on such technologies will be a fine balancing act between defending the freedom of expression and information and ensuring protection from abuses e.g. spread of child pornography.

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

Restrictions in the name of public order and national security can often be excessively broad and vague. International and regional bodies have said that such restrictions should only be imposed

where there is a real risk of harm to a legitimate interest meaning there is a significant risk of imminent harm; the risk is of serious harm, that is to say violence or other unlawful action; there a close causal link between the risk of harm and the expression; the expression was made with the intention of causing the harm.

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. International/regional 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 imminent 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 actions; truth should always be available as a defense; politicians and public officials should have to tolerate a greater degree of criticism; publications regarding matters of public interest which are reasonable in all the circumstances should not be considered defamatory; damage awards should be proportionate to the actual harm caused and should take into account alternative remedies such as apologies and corrections.

Courtroom restrictions: 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 the court from being "scandalized". There are increasing questions about whether freedom to criticize the judiciary should be limited in this way. Having cameras in the courtroom has become a lively area of debate in recent years. Again, 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 the one hand and protecting the privacy of victims and their families on the other.

1.2. Objectives of the study

i. To study the role of police on the enjoyment of the right to freedom of speech and expression.
ii. To study the involvement of police in the violation of the right to freedom of speech and expression.
iii. To critically examine the role that has been played by the Uganda human rights commission and other human rights activists in remedying the acts of police force to people and to find out the challenges it has encountered in bringing a solution.
iv. To find out whether there are laws in place that safeguards human rights and prohibits its violations.
v. To suggest possible lasting solutions of upholding and respecting the right to freedom of speech and expression.

1.3. Research questions

i. What is the role of police on the enjoyment of the right to freedom of speech and expression?
ii. Are the police forces involved in the violation of these rights?

iii. What is the role played by Uganda human right commission and other human rights activists in remedying the acts of police and finding a solution?
iv. Are there laws in place that safeguards human rights and prohibits the violations?
v. Can there be lasting solutions to that can uphold and respect human rights tenets?

1.4. Scope of the study

The study has been approached from a legal perspective. In this regard, it will consider the extent to which the Uganda Police Force in the name of enforcing the right to freedom of speech and expression has violated it.

The study will be approached in a legal perspective, conducted to cover the entire country of Uganda especially western and central regions of the country. These regions have experienced massive cases of rights abuse that freedom of speech and expression thus making the inhabitants of the regions perceive the Uganda police force as monsters rather than protectors.

1.5. Literature review

This area looks at the related literatures that were read concerning the effects of police force brutality in enforcing the right to freedom of speech and expression in Uganda. It aimed to discuss on the existing writings or knowledge focusing on the brutality of police which is always a source of torture and law of life with negative impact on human right in the country.

1.6. Hypothesis

The Uganda police force is the major violator of the right to freedom of speech and expression in the name of enforcing it.

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

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

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 fueled by globalization which call for corresponding new prescriptions.

1.7. Statement of the problem

In a country that is history is characterized with massive human rights violations, the situation is much worse for the Uganda police force in enforcing the right to freedom of speech and expression like during the recent walk to work demonstrations by the opposition leaders to government.

In Uganda, this problem is so rampant where there is the involvement of military and police in torturing the suspects and even innocent civilians in the name of interrogation, despite the fact that there are both local and international instruments in place that advocate for the end of torture and promote respect to humanity, there has been no practical and lasting solution to the cruelty nature of the police force. This is because either they are ignorant of the law or just take pleasure in torturing the people.

1.8. Purpose of the study

i. To examine the causes of Uganda police brutality in enforcing the right.

ii. To examine the impact of police on enforcing the right to freedom of speech and expression.

iii. To examine government's responses to those acts and make recommendations for lasting solution.

1.8.1. Documentary Review

The researcher used secondary data content analysis. Using this method, international and regional human rights instruments were analyzed writings of leading scholars, Newspaper reports of relevant events were reviewed. In this respect, the researcher was not responsible for the collection of original data but only analyzed conclusions and findings of the authors.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF PRESS AND MEDIA FREEDOM OF ONIN 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 in Uganda up to the present.

2.1. General perspective of press freedom worldwide

Press freedom is one of the fundamental human rights that have existed as long as human life[1]. In the European states the press prayed 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 refereed 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 I propaganda towards the enemy and eventually winning them.

[1] Christian Journal Taber Charles 2001, Pg 20

In Asia the media gained greater importance in the political and economic restruction 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 to day 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 story telling 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 prayed 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.

2.1.1. Origin of the press and press freedom in Uganda

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 evangelism[2]. 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 1900[3].

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.

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[2] A.E.A. Mbaine, The challenges to press freedom. A critique to press laws, a paper presented at Uganda Human Rights Commission Seminar 12/4/1999.
[3] Amos Kajoba: The state of the media in Uganda fighting corruption in Uganda, Mengo notes Pg 2.

Some examples included the Uganda Eyogera, published by the Uganda national congress {UNC], Muwereza, by the Democratic Party [DP][4]. 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 freedom[5].

2.1.2. Freedom of Expression in Colonial Period

The colonial regime reacted harshly and decisively against criticisms and political agitation by the press. The press censorship and correction ordinance[6], and sections 49 and 53 of the penal code[7] 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 administration[8]. 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 Buganda[9].

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 however imposed, was not the more liberal democratic system,

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[4] Lent. 1987 Pg 22.
[5] Supra.
[6] No. 13 of 1948.
[7] Penal Code Cap 120
[8] The first laws on press censorship had been formulated earlier in 1910 (the Newspaper ordinance 1910), the press censorship ordinance (1915) and the Penal Code.
[9] ZIE GARIYO; the press and democratic struggles 1900 – 1962 in Uganda studies in the living conditions propular movements and the constitutions Pg 26.

which was the fairly well established. Instead the British imposed the authoritarian model complete and suspend or barn publication[10].

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[11].

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[12].

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[13].

[10] James Namakajo, president of UJA quoting professor Peter Tikirambudde in a paper presented at UJA discourse in Kampala in Oct. 1990
[11] No. 13/1948
[12] East Africa law reports vol. XVI 1949
[13] Uganda Post January 23 of 1953 Pg 1

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[14].

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 regulations[15] also Peter Ssali editor of Uganda mirror and Musa Mukiibi editor of Doboozi lya 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[16].

Apparently the laws that were enacted during the colonial period[17] 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[18].

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 freedom[19].

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[14] Gambuze, of May 1st 1953
[15] Ebifa mu Uganda June 1st 1954
[16] Ebifa mu Uganda June 15th 1954
[17] Surety ordinance 1910, the press censorship ordinance 1915
[18] Robert Mukhooli Kabushenga (1994) quoted in the challenges to press freedom. A critique to anti press laws 12th April, 1999 by A.E.A MBAINE.

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

[19] A.E.A. MBAINE the challenges to press freedom a critique to anti laws paper presented at human rights commission seminar, 12/4/1999.

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:

"From today, I, Idi Amin 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[20].

Immediately after independence in 1962, parliament enacted the newspaper and publication Act in 1964[21] 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 books, 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[22].

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.

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[20] Ibid.

[21] 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, 8th Dec. 2002 at the senate conference room.

[22] Amos Kajoba, president of Uganda newspaper, editors and proprietors association presented on June, 3rd 1996.

So right from the constitution, press freedom remained un-catered 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 Mayanja[23] and the passing of public order and security Act made the job of public watch dog a bigger night mare.

2.1.4. Freedom of 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 Bella 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 Amin and overthrew it in 1980.

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.

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[23] Uganda Vs Rajat Neogy and Abu Mayanja (the transition case) 1st Feb. 1968

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 life 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[24]. 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

[24] Amos Kajoba, the role of the media, the state of the media in Uganda, part six fighting corruption in Uganda.

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 Luyimna led to the closure of Munno in 1976[25].

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 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 elections[26]. 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

[25] I bid
[26] Burned used papers Ag. Africa, weekly topic, the citizen and the economy. Pg 20

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 Press during NRM era 1986 to the Present

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 I 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[27]," 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.

Of particular interest to this discussion was the view that freedom of press had finally arrived. The NRM 20 years have been the longest period the press has

[27] Yoweri Museveni, Ten-point programme, 1986.

entered some freedom. 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, hive 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 a like setup 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 Kajoba[28] 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?

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 newspaper was charged with sedition for reporting that the National Resistance Army (NRA)[29] had found the going tough in war against the Uganda Liberation Army (UNLA) of general Tito Okello[30]. In June 1986, the weekend Digest was banned and its editors, Jesse Mashat and Wilson Wandera, charged

[28] Late Amos Kajoba president of Ugandan newspapers and proprietors association on 6th March, 1996.
[29] Now called the Uganda People's Defence Forces (UPDF).
[30] ZIE GARIYO; the media, constitution and democracy in Uganda, quoting from amnesty international reports of 1989, Uganda human rights record 1986 – 1989.

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[31].

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.

[31] I bid. Pg 40 – 43.

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 51[32]. 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 has been cited[33]. Many and more other journalists were arrested and detained.

When the government started to fill uneasy about reportage on corruption and other forms of Misadministration had to introduce the offence of sectarianism through section 42(a)[34]. It is this offence that the editor of the crusade George Lugalambi 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)[35].

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 of information while including, emphasizing and

[32] Penal Code Act, Cap 106 now Cap 120.
[33] Sylivia Tamare Balaba "Press freedom and the law in Uganda today. The alpha and the omega" a paper presented at the seminar for Makerere University mass communication association, July, 1991.
[34] Penal Code Act Cap 106 now Cap 120
[35] Penal Code amendment statute No. 9 of 1988.

consolidating the repressive aspects of it. Eventually the print media was separated from the electronic media. This has been a tendency to 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 Act[36], 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.

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[37].

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.

[36] Press and journalist statute 1995.
[37] Amos Kajoba Supra.

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.

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.LD) have on numerous occasions' subjected editors from The Monitor and critical newspapers to rigorous interrogation[38].

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[39]'.

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.

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[38] 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 abroad Concorde, the Monitor Feb. 12th 1997 and angry Museveni wants press, MPs published, the Monitor Jan. 9th 1997.

[39] Says reports in the 21st 1997 edition of the Sunday Monitor.

In October 2002 three journalists, from the Monitor Frank Nyakairu, Wanyama Wangah and Charles Onyango Obbo were charged for allegedly publishing false news and infonnation prejudicial to national security. The charged 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 security officers raided the offices of Uganda's largest independent newspaper, The Monitor. The 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[40].

"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 new as 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,

[40] Quote in New Vision 11th Oct. 2002 Pg 1.

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[41].

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.

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.

[41] New Vision 18th Oct. 2002.

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 broadcasting.

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 charged of sedition.

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 (Cm) 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 bombs?"

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 off.

To crown on the above, when in 1986 Yoweri Kaguta Museveni was sworn in as President of the NRM, he promised Ugandans a 'fundamental change'. 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.

CHAPTER THREE

LEGISLATIVE FRAMEWORK ON 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. 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.

3.1. Constitution

It is the basic law which governs a particular society. The grand norm on which all the organs and departments of the government derive their authority and legitimacy from, it spells out the relationship between individuals and government, provides for rights, duties of government towards an individual and the right and duties of individuals.

Unlike the pre 1995 constitutions which eroded human rights by staff inspired violence, this one provides that fundamental rights and freedoms are inherent and not granted by the state as it was held in the East African court of Appeal in Ibingira and Ors V Uganda that everybody has a right to liberty and no violation of that by any law or order is allowed[42].

Enjoyment and limitations of assembly and demonstration are provided, our constitution (1995) not only entitles citizens to express their views but also allow them to assemble and demonstrate with others peacefully and

[42] Article 20(1) 1995 constitution

unarmed[43], these rights are also provided for in key international human rights instruments to which Uganda is a party.

It is provided in Article 20 (1,2) and 21 (1,3) that man ought to live in a perfect freedom to be equal and have a right to live. It provides for the police force as a department of the government and to exercise their powers and functions in accordance with the constitution.

3.2. Relevant legal provision on protection of right to freedom of speech and expression.

The year 2013 was manifest with both progressive and prohibitive incidents in the human rights discourse. The human rights committee of parliament developed a checklist that will require them to subject all bills and business before them to international, regional and human rights standards to ensure compliances. The Uganda police force council passed the police form 105 and a register book on complaints against police officers which will enhance accountability, enable the public to lodge complaints against police officers who violate human rights and conduct themselves unprofessionally. The national curriculum department center has reviewed the lower secondary education curriculum and provided an opportunity to mainstream human rights in the curriculum.

The process to have a national plan of action on human right is underway by the ministry of foreign affairs and we commend government.

HURINET-U is however concerned that human rights violation continue to persist in Uganda at the outset of 2014: As we move into 2014, it is important to recall that 2013 was marred with grave human rights violations such as clamp down on demonstrators, media clamp down, harassment of human rights defenders, passing of laws that undermine constitutionalism and the

[43] Article 29 1 (d) constitution

rule of law in Uganda. HURINET – U condemns the human rights violations witnessed in 2013 and demands for urgent interventions be taken to ensure the violations do not continue in 2014 and other years.

3.3. The legislations that hamper fundamental rights and freedom

3.3.1. The public order management Act 2013.

In its current form, the Act cannot be an enabling piece of legislation as Uganda strives to achieve the democratization aspirations of liberty, equality rule of law and constitutionalism. Human rights network (HURINET – U), department Network for indigenous voluntary associations (DENIVA), Uganda association of women lawyers in Uganda (FIDA – U) Bishop Zac. D Niringiye and Hon. Muwanga Kivumbi MP for Butambala county challenged the constitutionally of Sec 4,5,6,7,8,9,10,11,12,13 of Act in the constitutional court on the 10th of Dec. 2013 constitutional court petition No. 56/2013. The Act is being enforced by the Uganda police force to prohibit public assemblies hence violating the constitutional right to peaceful public assemblies as envisaged by Article 29 of 1995 constitution.

3.3.2. Anti-Homosexuality Act

The Act curtails constitutionally protected rights to privacy family life and equality and hugely violates the rights to freedom of association and expression. The Act provides great challenges to the enjoyment and observation of human rights in Uganda inclusive of the right to life, right to privacy, right to freedom of conscience, expression, movement, religion, assembly and association.

Other associated rights directly affected include rights of minorities and the right to health.

Article 21 of constitution provides for the right to equality before the law and freedom from discrimination. Article 21(2) states that a person shall not be

discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion or disability. The Act directly discriminates against not only sexual minorities but also persons who do not fight (report) sexual minorities. This directly violates the provisions of Article 21 constitution. Freedom of discrimination is also provided for under the universal declaration on human rights, the ICCPR, ICESCR and CEDAW to which Uganda is a party.

3.3.3. Archaic draconian Legislations

Uganda still bears a number of archaic draconian legislation that no longer suit developments in human rights arena. The police has used such legislation to deny citizens, the enjoyment of fundamental rights and freedoms.

Such provisions exist in laws such as penal code Act Cap 120, criminal procedure Code Act Cap 116, etc. The police have used provisions such as preventive arrest to deny citizens opportunity to enjoy their rights of association, liberty and speech. Notably, sec 56 penal code Act and sec 26 Criminal Procedure Code Act on preventive arrest which has been used to stop opposition politicians from holding public assemblies.

HURINET – U is concerned that human rights defenders in Uganda are increasingly becoming a target of the state and its agents. In 2013, 18 Black Monday activists were arrested for involvement in anti-corruption campaigns, four offices broken into and valuable equipments and information lost.

Human Rights Defenders have been attacked physically, some such as Journalists face criminal charges on matters relating to their work, civil society activists under black Monday movement have been arrested and detained on frivolous charges. RDCs and District security officers continue to intimidate Human Right Defenders throughout the country. Legislation such as the public order Management Act will further hamper the work of Human Right

Defenders. The operating environment for civil society has continued to be fluid and narrow.

3.3.4. 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 epoch."

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 shillings.

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 of the enemy."

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 district." The penalty for sedition is imprisonment of up to five years or a fine not exceeding fifty thousand shillings. Courts are granted the power to confiscate

printing machines on which seditious material was printed and to prohibit the production6f the publication for up to one year.

The Penal Code also criminalizes the publication of material that is likely to promote sectarianism and imposes a penalty of up to five years' imprisonment 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 ridicule."

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 Minister, 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 Garang. 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 sectarianism.

The petition was merged with a similar petition from the East Africa Media Institute Limited (EAMIL) in October 2006. The Constitutional Court is yet to make a ruling on it.

In June, 2006, James Tumusiime, editor, and Ssemujju Thrahim 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 Kizza Besigye for ethnic reasons. Tumusiime and Ssemigju continue to report to court monthly based on the sectarian charges. The trial is on hold pending a ruling on Mwenda's petition challenging the constitutionality of the law against promoting sectarianism.

The Editor in Chief of the Red Pepper, Richard Tumusiirne 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 bond.

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 where 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 modem 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.

3.3.5. Clamp down on media freedom, freedom of speech expression and movement

The year 2013 experienced great clamp down on media freedom such as the government unlawful siege and closure of the four media houses, namely **monitor publications Ltd (MPL), Kasese Guide Radio, K-FM, Dembe FM** located in Namuwongo and the Red Pepper located at Namanve which were arbitrarily closed down on 20th May, 2013 over the letter written by renegade **General David Ssejussa,** suspension of Journalists, arrests and detention of journalists among others. The clamp down on media freedom contravenes Article 29 constitution which provides that every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media.

3.3.6. Undermining the independence of the Judiciary

Although efforts were made to increase the number of Judiciary Officers in all the court hierarchy, there are key offices which still remain vacant. These include the office of the chief justice and the deputy chief Justice. The Judiciary still continues to be under threat with (if) its decisions not respected. Incidences of such disrespect occurred with the appointment of the CJ which has been on hold, the failure by police to respect court decisions regarding the removal court order restraining the removal of the **Lord Mayer Erias Lukwago** from office and the closure of monitor publications, the taxi drivers' order restraining KCCA from collecting 120,000/=. Such Acts of impurity by leaders have spread to the masses to the extent that the Kyambogo University Staff refused to respect a court order that had reinstated embattled professor Omolo Ndiege to office and they laid down their tools.

3.3.7. Public safety and security

3.3.7.1. Unresolved infernos gutting markets and murders

Since 2010, several tires have gutted markets across the country with no clear circumstance under which they occur. Efforts by Uganda police force to investigate the fires have not yielded known public reports about their causes or solutions. In 2013, there were increased cases of mysterious murders in the District of Masaka, Mityana, Mubende and other Districts. If not addressed, these could be a source of tension among other issues like land, shelter and others.

3.3.7.2. 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 convicted. It outlaws the disclosure of information that may prejudice an investigation concerning terrorism. Finally, the Third Schedule details information protected under legal privilege, but excludes from that "journalistic material which a person holds in confidence and which consists of documents or of records other than documents."

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

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.

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 officials.

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 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 Uganda. The proposed Bill has provisions that reduce the participation of professionals in the control and discipline of journalists 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(l)(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 bill also provides 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.

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

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 powers. 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 Act. 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 f 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 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 b the DPP, to place charges in cases involving serious criticisms of the person of the president. In order to determine whether Uganda's sedition law is constitutional or otherwise, must ask whether our sedition law is based on justifiable legislative objective for overriding other 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 the 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, 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 leader ship 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 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.

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, mat and inept administration. It must advance communication between the governed and those who govern. The press must act as the watchdog for the governed.

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". He rightly concludes;

Defamation is an impossible notion for democracy....a society may or may not treat obscenity or contempt by publication 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 ell recognized inconsistency with democratic principles, many democracies, especially in common law jurisdictions, including Canada, England, Australia, India, and Kenya, have either repealed their sedition laws, or have simply ceased to apply them.

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 earlier noted, that requirement is qualified by what Mulenga J referred to as the "the limitation upon the limitation". In other wards, over and above the requirement to found a 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,* 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"

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 inform of view points. In the first place, the provision seems to assume a homogeneity of the audience in form of the audience inform 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 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 view points 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 wards, 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 with out 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*, 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 protective 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 per Se. 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 of democratic governance with the recognized role of criticizing the government, among others, any measures taken by the government to restrict the media

must be exercised with extreme restraint largely because of the power imbalance characteristic of two. Indeed, as the European court of human rights rightly ruled in the case of *Surek and Ozdemir V Turkey*, the government must always "exercise restraint in resorting to criminal proceeding, particularly where other means are available for replying to the unjustifiable attacks and criticisms of its adversaries". In the same case, where turkey had sought vindicate the criminalization of publications about terrorist organizations, including writings that undermined the "territorial integrity of the republic of turkey or the indivisible unity of the nation" as proportionate, the court further ruled that the public had a right to be informed of a different perspective on the political situation in south east turkey "irrespective of how unpalatable 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*, 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 a re 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. Only two 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 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 concerned". The use of such subjective terms as 'hatred', 'contempt', 'discontent', 'feelings of ill-will' and 'dissatisfaction' without any definitions, renders the law on sedition too vague. Coupled with the chilling effect of criminal prosecution 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 expression.

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,* 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.

A similar but different argument can be sustained against the provision on sedition in the Ugandan penal code act. In seeking to protect only the government officers who are either part of the judiciary, parliament or the executive, the provision appears to view the government from a perspective that runs contrary to the democratic dispensation. Notably missing form 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 a ready political tool of the ruling party for the purposes of oppressing the opposition. Against the background provided, it is possible to turn to our case studies, viz, the vagina monologues and the demonstration against the attempted giving away of the mabira forest.

4.3. The case studies for the freedom of expression

Whereas the fore going 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 challenges; the need for new legal rules to address emerging challenges. 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 has altered the demographic figures between the locals and the foreigners. In the result, racial tensions which were perhaps hitherto at significant levels are only bound to emerge and increase as is the case in economies with 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.

4.3.1. The vagina monologues

According to Apollo Malibuya, 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 Act. I 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 morals.

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 s9ciety. 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? Or, 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 it.

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 wards 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;

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 are.

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 fro 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 cancel 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 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".

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 SCOUL (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 close 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", and "Asians should go" 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 Mules 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 Orentilicher defines it "connotes speech that incites its audience to racial discrimination or hatred, even when it does not entail incitement to violence". According to 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 imp act 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 ho link between persecution and acts of violence.

The history of Indians in Uganda suffered turn 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 properties.

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 cetra.*

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*, 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 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 in the constitutionality practicable sense of the word is a type of type 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.

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 it 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), 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.

Applied in the mabira forest demonstration expressions, one wonders whether, especially in light of the already noted unfortunate history of the people of Indian extraction in Uganda, such expressions did not offend the constitutional principles of free expression in a free and democratic society. Whereas it is not within the scope of this paper to make free expression determination in respect of the mabira forest demonstration, it ill suffice to contend that the immediately foregoing exposition makes a compelling case for a review of the media laws of Uganda especially in the wave of the blossoming of the media industry.

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.

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 any 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 owned 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 filled 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 baring the media and the public auditing the performance of government. This not 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 - U 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.

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 regulatory 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.

5.2. Recommendation

5.2.1. In view of above, HURINET – U recommends the following (Recommendation)

i. To the government

- The government should respect the separation of powers and the independence of the judiciary.
- The crisis in the judiciary be addressed with immediate effect through the appointment of the CJ and Deputy CJ
- The government should follow state obligations under the national objectives and directive principles of state policy V which obliges the state to respect the independence of CSOs and HRDs.
- The government should give priority to civil education and expedite the development of the civic education policy to enable Ugandans participate meaningfully in governance issues.
- The government should investigate, identify and prosecute the members of the police force and the stick welding pain clothed persons working alongside police that perpetrate human rights violations during demonstrations.
- Government upholds the independence of the media and the practioners must be accorded their liberty in order to effectively inform the public without interference.

ii. To the parliament

- Human rights agencies such as the Uganda Human Rights Commission, equal opportunities commission, human rights organizations and the general public should be consulted before the bills are passed into law.
- The parliament should audit all bills before it to ensure that they conform to international standards and the Human Rights Checklist which it developed and adopted in 2013.

- Parliament in conjunction with Uganda law Reform Commission should expedite the process of reviewing and amending laws that one inconsistent with the constitutions like the penal code Act, criminal procedure Code Act and the public order management Act.

iii. 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 amendments and to comply with media freedom standards acceptable in a free democratic society.

iv. The European Union

Delegation in Uganda and all other members of the European Union should use their relation with the government of Uganda to demand for respect of media freedom and protection of journalists as human rights defenders as required of them by £ U guidelines on the protection of human rights defenders.

5.3. Conclusion

The role of the freedom of expression to the democratization process cannot be over emphasized. For fledging democracies, the challenges remain high as the principles that governs the proper regulation of the right to freedom of expression are subtle and the ever difficult to exhaust. In Uganda where the provisions of the constitutions and the legislative provisions affecting the freedom of expression remains in tension, attainment of a reasonable standards 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 a given country but the existence of an enabling legal regime and an appropriate political climate for free expression.

Human rights and media watching 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 official (even subjects the government warns is taboo, most notably its war with the.....)

The government should therefore streamline the mandate for the myriad media regulatory bodies. Laws governing the operation of the media and those that unfairly criminalize certain acts by the media must be repeated 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 that is police should act in tandem to promote freedom of expression.

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