

Media Regulation and Practice in Uganda

A Journalists' Handbook

Second Edition



Paul Kimumwe

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In association with



**Collaboration on International ICT
Policy for East and Southern Africa**

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Preface

Since the publication of the first edition in 2014, there has been a lot of development in the media and communication regulatory framework, globally, regionally, and nationally. This has been driven by the recent technological developments, especially the Internet that has significantly disrupted the media and communication landscape. The traditional media as we know it has ceased its monopoly on the news and information flow. Anyone with access to a computer and an internet enabled phone can source, disseminate information as well as express their opinions to the entire world via a blog or social media.¹ Many traditional media and journalists also have very strong online presence, with large followings.

Inevitably, the right to freedom of expression, especially online has now become a big advocacy issue as governments across the world, but mainly in Sub-Saharan Africa, have responded to this exponential growth in internet usage by doubling control measures and sanctions such as restrictive laws and policies as well as ordering Internet disruptions, including complete internet shutdowns in order to disable online communication.

By 2019, at least 24 African countries - Algeria, Burundi, the Central African Republic (CAR), Cameroon, Chad, DRC, Congo (Brazzaville), Egypt, Eritrea, Equatorial Guinea, Gabon, Ethiopia, Libya, Mauritania, Niger, Togo, Zimbabwe, Uganda, Mali, Morocco, the Gambia, Sierra Leone, Somalia, and South Sudan were reported to have ordered internet disruptions.²

In April 2018, the Ugandan communications regulator, Uganda Communications Commission (UCC) directed online data communication service providers, that include; online publishers, online news platforms and online radio and television operators, to apply and obtain authorisation from the commission within a period of one month or risk having their websites and/or streams being blocked by Internet Service Providers (ISPs).³

¹ Article 19 (2013) *The Right to Blog* <https://www.article19.org/wp-content/uploads/2018/02/Right-to-Blog-EN-WEB.pdf>

² CIPESA 2019: *Despots and Disruptions: Five Dimensions of Internet Shutdowns in Africa* <https://cipesa.org/2019/03/despots-and-disruptions-five-dimensions-of-internet-shutdowns-in-africa/>

³ *The Registration Of Online Data Communication And Broadcast Service Providers notice* at http://www.ucc.co.ug/wp-content/uploads/2018/03/UCC_ONLINE-DATA-COMMUNICATIONS-SERVICES.pdf

However, Uganda was only taking cue from Tanzania which adopted the Electronic and Postal Communications (Online Content) Regulations in March 2018 making it compulsory for bloggers and owners of other online forums such as discussion forums and online television and radio streaming services to register with the regulator.⁴ In the same year, the Kenyan Film and Classification Board (KFCB) is reported to have issued directives requiring anyone filming and posting videos to their social media accounts to obtain a license failure of which would attract a heavy penalty of Ksh100,000 (GBP 739) or imprisonment of up to five years.⁵

To respond to the growing outcry against government restrictions, in 2016, the United Nations passed a non-binding resolution on “the promotion, protection, and enjoyment of human rights on the Internet.”⁶

The resolution affirms that the same rights that people have offline must also be protected online, in particular freedom of expression, which is applicable regardless of frontiers and through any media of one’s choice, in accordance with articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; and calls upon all states to promote and facilitate international cooperation aimed at the development of media and information and communication facilities and technologies in all countries.⁷

The above developments have therefore had an influence in the content of this edition. I have therefore included updates on the various laws and policies on media and communication regulation, including cases to illustrate how the various provisions affecting both offline and online media have been used by the government. Amendments to some laws such as the Uganda Communications Act (2017), the Anti-Terrorism Act (2015) and those that have been annulled such as the Public Order Management Act 2013, have also been highlighted. The handbook also has a section on theoretical framework to media regulation.

⁴ *Shrinking Civic Space in East Africa* https://cipesa.org/?wpfb_dl=299

⁵ *Article 19 (2018) Kenya: Censorship by film classification board limiting free expression* <https://www.article19.org/resources/kenya-censorship-by-film-classification-board-limiting-free-expression/>

⁶ https://www.article19.org/data/files/Internet_Statement_Adopted.pdf accessed on 20th December 2019

⁷ <https://www.osce.org/fom/250656> accessed on 20th December 2019

While writing this edition, I received valuable feedback on the 1st edition of the handbook from a wide range of people, including students, lecturers and rights activists, both on the content of the handbook and other emerging trends in the media and communication regulatory sector. These, including Dr. Adolf Mbaine and Sulaiman Kakaire – Makerere University, Edrine Wanyama and Victor Kapiyo - CIPESA, Jan Ajwang – Media Focus on Africa, Catherine Anite – Freedom of Expression Hub, Apolo Kakaire – Africa Centre for Media Excellence. As you can imagine, many names have been omitted.

In a special way, I want to thank the Collaboration on International ICT Policy for East and Southern Africa (CIPESA) for support in revising the handbook.

I am grateful to all the scholars whose works I have cited. To the students and lecturers who found the handbook useful, thank you for the feedback. I want to thank my reviewers, Victor Kapiyo (CIPESA) and Benon Herbert Oluca (GIJN-Africa). And my graphic designer – Issa Muwonge.

Lastly, my family – wife and children.

Kampala, Uganda – May 2020

To Margo Wood (RIP)

You were a true inspiration and fountain of humanity

1.0 AN INTRODUCTION TO MEDIA REGULATION

Regulation of the media presents special problems. On the one hand, the right to freedom of expression requires that the state refrain from interference in peoples' enjoyment of their rights. This is quite challenging given that the media has a big influence on public opinion through its critical reporting and accountability mechanisms, thus becoming an attractive target for control. Governments often seek to transform the media from watchdog to lapdog, by making the work of independent journalists and publications impossible and sometimes illegal.⁸

On the other hand, Article 2⁹ of the International Covenant on Civil and Political Rights (ICCPR) places an obligation on States to “adopt such legislative or other measures as may be necessary to give effect to the rights recognised by the Covenant.” This means that States are required not only to refrain from interfering with rights but also take positive steps to ensure that rights, including freedom of expression, are respected. In effect, governments are under a duty to ensure that citizens have access to diverse and reliable sources of information on topics of interest to them.¹⁰

Any system of media regulation should therefore be very conducive to freedom of expression, pluralism, and diversity of the media. This requires that the legal, policy and regulatory framework that is adopted seeks to; protect and promote freedom of expression and information; is based on international best practice standards and developed in participation with civil society.¹¹

⁸ ARTICLE 19 (2010) *Memo on the Press and Journalists Amendment Bill 2010*

⁹ Article 19 (2) of the ICCPR states that; “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.”

¹⁰ ARTICLE 19 (2010) *Memo on the Press and Journalists Amendment Bill 2010*

¹¹ UNESCO (2008) *Media Development Indicators: A framework for assessing media development; Paris, France.*

Additionally, the media regulation framework should include self-regulatory mechanisms which promote freedom of expression including codes of conduct, media councils and standard-setting bodies operated by the media itself. Where a country has no legal guarantees of media freedoms and none in draft, there needs to be a clear public policy on the media that complies with the relevant international standards.¹²

Additionally, the media regulation framework should include self-regulatory mechanisms which promote freedom of expression including codes of conduct, media councils and standard-setting bodies operated by the media itself. Where a country has no legal guarantees of media freedoms and none in draft, there needs to be a clear public policy on the media that complies with the relevant international standards.¹³

¹² *Ibid*

¹³ Mendel, T (2011) *Public Service Broadcasting: A Comparative Legal Survey (2nd Ed)*; UNESCO, Paris, France

1.1 Theoretical Frameworks to Media Regulation

Media theory refers to the complex of social-political-philosophical principles which organize ideas about the relationship between media and society.¹⁴ Within the media theories are what is referred to as the normative theories, first proposed by Fred Siebert, Theodore Peterson and Wilbur Schramm in their book called “Four Theories of the Press.” These included Authoritarian, Libertarian, Social Responsibility and Soviet Communist Theory of the Media. Two other theories – Democratic-Participant and Development Media Theory were later added by Denis McQuail.¹⁵

Normative theories describe an ideal way for a media system to be controlled and operated by the government, authority, leader and public.¹⁶ It is important to note here that normative theories are more focused on the relationship between the media and the Government than the media and its audience; and about the ownership of the media and who controls the press or media in the country.¹⁷

1.1.1 Authoritarian Theory

The authoritarian theory holds that man is weak and fallible, superseded historically and normatively by the collective society or state; that knowledge is either difficult or arcane, perhaps divinely inspired or revealed; and that truth is absolute.¹⁸ The authoritarian theory originated from the philosophy of Plato (407-327 B.C.)¹⁹ and came into being in the authoritarian climate of the late Renaissance, soon after the invention of printing. During that time, the press was seen as a powerful tool and those in power utilised their powers to convey only the information they wanted the public to have.

At the time, private media ownership was partially permitted but this permission could be withdrawn anytime once the obligation to support the royal policy was considered to have been dishonored by the licensee²⁰ The media was thus seen as an instrument to enhance the ruler’s power in the country rather than any threats. The authorities had all rights to permit any media and control it by providing license to the media and as well as the liberty to make censorship of certain content.²¹ No one

¹⁴ Media Regulation https://www.le.ac.uk/oerresources/media/ms7501/mod2unit11/page_07.htm

¹⁵ McQuail, D (1987) *Mass Communication Theory: An Introduction*. London: SAGE Publications

¹⁶ Communication Theory <https://www.communicationtheory.org/normative-theory-four-theories-of-the-press/>

¹⁷ *Ibid*

¹⁸ John Nerone (2018) *Four Theories of the Press* https://www.academia.edu/37361976/Four_Theories_of_the_Press

¹⁹ Authoritarian Theory of Mass Communication <https://www.businessstopia.net/mass-communication/authoritarian-theory-mass-communication>

²⁰ Calvin Lucas (undated) *Theories of Media and Freedom of Expression* https://www.academia.edu/26009296/theories_of_media_and_freedom_of_expression

²¹ Authoritarian Theory <https://www.communicationtheory.org/authoritarian-theory/>

could work in the media and communication industry without obtaining permission or a license issued by the state. The main purpose of this was to ensure that the news media is void of any material that can in any form threaten the security of the state, scandalise or offend the dominant moral or socio-political values of the ruling class values.²²

This thinking and theory formed the basis of many national media control systems at the time, although some elements of it persist in some countries. Among the tools of control that were and are still being employed to control the media and communication sector include repressive laws that criminalise certain forms of speech and provide for punitive measures including, heavy taxation, registration and licensing of journalists, as well as suspension or revocation of broadcasting and publishing licenses, among others.

1.1.2 The Libertarian Theory

The libertarian or free press theory is the opposite of each of the tenets of the authoritarian theory.²³ It has its origin in the libertarian thoughts of Europe during the 16th century after the invention of printing press and after the press movement.²⁴ It was advocated by many renowned personalities like Lao Tzu, John Locke, John Milton, John Stuart Mill, Thomas Jefferson, etc. and is still famous in England and America.²⁵

According to this theory, people are rational beings capable of distinguishing between the truth and false and between good and evil. The theory postulates that all individuals have an equal right to news and information, whether social, political or economic as well as the right to express themselves through the media and mass communication.²⁶ Individuals should be free to hold opinions, express them freely as well as publish what they like.²⁷ The theory advances complete freedom of public expression and of economic operation of the media, rejects any form of interference by government in any aspect of the press and instead advocates for a well-functioning free market that should resolve all issues of media obligation and social need.²⁸

²² Mohammed S. AL-Ahmed (1987) *The six Normative Theories and the role of Social, Political and Economic forces in shaping Media Institutions and Content: Saudi Arabia - a Case Study*, PhD Dissertation

²³ John Nerone (2018) *Four Theories of the Press* https://www.academia.edu/37361976/Four_Theories_of_the_Press

²⁴ *Libertarian Theory of Mass Communication* <https://www.businessstopia.net/mass-communication/libertarian-theory-mass-communication>

²⁵ *Ibid*

²⁶ Mohammed S. AL-Ahmed (1987) *The six Normative Theories and the role of Social, Political and Economic forces in shaping Media Institutions and Content: Saudi Arabia - a Case Study*, PhD Dissertation

²⁷ *National Open University of Nigeria (2006) Advanced Theories of Mass Communication*

²⁸ *Media Regulation*: https://www.le.ac.uk/oerresources/media/ms7501/mod2unit11/page_07.htm

The media is therefore seen as playing a watchdog role over government and as a critical source of information as well as being a platform of the expression of divergent opinions.²⁹

Unlike the Authoritarian system, the media under a libertarian system is not owned by the ruling forces, but individuals have the right to own, operate and distribute media products. Journalists are assumed to have the right to gather any information from any source within or outside the national boundaries without any hindrance.³⁰

However, the theory doesn't advocate for the freedom to defame, to indulge in obscenities, assault individual rights to privacy or commit sedition. Nor does it advocate for media immunity towards the rule of law, but rather, the media to be partners with the ruling class in the search for the truths, rather than as tools for the government.³¹

1.1.3 The Social Responsibility Theory

The Social responsibility theory owes its origin to the Hutchins Commission on Freedom of the Press, set up in the United States of America in the 1947 to re-examine the concept of press freedom.³² The commission listed 13 recommendations, ranging from guaranteeing institutionalized freedom of the press (and of radio broadcasting and motion pictures) to maintaining competition through antitrust laws.³³ One of the recommendations was that "agencies of mass communication accept the responsibility of common carriers of information and discussion." This became the basis of the concept of social responsibility. The theory is therefore considered as a modified version of free press theory placing greater emphasis upon the accountability of the media to society.

According to this theory, the media is supposed to assume the role of being the fourth arm of government, and just like the three arms (executive, judiciary and legislature) are in principle, interdependent, but checkmating each other, the media too, is expected to play both complementary roles at the same time a watchdog role over the three arms.³⁴ The journalists ought to act as the watchdog on behalf of the public on other centers of powers in society.

²⁹ Calvin Lucas (undated) *Theories of Media and Freedom of Expression* https://www.academia.edu/26009296/theories_of_media_and_freedom_of_expression

³⁰ Mohammed S. AL-Ahmed (1987) *The six Normative Theories and the role of Social, Political and Economic forces in shaping Media Institutions and Content: Saudi Arabia - a Case Study*, PhD Dissertation

³¹ National Open University of Nigeria (2006) *Advanced Theories of Mass Communication*

³² National Open University of Nigeria (2006) *Advanced Theories of Mass Communication*

³³ Rantanen, Terhi (2017) A "crisscrossing" historical analysis of four theories of the press. *International Journal of Communication*, 11. pp. 3454-3475. ISSN 1932-8036; http://eprints.lse.ac.uk/85318/1/Rantanen_A%20crisscrossing_Cover.pdf

³⁴ Paul, U. Obagwu, et al (2019) *Social Responsibility Theory of the Press: A Critique of Its Application and Constraints*; http://www.internationaljournalcorner.com/index.php/ijird_ojs/article/view/149989/104632

The main duty of the media is to raise conflict to the plane of discussions and it (media) can be used by anyone who has an idea to express – but is forbidden from invading privacy rights or disrupting vital social structures or interests.³⁵ The main differences between the libertarian and social responsibility theories is the demand for the media to be more socially responsible, and this could be enforced by external institutions if need be.³⁶

Proponents of the social responsibility theory argue that media regulatory bodies should be set up by the media practitioners themselves, and journalists are required to strictly adhere to the provisions within their own codes of ethics and professional standards in journalism. However, the government has the right to intervene in the public interest under some circumstances.³⁷

1.1.4 The Soviet-Communist Theory

The Soviet Communist model is seen as an extreme application of authoritarian ideas—in that the media are totally subordinated to the interests and functions of the state.³⁸ The main difference between authoritarian and communist systems is ownership. In authoritarian systems, the press can be privately owned as opposed to complete state ownership in communist systems.³⁹ And unlike the social responsibility system, the Soviet’s media are a party- owned system which prevents the cultural market from being swamped with commercialism. The media are thus situated and expected to propagate socialism and help to spread communism inside, as well as outside the Soviet Union.⁴⁰

The soviet media theory is common to Leninist principles which are based on the Karl Marx and Engel’s ideology.⁴¹ The government controls the media as a whole and communication to serve the working class and their interests. Under the soviet communist theory, the state has total power to control any media for the benefits of people.⁴²

³⁵ National Open University of Nigeria (2006) *Advanced Theories of Mass Communication*

³⁶ *Ibid*

³⁷ Calvin Lucas (undated) *Theories of Media and Freedom of Expression* https://www.academia.edu/26009296/theories_of_media_and_freedom_of_expression

³⁸ Jennifer Ostin and Anthony T.H Fung (2002) *Beyond the Four Theories of the Press: A New Model of National Media Systems* https://www.researchgate.net/profile/Jenny_Ostini/publication/237492013_Beyond_the_Four_Theories_of_the_Press_A_New_Model_of_National_Media_Systems/links/00b4952d125a6988c1000000/Beyond-the-Four-Theories-of-the-Press-A-New-Model-of-National-Media-Systems.pdf

³⁹ *Ibid*

⁴⁰ Mohammed S. AL-Ahmed (1987) *The six Normative Theories and the role of Social, Political and Economic forces in shaping Media Institutions and Content: Saudi Arabia - a Case Study*, PhD Dissertation

⁴¹ <https://cla.purdue.edu/academic/english/theory/marxism/modules/marxideology.html>

⁴² Calvin Lucas (undated) *Theories of Media and Freedom of Expression* https://www.academia.edu/26009296/theories_of_media_and_freedom_of_expression

1.1.5 Development Media Theory

The Development media theory takes various forms but essentially proposes that media freedom, while desirable, should be subordinated (of necessity) to the requirements of economic, social and political development.⁴³ This theory differs markedly from the others in that it is derived not from the developed world, but from the Third World.⁴⁴ The media are seen as public institutions serving the peoples' needs, and subject to government intervention in case of deviation from development needs. The content of the media should therefore be less concerned with entertainment and more with development on the national and regional levels.⁴⁵ The theory argues that journalists and other media workers have responsibilities as well as freedom in their information gathering and dissemination tasks, but that media freedom needs to be open to economic priorities and development of society.⁴⁶

1.1.6 Democratic – Participant Media Theory.

The democratic-participant media theory is a variation of the libertarian, soviet and social responsibility media theories. It emerged as a result of criticism of the increasing commercialization and monopolization of private media, accompanied by the centralization and bureaucracy of public media.⁴⁷ The democratic-participant media theory revolves around the needs, interests and aspirations of the active audiences/citizens in a political society, including the right to accurate information, the right to reply, the right to use the media for interaction in small communities, groups of interest and subcultures. The theory rejects the need for uniformed, centralized, costly, highly professional media controlled by the government, which do not express properly the society's needs, but only the needs of their owners and political institutions.⁴⁸

The main tenets of this theory aim to achieve an effective participative democracy through information, giving people free access to the media, giving people's wishes and needs priority in media production, reducing the ever-increasing professionalism which dilutes the content of the messages and hinders an effective communication process with genuine feed-back from taking place.⁴⁹

⁴³ Media Regulation; https://www.le.ac.uk/oerresources/media/ms7501/mod2unit11/page_07.htm

⁴⁴ Mohammed S. AL-Ahmed (1987) *The six Normative Theories and the role of Social, Political and Economic forces in shaping Media Institutions and Content: Saudi Arabia - a Case Study*, PhD Dissertation

⁴⁵ *Ibid*

⁴⁶ McQuail, D (1983) *Mass Communication Theory: An Introduction*. London: SAGE Publications.

⁴⁷ Dorota Piontek (2016) *Normative Media Theories: The media in new democracies* http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.ojs-doi-10_14746_pp_2016_21_2_4/c/7238-7257.pdf

⁴⁸ *Ibid*

1.2 Forms of Media Regulation

1.2.1 Self-Regulation

Self-regulation is internationally acknowledged as the preferred means of print media regulation. Under this model, the media establishes its own regulator, which adopts media codes of conduct, and examines complaints against the media. This model is widely used for regulation of print media. For example, the Press Complaints Commission (PCC) in the UK adopts the editors' standards and deals with complaints for its violation. Here in Africa, the self-regulatory model has been adopted in Tanzania, with the Media Council of Tanzania and more recently, in Rwanda with the Rwanda Media Commission that was set up in 2013. At the heart of this model is the respect for the provision of the journalism code of conduct, respect for the established peer-review mechanism and professional development.

The special mandates on the right to freedom of expression, appointed by mechanisms within the United Nations (UN), the Organisation for Security and Cooperation in Europe (OSCE), and the Organisation of American States (OAS), have warned of the risk of interference in the work of regulatory bodies and emphasised the crucial importance of their independence.⁵⁰ The Declaration of principles on freedom of expression in Africa endorses media self-regulation declaring that effective self-regulation is the best system for promoting high standards in the media.⁵¹

1.2.2 Incentivised model of Media Regulation

In this model, while the regulation is still voluntary, statutory incentives are given to the media for adhering to the system. The media regulation in Ireland exemplifies this model. The 2009 Defamation Act of Ireland⁵² sets out that in court proceedings considering publication of allegedly defamatory statements the court shall consider such matters as a statement or determinations by the Press Council published in the periodical. Thus, a track record of compliance becomes important for a publication to demonstrate its accountability and responsibility in court. Finally, the Defamation Act gives incentives for the making of an apology. For example, in making an award of damages it sets out that the court shall have regard to "offering or making any apology, correction or retraction by the defendant to the plaintiff in respect of the defamatory statement."⁵³ The Irish Press Council can expel members for

⁴⁹ Mohammed S. AL-Ahmed (1987) *The six Normative Theories and the role of Social, Political and Economic forces in shaping Media Institutions and Content: Saudi Arabia - a Case Study*, PhD Dissertation

⁵⁰ *Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, adopted 18 December 2003.*

⁵¹ *Principle IX, 3.*

⁵² *Ireland Defamation Act, 2009* <http://www.irishstatutebook.ie/eli/2009/act/31/enacted/en/print.html>

⁵³ *Ibid*, section 31(4d)

non-compliance, which would mean that the publication could not use Press Council Membership to demonstrate evidence of their standards and accountability for the courts in relation to defamation proceedings.

1.2.3 Co-Regulation

In this model, a statute establishes an independent regulator and gives it powers to set up professional standards for all media and impose sanctions for violations of them. The regulator is independent from the state. For example, in Denmark, the Media Liability Act⁵⁴ requires that “the content and conduct of the mass media shall be in conformity with sound press ethics”⁵⁵ and sets out a right of reply.⁵⁶ The Press Council issues advisory rules on press ethics. The Council is composed of members from the industry and the public and presided by a judge from the Danish Supreme Court.

Closer home, Kenya provides a perfect example of co-regulation as the Media Council Act 2013,⁵⁷ provides for the establishment of media council⁵⁸ to; promote and protect the freedom and independence of the media, prescribe standards of journalists, media practitioners and media enterprises as well as establishing media standards, regulating and monitoring compliance with these standards.⁵⁹

1.2.4 Statutory Regulation

In this model, the media regulators are not independent from the state. In addition, the statute sets up the professional standards.

As these models (co-regulation and statutory) are based on statutes, the regulation amounts to interference with media freedom and must comply with Article 19 (3) of the International Covenant on Civil and Political Rights. More specifically the proposed regulation should be necessary. When the European Court of Human Rights (ECHR) applies the test of “necessity,” it determines whether the interference corresponds to a “pressing social need” and whether it is proportionate to meet that need. The ECHR has explained that “necessary” is not synonymous with “indispensable”, but it does not have the flexibility of such expressions as “useful”,

⁵⁴ *Media Liability Act, 2014* <https://research.uta.fi/ethicnet/country/denmark/the-media-liability-act/>

⁵⁵ *Ibid*, section 34

⁵⁶ *Ibid*, section 36

⁵⁷ *Media Council of Kenya Act, 2013* <http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/MediaCouncilAct2013.pdf>

⁵⁸ *Ibid*, section 5

⁵⁹ *Ibid*, section 6

“reasonable” or “desirable”. The proportionality is a complex notion, made of many components in the ECHR’s case law: if the need could be achieved by less restrictive means, the restriction will fail the test of proportionality; if the measure is unsuitable for achieving the legitimate objective, the measure will fail the test of proportionality. This model has been adopted by many countries in Africa including Uganda, with the basic argument that the media is still un-developed to be allowed to regulate itself.

Over the years, states have adopted different forms of media and communication regulation – ranging from self-regulation, incentivized regulation, co-regulation and statutory or a combination of each. More developed democracies have tended to enact legislations that guarantee media freedom as well as permit the media regulation itself, while the more dictatorial have embraced the statutory form of regulation by passing legislations that effectively seek to control the media.

2.0 MEDIA REGULATION IN UGANDA

2.1 Statutory Regulation

The media and practice of journalism in Uganda is primarily regulated by the Press and Journalists Act (2000) as amended. Enacted in 1995, the Act was intended to ensure the freedom of the press, to provide for a council responsible for the regulation of mass media and to establish an institute of journalists of Uganda.

The Act repealed the Newspaper and Publications Act (Cap 305) and the Press Censorship and Correction Act (Cap 306) Laws of Uganda, which were very problematic for media freedom. Specifically, section 9 of the Press and Censorship Act gave sweeping powers to the Minister to order a newspaper proprietor to retract published statements which the minister would have thought false or distorted.

The Press and Journalists Act establishes several bodies mandated to regulate the media sector in Uganda, and provides for the licensing of journalists, including conditions on who may work as a journalist, for the registration of editors, for a complaints system for journalists, a code of conduct and various sanctions for unprofessional conduct.

The Press and Journalists Act however contains several provisions that breach fundamental aspects of the right to freedom of expression. The oversight bodies established by the Act specifically, the Media Council and Disciplinary Committee,⁶⁰ lack independence from the government. Licensing of journalists and placing conditions on who may practice journalism are not permitted under international guarantees of freedom of expression. In addition, the complaints system envisaged by the Act fails to meet international standards in various respects, including that it is not rooted in clear and appropriate rules regarding what is prohibited.⁶¹

⁶⁰ Section 8 and 30 respectively of the Press and Journalists Act 2000

⁶¹ ARTICLE 19 (2010) Memo on the Press and Journalists Amendment Bill 2010

But while the Press and Journalist Act was intended primarily to regulate the print media, it contains several provisions, such as the one about registration, that applies to journalists in the broadcast media and online as well. For instance, section 28 (3) states that:

“No person shall practice journalism (in Uganda) unless he is in the possession of a valid practising certificate issued under this section.’ Under clause 5 of this section: ‘A person is deemed to practice journalism if he is paid for the gathering, processing, publication or dissemination of information and such person includes a freelance journalist.”

Section 15(2) further specifies the qualification of a journalist as; someone with a degree in journalism; a degree in any field with an additional qualification in journalism.

*“A person shall be eligible for full membership of the institute if—
a) he or she is a holder of a university degree in journalism or mass communication; or
b) he or she is a holder of a university degree plus a qualification in journalism or mass communication and has practiced journalism for at least one year.”*

Section 27(3) of the Press and Journalists Act bars anyone from practicing journalism (including as a producer) in Uganda unless that person is in possession of a valid practicing certificate.

Section 27 (4) specifies the sanctions.

“A person who contravenes subsection (3)⁶² commits an offence and is liable on conviction to a fine not exceeding three hundred thousand shillings and in case of failure to pay the fine to imprisonment for a period not exceeding three months.”

For any practicing journalist or those intending to do journalism, it is important to take note of these provisions – draconian as they are. Remember, it is still an offence under this act to violate the above provisions.

⁶² Section 27(3) states that

There have been several efforts to contest the constitutionality of these provisions,⁶³ without much success. However, journalists and media houses have also openly opposed government efforts to implement certain provisions of the Act. For example, in 2016, the Media Council made some futile attempt to have all practicing journalists register, a move that was opposed and ignored by many journalists and media houses.⁶⁴

However, besides the legal provisions, government has used other means, such as imposing economic sanctions and denial of advertisements, closures of media houses, physical attacks, threats, and harassment of journalists to bring media houses and journalists to “order.”

For example, in 1993, the government slapped an advertising ban on The Monitor (now Daily Monitor) as punishment for its critical reporting on the government. The ban was later lifted in 1997, but the damage had already been done.

In May 2013, the government ordered the suspension of operations of two media houses – Red Pepper and Monitor Publications for 11 days, together with their subsidiaries leading to massive losses in revenue. The closure followed the publication of a letter by Daily Monitor, purported to have been written by the then Coordinator of Intelligence, Gen. David Sejusa to his junior instructing them to investigate allegations of an assassination plot against those opposed to the installation of Brigadier Muhoozi Kainerugaba (President Museveni’ son) as the president’s heir.

In 2016, parliament “kicked” out all journalists without a first degree and at least three years’ experience in journalism. In its directive, news editors were requested to forward a list of journalists that would designate to cover parliamentary business and one of the qualifications was a bachelor’s degree in journalism, communication or a related field and practiced journalism for at least 3 years.⁶⁵

The qualification and experience requirement by parliament is in line with section 15(2) of the Press and Journalist Act that provides for the qualification of a journalist as; someone with a degree in journalism; a degree in any field with an additional qualification in journalism.

⁶³ 1997 Constitutional Petition No. 7/97; *Uganda Journalists safety Committee and Others Vs the Attorney General*

⁶⁴ HRNJUganda (2016) *Uganda’s plot to forcefully register journalists riles human rights activists* <https://hrnjuganda.org/?p=2883>

⁶⁵ *New Vision* (2016) *Parliament ejects journalists without degrees* https://www.newvision.co.ug/new_vision/news/1414713/parliament-ejects-journalists-degrees

2.2 The Attempts to Self-Regulate

Having been frustrated by the repressive statutory media council, the media, under the leadership of Panos Eastern Africa initiated a self-regulatory mechanism, which saw the establishment of the Independent Media Council of Uganda (IMCU), officially launched by its Board Chair, the Rt. Hon. Kintu Musoke in 2008.

The IMCU raised a lot of hope mainly because it was organic, and an initiative by the media themselves. It developed a code of conduct which was endorsed by media practitioners after nationwide consultations.⁶⁶ However, there will always be questions on the ability and capacity of the media not only to put their houses in order, but also to develop a functional peer review mechanism. This is because the self-regulatory mechanism assumes the existence of (and seeks to promote) a certain level of maturity in the professional ranks as well as a culture of civility and respect for both media peers and the society in general.⁶⁷ There is no doubt however that the media in Uganda today is more professional and principled than ever before – of course with some exceptions – and capable of regulating itself.⁶⁸

There have also been calls for the statutory media council to cede some of its regulatory functions to the IMCU or better still, have the Press and Journalists Act amended to provide for a self-regulatory mechanism.⁶⁹ According to Moses Kyetume, the Secretary to the statutory Media Council, it is important that both the MCU and IMCU to come together and find common ground and work together. He notes that while the interests of both councils and modus operandi differ, they are serving the same person – the general public.”⁷⁰

The IMCU has however also had its fair share of challenges, primarily the lack of funding and support from within the media fraternity, which saw the secretariat close its offices in 2012 and start operating remotely from the Secretary’s⁷¹ home.

⁶⁶ See Appendix I

⁶⁷ Kimumwe. P., (2012) *Isn't it time for the govt to let the media regulate itself?*; Daily Monitor Monday, September 10 2012

⁶⁸ *Ibid*

⁶⁹ ACME (2018) *New study finds majority support for media self-regulation in Uganda* <https://acme-ug.org/2018/05/04/new-study-finds-majority-support-for-media-self-regulation-in-uganda/>

⁷⁰ *New Vision* (2019) *Media Council of Uganda: The task ahead* https://www.newvision.co.ug/new_vision/news/1509775/media-council-uganda-task-ahead

⁷¹ *Mr. Haruna Kanaabi*

The IMCU can be said to have a lot of good will (at least verbally), but if the media fraternity however wants the government to give them a chance of regulating themselves, they must give the necessary support to the IMCU to revive it – including financing from the media houses and adhering to the code of conduct as well as encouraging the public to refer cases of breach of the code of conduct by the journalists to the IMCU for arbitration instead of seeking redress in the courts of law. The IMCU needs to be seen to be acting for it to attract public support.

As the debate on the best approach to media regulation in Uganda continues, there have been other efforts by the media to promote self-regulation and professionalism, including the formation of associations such as the National Association of Broadcasters, Uganda Journalists Association, the Uganda Online Media Publishers Association and Independent Online Journalists' Association Uganda (INDOJA-U) among others. There have also been efforts to revive the Editors Guild to lead and guide media houses internal regulatory mechanisms including the development of in-house codes of ethics and editorial policies.⁷²

⁷² *New Vision (2019) Media houses commit to work together*
https://www.newvision.co.ug/new_vision/news/1504099/media-houses-commit

3.0 NATIONAL LAWS AFFECTING MEDIA AND FREEDOM OF EXPRESSION IN UGANDA

Besides the Press and Journalists Act, Uganda has several other laws and policies with provisions that directly affect how the media works and the journalism practice. These include the Constitution, that provides for the right to freedom of expression including that of the media, the Penal Code, the Regulation of Interception of Communications Act, the Communications Act, among others, as have been discussed below.

3.1 The 1995 Constitution

The freedom of the media and expression is expressly provided for in the 1995 Uganda Constitution, which is the supreme law of the land. Article 29(1) (a) of the Ugandan Constitution states that:

“Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media”

The right to seek; receive and access information, which is the backbone of any democracy and the enabler of a free media, is also provided for in article 41, which states that;

“(1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person;

“(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.”

We need to note here however, that freedom of expression is not absolute. Thus, even with the above two articles in our constitutions, article 43 provides caveats to their enjoyment thus;

(1) "In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest";

(2) "Public interest in this article shall not permit – (a) political persecution; (b) detention without trial; (c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution."

The challenge though, has always been in the vagueness of these provisions, as they provide for wider interpretations. There are still questions on who determines what is in the public interest.

Another constitutional provisions that journalists must be well conversant with is article 27, regarding privacy of persons. While conducting investigations for stories and unearthing the truth, journalists use several methods that include posing as undercover investigators, hidden cameras/listening devices and in some instances, impersonation. In the process, some of these approaches' border on invading peoples' privacy. Article 27(2) seeks to protect the privacy of individuals and states thus,

"No person shall be subjected to interference with the privacy of that person's home, correspondence, communication or other property."

As a tort or civil wrong, invasion of privacy can be defined as the wrongful and unwarranted intrusion into or publicizing of someone's private affairs by another person or the government.⁷³ Depending on the jurisdiction, invasion of privacy can lead to jury trials and potential claims for compensatory and punitive damages including injunctions. It also places judges in the unfamiliar and uncomfortable role as "editors" of last resort.⁷⁴

⁷³ Amy Hackney Blackwell (2008) *Essential Law Dictionary*; Sphinx Publishing; Naperville, Illinois, USA

⁷⁴ John A. Bussian and Paul J. Levine (2004) *Invasion of Privacy and the Media: TeRight "Go Be Let Alone"*

<http://www.floridabar.org/DIVCOM/PI/RHHandbook01.nsf/1119bd38ae090a748525676f0053b606/dMc00ac22467b7f5852569cb004cbc2a>
accessed on 5th February 2014.

In November 2010, High Court judge, Vincent Musoke-Kibuka issued injunction orders against the Rolling Stone tabloid from further publication of names or pictures of anyone the tabloid perceived to be gay, lesbian or homosexual in general as this would tantamount to an infringement or invasion of the right to privacy of those persons. In its October 2010' edition, the Rolling Stone had published names, photos and address of 100 people that it called the country's "generals" of the gay community in Uganda.

The temporary injunctions were granted following an application by Sexual Minorities Uganda (SMUG), a pressure group that advocates for gay rights against the tabloid for invasion of privacy of the persons whose details had been published. Mr. Giles Muhame, the tabloid's Managing Editor had failed to defend the decision for publication of the details the affected people.

It is therefore important that all other methods are exhausted before resorting to invading peoples' privacy. Where need be, it is better to consult with the media house' lawyers on the legal implication of the methods as this will mitigate the consequences should you get into trouble.

3.2 The Uganda Communications Act 2013⁷⁵ (amended 2017)

This Act, assented to on 23rd December 2012 sought to among other things; “... consolidate and harmonise the Uganda Communications Act, 1997⁷⁶ and the Electronic Media Act, 1996;⁷⁷ to dissolve the Uganda Communications Commission and the Broadcasting Council and reconstitute them as one body known as the Uganda Communications Commission; and to provide for related matters.”

Section 3 of the Acts sets out the key objective of the acts are; to develop a modern communications sector, which includes telecommunications, broadcasting, radio communications, postal communications, data communication and infrastructure by—

- a. establishing one regulatory body for communications in accordance with international best practice;*
- b. enhancing national coverage of communications services*
- c. expanding the existing variety of communications services available in Uganda to include modern and innovative communications services;*
- d. reducing the direct role of Government as an operator in the communications sector and minimising the subsidies paid by the Government to the communications sector;*
- e. encouraging the participation of the private sector in the development of the communications sector;*
- f. introducing, encouraging and enabling competition in the communications sector through regulation and licensing of competitive operators to achieve rapid network expansion, standardisation as well as operation of competitively priced and quality services; and*
- g. establishing and administering a fund for the development of rural communications and information and communication technology in the country.*

⁷⁵ UCC Act 2013 <https://www.ug-cert.ug/files/downloads/UCC%20Act%202013.pdf>

⁷⁶ Uganda Communications Act 1997 <http://www.itu.int/ITU-D/ict/webs/ucc/uca1997.pdf>

⁷⁷ Electronic Media Act 1996 <https://ulii.org/ug/legislation/consolidated-act/104>

Two of the Commissions' 25 functions are; to monitor, inspect, license, supervise, control and regulate communications services; and to allocate, license, standardize and manage the use of the radio frequency spectrum resources in a manner that ensures widest variety of programming and optimal utilization of spectrum resources; (sections 5(1) b and c respectively).

The Commission has on several occasions cited Section 5 as basis for withdrawing, threatening to withdrawal, of suspend licenses of communication service providers.

In May 2019, citing powers given to it under Section 5, ordered the suspension of Producers, Head of News and Head of Programmes in the following broadcasting stations; AKABOOZI FM, BBS TV, BEAT FM, BUKEDDE TV, CAPITAL FM, CBS FM, KINGDOM TV, NBS TV, NTV, PEARL FM, SALT TV, SAPIENTIA FM and SIMBA FM⁷⁸ for alleged breach of minimum broadcasting standards as enshrined in Section 31 schedule 4 of the Uganda Communications Act, 2013.

Earlier in March 2018, the Commission directed online data communication service providers, including online publishers, online news platforms and online radio and television operators to apply and obtain authorisation from the commission within a period of one month or risk having their websites and/or streams being blocked by Internet Service Providers (ISPs).⁷⁹

The act gives powers to the minister to give policy guidelines to the commission, regarding its functions, which the commission must comply with; section 7(2) states thus;

"The Commission shall comply with the policy guidelines given by the Minister under this section."

⁷⁸ UCC (2019) SUSPENDED – REPEATED BREACH OF MINIMUM BROADCASTING STANDARDS
<https://uccinfo.blog/2019/05/01/suspended-repeated-breach-of-minimum-broadcasting-standards/>

⁷⁹ See The Registration Of Online Data Communication And Broadcast Service Providers notice at http://www.ucc.co.ug/wp-content/uploads/2018/03/UCC_ONLINE-DATA-COMMUNICATIONS-SERVICES.pdf

This section therefore makes a mockery of section 8, which provides for the independence of the commission. This is because, all the board members are appointed by the Minister, according to S.9(3).

Under S.29, the act puts the responsibility of ensuring that what is broadcast is not contrary to public morality as well as retaining a record of what has been broadcast for a minimum of sixty (60) days solely on the license holder and or the producer. The Act retained – word for word – S.5 of the Electronic Media Act (now numbered section 30), regarding the disqualification of a producer.

A person shall not be appointed a producer of a broadcasting station if that person—

- a) *is less than eighteen years of age;*
- b) *is of unsound mind;*
- c) *is not ordinarily resident in Uganda;*
- d) *does not possess the requisite qualifications prescribed by the Media Council.*⁸⁰

Although the Act provides for a right to broadcast, any broadcasts that infringes on other peoples' privacy or broadcasting of pornographic materials⁸¹ is prohibited. This S.28 is however prone to abuse and misinterpretation.

The Act also provides for the establishment of a Communications Tribunal mandated to hear and determine all matters relating to communications services arising from decisions made by the Commission or the Minister under this Act. The tribunal has powers of the High Court as all its judgments and orders of the tribunal are executed and enforced in the same manner as judgments and orders of the High Court.

But by August 2019, the Tribunal was yet to be set up, with lack of funds cited as one of the reasons for failure to set it up.⁸²

⁸⁰ The qualifications as specified under Section 15(2) of the Press and Journalist Act, 2000 that sets up the Media Council, include possession of a university degree plus a qualification in journalism or mass communication

⁸¹ The Anti-Pornography Act, 2014 defines pornography as any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real, or(simulated) explicit sexual activities or any representation of sexual parts of a person for primarily sexual excitement

⁸² Gov't to finally set up Communication Tribunal <https://ugandaradionetwork.net/story/govt-to-finally-set-up-communication-tribunal>

The Act also provides for the regulation of postal services in Uganda by the Uganda Post Limited (S. 66) as well as the regulation of Video and Cinema operations. Specifically, S. 37(1) prohibits anyone from operating a cinematograph theatre of video or film library without a licence that is issued by the commission.

Broadcasters and video operators need to be cautious to meet the minimum broadcasting standards outlined under Schedule 4 of the Act. These include;

- (a) ensuring that any programme which is broadcast—*
 - i. is not contrary to public morality;*
 - ii. does not promote the culture of violence or ethnical prejudice among the public, especially the children and the youth;*
 - iii. in the case of a news broadcast, is free from distortion of facts;*
 - iv. is not likely to create public insecurity or violence;*
 - v. is in compliance with the existing law;*
- (b) programmes that are broadcast are balanced to ensure harmony in such programmes;*
- (c) adult-oriented programmes are appropriately scheduled;*
- (d) where a programme that is broadcast is in respect to a contender for a public office, that each contender is given equal opportunity on such a programme; and*
- (e) where a broadcast relates to national security, the contents of the broadcast are verified before broadcasting.*

In 2016, the Minister of Information and Communications Technology gazetted the Communications (Amendment) Bill, 2016 that sought to amend section 93(1) of the Communications Act, 2013 to enable the minister to make statutory instruments without seeking parliamentary approval. The current law requires the minister to lay regulations before parliament for approval, hence the amendment was aimed at ousting parliamentary oversight powers.

The Amendment not only removed the requirement for parliamentary approval for regulations made by the minister under the Act, but also the requirement to inform parliament of the new legislation made through laying the regulation before parliament.⁸³

⁸³ Cipesa, *State of Internet Freedom in Uganda 2016*; http://cipesa.org/?wpfb_dl=235

3.3 The Right of Access to Information Act 2005⁸⁴

The purpose of the Right of Access to Information Act is expressly stated as; “to empower the public to effectively scrutinise and participate in Government decisions that affect them.”

The Act applies strictly to information in possession of the state or public body. Section 5 of the Act restates the right of access to information in almost similar terms as Article 41 of the Constitution. It obligates information officers to supply only accurate and up to date information.⁸⁵

The right to freedom of information is based on the fundamental premise that a government is supposed to serve the people. Information itself has been called ‘the oxygen of democracy’, essential for openness, accountability, and good governance. The establishment of a legal right to government information by citizens is therefore a critical principle in the quest for more accountable governments.

The passage of the law provided the citizens and civil society groups a platform for engagement with the state and advocacy efforts for greater accountability. But beyond this, the law, whose regulation were passed five years later, did not succeed as a tool to mobilize or operationalise latent demand among citizens for information, nor has it serve as a tool for making government officials responsive to such requests.⁸⁶

The regulations, as provided for in article 41 (2) of the constitution specify the kind of information, procedure and other issues related to how information may be requested and obtained. The regulations themselves are however problematic as they put restrictions, such as access fees (regulation 7) of twenty thousand shillings (equivalent to USD 8) and reproduction costs of the information requested for. While this fee appears modest, it is by far unaffordable to majority of Ugandans who still live below one dollar a day. The set fee of Ushs. 20,000 contradict the spirit of the Act which is to the effect that fees payable must be reflective of the actual cost incurred to retrieve and reproduce the sought record.⁸⁷

⁸⁴ Access to Information Act, 2005 <http://judiciary.go.ug/files/downloads/access%20to%20informatioinformation%20Act2005.pdf>

⁸⁵ Access to Information in Africa Project An Executive Summary. The Case of Uganda <https://www.greenwatch.or.ug/sites/default/files/2019-07/Access%20to%20Information%20In%20Africa%20Project%20Summary.pdf>

⁸⁶ Anupama Dokeniya (2013) *Implementing Right to Information: A case study of Uganda*; World Bank

⁸⁷ Access to Information in Africa Project An Executive Summary. The Case of Uganda <https://www.greenwatch.or.ug/sites/default/files/2019-07/Access%20to%20Information%20In%20Africa%20Project%20Summary.pdf>

The Act also contains several exemptions to the right of access to information including Cabinet records and those of its committees,⁸⁸ information relating to privacy of another person,⁹⁰ commercial information of a third party, confidential information,⁹¹ and information prejudicial to safety of persons and property,⁹² among others.

Additionally, the maximum of 21 days within which a citizen's information request is responded to provides new challenges as the delay in releasing critical information may lead to loss of usability of information especially for investigative journalistic work.

In 2009, two former Daily Monitor journalists, Angelo Izama and Charles Mpagi, sued the government over the failure by the Solicitor General to grant them access to information regarding oil production, prospecting and exploitation agreements.⁹³ Their case was dismissed by then Chief Magistrate Deo Ssejjemba of the Nakawa Court, who stated, *"I would like to think that government business is not in its entirety supposed to be in the public domain. There are cases where the keeping of certain class of documents secret is necessary for proper functioning of public service."*⁹⁴ This was a big setback in the quest for openness and accountability of government processes.

However, a minor victory was to be registered in 2015, when court ruled that that the reasons for which information is requested or the belief about how it will be used "are irrelevant considerations" in determining government's approval or denial of a request.⁹⁵ The landmark ruling, sets a precedent that could make it easier for journalists and citizens to exercise the right to information.

In Uganda, the failure for the successful implementation of the RTI law has largely been blamed on the lack of capacity and influence of key institutions of accountability, particularly the civil society groups and media to hold government departments accountable. But also, the existence of retrogressive legislations such as the Official secrets act (discussed below) that prohibit state officials from disclosing information.

⁸⁸ Section 25 of the ATI

⁸⁹ Section 26 of the ATI

⁹⁰ Section 27 of the ATI

⁹¹ Section 28 of the ATI

⁹² Section 29 of the ATI

⁹³ *Charles Mwanguhya Mpagi & Izama Angelo v. Attorney General (2009), Miscellaneous Cause 751 of 2009*

⁹⁴ *Court dismisses petition to reveal Uganda's oil agreements* <http://www.monitor.co.ug/News/National/-/688334/855348/-/why-/-/index.html>

⁹⁵ *Access to Information Ruling – Hub for Investigative Media vs. National Forestry Authority* <http://acme-ug.org/2015/02/17/uganda-media-silence-on-access-to-information-victory-a-travesty/>

3.4 The Official Secrets Act Cap 302 (1964)⁹⁶

It is 50 years since this act came into force. While it would be reasonable to articulate the relevance of this draconian act at that time in our history, it is hard to imagine what it is still doing on our statutory books 50 years later. The act was established to deal with protection of state secrets and security.

According to section 2(3), anybody who obtains, collects, records, or publishes or communicates in whatever manner to any other person any secret official code word, or password or any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to a foreign power, commits an offence under this Act.

The act prohibits anyone, especially state officials from communicating with “foreign power” directly or indirectly information that is considered secret and could therefore be prejudicial to the safety or interests of Uganda, commits an offence under this Act.

For the media, it is one of the drawbacks to the gains the media has made in fighting for freedom of the media. The act has almost rendered irrelevant the right of access to information law as it has been invoked severally by state officials to frustrate efforts to access government documents, many of which have no bearing to national security.

The act provides very harsh penalties, for offences committed against the act. Section 15 states that;

Where no specific penalty is provided in this Act, any person who commits an offence under this Act shall be deemed to be guilty of an indictable offence and is liable on conviction on indictment to imprisonment for a term not exceeding fourteen years; but that person may, at the election of the Director of Public Prosecutions, be prosecuted before a magistrate under Part XIV of the Magistrates Courts Act, and, if so prosecuted, shall be punishable by imprisonment for a term not exceeding seven years.

While not excusable, it is understandable why many state officials, many of whom have taken the oaths of secrecy, are scared of responding positively to information requests.

⁹⁶ Came into force on 30th December 1964

3.5 The Anti-Terrorism Act 2002⁹⁷ (amended 2017)

While the Anti-Terrorism act should ideally be helping to fight terrorism, it has got provisions which directly affect the practice of media in Uganda. The most troublesome provision for the media is section 9 which provides that:

“Any person, who establishes, runs or supports any institution for ... publishing and disseminating news or materials that promote terrorism ... commits an offence and shall be liable on conviction, to suffer death.”

There are two singularly critical problems with this law: one is that the authorities have typically interpreted and invoked them based on political rather than legal imperatives; the other is that terrorism’ is not precisely defined, leaving its parameters so elastic that the provisions of the law can be exploited to prefer any sorts of charges against an individual, group, or organisation.

In 2016, journalists Joy Doreen Biira, who was at the time working with Kenyan Television Network (KTN) in Kenya was arrested and later charged with abetting terrorism after she filmed and shared videos and photos of the burning palace during the Uganda Peoples’ Defence Forces (UPDF) clashes with the armed royal guards of the Rwenzururu kingdom in Kasese, western Uganda.⁹⁸

Also, section 3(1) c of the Third Schedule of the Act violates journalistic ethics by clearly excluding “journalistic material which a person holds other than documents” from the list of items that are subject to legal privilege during terrorist investigations.⁹⁹ Journalists need to be aware of these provisions and ensure they operate within these parameters.

⁹⁷ Anti-Terrorism Act 2002 <https://ulii.org/ug/legislation/act/2015/2002>

⁹⁸ Daily Monitor (2016) Kasese clashes: KTN journalist charged with abetting terrorism <https://www.monitor.co.ug/News/National/Kasese-clashes-KTN-journalist-terrorism/688334-3468084-5xnl8u/index.html>

⁹⁹ ACME (2010) Freedom of Expression Factsheet

3.6 The Public Order Management Act (2013)¹⁰⁰

The Public Order Management Act was enacted to provide a regulatory framework for gathering and meetings, as well as prescribe measures to ensure public order. Section 8 of the Public Order Management Act gives the Inspector General of Police sweeping powers to arbitrarily prevent or stop public gatherings organised by opposition politicians, and to crack down on protests. And it is this provision that had been used on several occasions to prevent, or disband public assemblies or demonstrations, especially those organized by the opposition politicians.

The Act fails to establish a presumption in favour of the exercise of the right to freedom of peaceful assembly, or the duty on the State to facilitate peaceful assemblies. Also, the Act's definition of "public meeting" under Section 4, by reference to "public interest," potentially excluding critical meetings from the scope of the Act. Indeed, the Act establishes a de facto authorisation procedure for peaceful assemblies that are unnecessarily bureaucratic with broad discretion for the State to refuse notifications.¹⁰¹

The obligation on organisers under Section 10(1)(d) to "ensure that statements made to the media and public by the organiser do not conflict with any law" serves no purpose other than to deter organisers and participants from speaking to the media.

Additionally, the law contains no provisions relating to the access of media to assemblies. International law requires that states protect, promote, and always respect the right to freedom of expression and media freedom, including during assemblies. Journalists and the media, including bloggers, play an important role in informing the public about assemblies.¹⁰²

Under Section 12, the Act allows the Internal Affairs Minister broad powers to designate "gazetted" areas where assemblies are prohibited at all. For the media and freedom of expression activists, this law indeed takes the nation a few years backwards from the gains that the country achieved through the promulgation of the 1995 Constitution.

¹⁰⁰ POMA Act <http://old.ulii.org/files/PUBLIC%20ORDER%20MANAGEMENT%20ACT.pdf>

¹⁰¹ For a detailed analysis of the Act, see ARTICLE 19 <http://www.article19.org/resources.php/legal/>.

¹⁰² ARTICLE 19 (2013) *Legal analysis of the Uganda Public Order Management Law*

Repeal of the Act

However, in March 2020, Uganda's Constitutional Court annulled the Public Order Management Act, 2013 (POMA) and declared all acts done under the law null and void.¹⁰³ In a majority decision of 4-1, the court ruled that the entire law was inconsistent with the 1995 Constitution of the Republic of Uganda.

In the lead judgment, Hon. Justice Cheborion Barishaki, JA/JCC ruled that the provisions of the POMA do not pass the test set out under Article 43(2)(c) of the 1995 Constitution which requires that any limitation of rights and freedoms must be acceptable and demonstrably justifiable in a free and democratic society.¹⁰⁴

¹⁰³ Chapter Four (2020) POMA Judgement <https://chapterfouruganda.org/sites/default/files/downloads/POMA-Judgment.pdf>

¹⁰⁴ Chapter Four (2020) POMA: Uganda court annuls public order law

<https://chapterfouruganda.org/articles/2020/03/29/poma-uganda-court-annuls-public-order-law>

3.7 The Uganda Broadcasting Corporation Act, 2005¹⁰⁵

The Uganda Broadcasting Corporation Act 2005 is the founding legal instrument for the public broadcaster. The law was the first attempt to transform Uganda Television (UTV) and Radio Uganda from state broadcasters into independent public broadcasters. However, the purpose of the act does not specify the transformation in those terms.

Among its objectives, the Corporation is to “develop the broadcasting bodies into a public national broadcasting centre of excellence, for the purpose of providing electronic media and consultancy services that educate and guide the public.”¹⁰⁶ The extent to which the Corporation has achieved this particular objective – almost 20 years since its creation requires further investigation.

However, while the objective was to develop the Corporation into a “public national broadcaster”, the functions require that the Corporation; “reflects the Government vision regarding the objectives, composition and overall management of the broadcasting services.”¹⁰⁷ The challenge with this function is that it undermines the core objective of the Corporation. What if the government of the day has no “vision”?

The Act neither defines public broadcasting nor identifies Uganda Broadcasting Corporation (UBC) explicitly as a public broadcaster. It is also not clear whether the vagueness of the law was a result of innocent omissions or a deliberate attempt by the government not to cede full control of the national broadcaster. Section 3(3) states thus; “The Corporation shall be wholly owned by the Government.”

In 2016, Uganda Broadcasting Corporation, the state broadcaster was found, by the Supreme Court in its ruling on the *Amama Mbabazi v Museveni & Ors (PRESIDENTIAL ELECTION PETITION NO. O1 OF 2016) [2016] UGSC 3 (31 March 2016)*¹⁰⁸ to have failed to provide equal coverage to all the presidential candidates as required by the Article 67(3) of the Constitution and section 24(1) of the Presidential Elections Act.

¹⁰⁵ UBC Act, 2005 <https://ugandajournalistsresourcecentre.com/wp-content/uploads/2013/08/uganda-broadcasting-corporation-act-2005.pdf>

¹⁰⁶ Section 4(a) of the Act

¹⁰⁷ Section 5(1)(b)

¹⁰⁸ (PRESIDENTIAL ELECTION PETITION NO. O1 OF 2016) [2016] UGSC 3 (31 March 2016) <https://ulii.org/ug/judgment/supreme-court/2016/3>

3.8 The Regulation of Interception of Communications Act, 2010¹⁰⁹

The Act seeks to make it legal for the state to intercept and monitor communication in telecommunications, postal or any other related system as a means of detecting and combating the coordination of international terrorism through telecommunications.

Additionally, the Act under section 3 gives authority to the Minister of security to establish a Monitoring Centre and gives him the ‘final responsibility over the administration and functioning’ of this Centre.

Although the act in S.5(1) provides grounds under which an interception warrant may be issued by stating that;

“A warrant shall be issued by a designated judge to an authorised person referred ... if there are reasonable grounds for a designated judge to believe that—

(a) an offence which may result to loss of life or threat to life has been or is being or will probably be committed;

(b) an offence of drug trafficking or human trafficking has been or is being or will probably be committed;

(c) the gathering of information concerning an actual threat to national security or to any national economic interest is necessary;

(d) the gathering of information concerning a potential threat to public safety, national security or any national economic interest is necessary; or

(e) there is a threat to the national interest involving the State’s international relations or obligations.”

Under section 8 of this Act, communication service providers are required to aid in intercepting communication by ensuring that their telecommunication systems are always technically capable of supporting lawful interception. Non-compliance by service providers is punishable by a fine not exceeding UGX2.24 million (US\$896) or imprisonment for a period not exceeding five years or both and it could also lead to the cancellation of an operator’s license.

¹⁰⁹ RICA 2010 <https://ulii.org/ug/legislation/act/2015/18-2>

3.9 The Computer Misuse Act, 2011¹¹⁰

According to section 2, the Act seeks to provide for safety and security of electronic transactions and information systems and to prevent unlawful access, abuse or misuse of information systems among other things. However, the Act includes provisions that can specifically limit freedom of expression online.

Section 24 of the Act defines and criminalises cyber harassment as “the use of a computer for any of the following purposes—

- a. *making any request, suggestion or proposal which is obscene, lewd, lascivious or indecent;*
- b. *threatening to inflict injury or physical harm to the person or property of any person; or*
- c. *knowingly permits any electronic communications device to be used for any of the purposes mentioned in this section.*

Upon conviction, one is liable to a fine not exceeding seventy-two currency points or imprisonment not exceeding three years or both upon conviction.

Section 25 defines and criminalises offensive communication as the use of “*electronic communication to disturb or attempts to disturb the peace, quiet, or right of privacy of any person with no purpose of legitimate communication whether or not a conversation ensues commits a misdemeanor and is liable on conviction to a fine not exceeding Uganda Shillings 480,000 (about USD 140) or imprisonment not exceeding one year or both.*”

While section 26 defines and criminalises cyber stalking stating thus; “*Any person who willfully, maliciously, and repeatedly uses electronic communication to harass another person and makes a threat with the intent to place that person in reasonable fear for his or her safety or to a member of that person's immediate family commits the crime of cyberstalking and is liable on conviction to a fine not exceeding one hundred and twenty currency points or imprisonment not exceeding five years or both.*”

¹¹⁰ Uganda Computer Misuse Act 2011 <https://ulii.org/ug/legislation/act/2015/2-6>

Since its enactment, the Act has been used to arrest and charge several individuals due to their online communication. On August 1, 2019, Ugandan academic and human rights activist, Dr. Stella Nyanzi, was convicted for cyber harassment (and acquitted of offensive communication) against president Yoweri Museveni under sections 24 (1) and (2)(a) of the Computer Misuse Act 2011.¹¹¹ However she was later acquitted and immediately released from prison after she appealed both the conviction and sentencing.¹¹²

Besides Dr. Nyanzi, other individuals who have been arrested and charged with offensive communication and cyber harassment include Swaibu Nsamba Gwogyolonga, a political activist, was arrested in 2016 and charged with offensive communication. The charge stemmed from a picture of President Yoweri Museveni lying dead in a coffin that Gwogyolonga had posted on Facebook.¹¹³ In 2017, two other people, Mr. David Mugema, a musician and his producer Jonah Muwanguzi, were arrested and charged with offensive communication. The two are alleged to have composed, recorded, produced and distributed a song in which they attacked and disturbed the peace of President Museveni.¹¹⁴

In 2015, Robert Shaka, an IT specialist was charged with offensive communication, centrally to section 25 of the Computer Misuse Act 2011. Prosecution alleged that between 2011 and 2015, Robert Shaka, who disguised himself as Tom Voltaire Okwalinga, in Kampala, willfully and repeatedly using a computer with no purpose of legitimate communication, disturbed the right to privacy of the President by posting statements regarding his health condition on Facebook.¹¹⁵

¹¹¹ Al Jazeera, "Ugandan academic Stella Nyanzi jailed for 'harassing' Museveni," August 3, 2019, available at <https://www.aljazeera.com/news/2019/08/ugandan-academic-stella-nyanzi-jailed-harassing-museveni-190803141817222.html>

¹¹² Daily Nation (2020) Uganda Court sets Stella Nyanzi Free <https://www.msn.com/en-xl/africa/top-stories/uganda-court-sets-stella-nyanzi-free/ar-BB10cDOW>

¹¹³ FDC chairperson arrested over posting Museveni in coffin on Facebook <https://www.monitor.co.ug/News/National/FDC-chairperson-arrested-over-posting-Museveni-in-coffin/688334-3485026-6lkhc9z/index.html>

¹¹⁴ Musician arrested for disturbing Museveni's peace <https://mobile.nation.co.ke/news/africa/Musician-arrested-for-disturbing-Yoweri-Museveni-peace/3126394-4216504-1mpklhz/index.html>

¹¹⁵ Daily Monitor (2015) Museveni Social Media Critic sent to Luzira <https://www.monitor.co.ug/News/National/Museveni-social-media-critic-sent-to-Luzira/688334-2748626-2bq6c4/index.html>

3.10 The Penal Code Act (Cap 120) of the Laws of Uganda (1950)

This is the widely used legal weapon against media freedom in Uganda by the government.

The code establishes and defines offences related to sedition, promotion of sectarianism, criminal libel/defamation, and terrorism.

S. 34 to 36 of the Penal Code Act provide for the prohibition of importation of publications; and S.34 specifically gives the minister discretionary powers on the type of publications to be imported or banned.

Whenever the minister considers it in the public interest so to do, he or she may, in his or her absolute discretion, prohibit by statutory order, the importation of all publications, or any of them, periodical or otherwise: and where the prohibition is in respect of any periodical publications, the same or any subsequent order may relate to all or any of the past or future issues of a periodical publication. The Minister may be writing in his or her handwriting, at anytime and from time to time, exempt any of the publications the importation of which has been prohibited under this section, or permit any person or class of persons to import all or any such publications

On the other hand, a seditious intention as defined in S.39 of the code is an intention, among other things, “to bring into hatred or contempt or to excite disaffection against the person of the President, the Government as by law established”.

Section 40 of the code provides for a jail sentence of up to five (5) years on conviction for this offence.

According to section 41 of the Penal Code:

A person who 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; or

(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 regional origin; Commits the offence of promoting sectarianism and is liable on conviction to imprisonment for a period of no more than five (5) years

S.53 of the code criminalises “defamation of foreign princes” by stating thus;

Any person who, without such justification or excuse as would be sufficient in the case of the defamation of a private person, publishes anything intended to be read, or any sign or visible representation, tending to degrade, revile or expose to hatred or contempt any foreign prince, potentate, ambassador or other foreign dignitary with intent to disturb peace and friendship between Uganda and the country to which such prince, potentate, ambassador or dignitary belongs, commits a misdemeanour.

This provision alone poses a challenge to journalists who would like to ask what may be regarded as uncomfortable questions when provided with an opportunity to hold leaders accountable for their human rights record or involvement in questionable dealings in their home countries.

In 1990, the section claimed its first victims, when three journalists, Festo Ebongu, then working with

The New Vision, Alfred Okware (RIP) then with Newsdesk Magazine and Hussein Abdi (RIP) who was a BBC correspondent based in Kampala were charged accused of asking “embarrassing” questions to Dr. Kenneth Kaunda during a 26th January 1990 press conference in Entebbe and subsequently to court to answer charges relating to defamation of a foreign dignitary under Section 53 of the Penal Code Act.¹¹⁶

Although they have been few and far between, the media has scored some few successes in its quest to have the draconian provisions in the respective media legislations quashed. Indeed in 2004, journalists Charles Onyango Obbo and Andrew Mwenda successfully challenged the constitutionality of section 50 of the Penal Code (publication of false news).

The Supreme Court, with a majority decision ruled thus;

“... It is evident that the right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. It is not confined to categories, such as correct opinions, sound ideas or truthful information. Subject to the limitation under Article 43, a person’s expression or statement is not precluded from the constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or

¹¹⁶ For details of the questions and the conclusion of the case; see Mbaine A. (2003) *The Effects of Criminalising Publication Offences on the Freedom of the Press in Uganda 1986-2000*; MA Thesis, Rhodes University, SA

*unpleasant. Everyone is free to express his or her views. Indeed, the protection is most relevant and required where a person's views are opposed or objected to by society or any part thereof, as 'false' or 'wrong'."*¹¹⁷

Prior to going to the Supreme court, and scoring this wonderful victory, the two journalists (Mwenda and Obbo) had themselves been victims when in 1997 were dragged to court and charged with publication of false news under S.50 of the Penal code. The charge resulted from a story published in the Sunday Monitor on 27 September 1997, written by Andrew Mujuni Mwenda, alleging that the former president of the Democratic Republic of Congo (DRC) Laurent Kabila (RIP) had paid Uganda in gold for the services rendered during the struggle to overthrow the Mobutu dictatorship.

Again, in 2010, another problematic Section 39(1) of the Penal Code, which defined and criminalised sedition,¹¹⁸ was ruled unconstitutional. Unfortunately, even with this ruling, many journalists are still charged with these frivolous charges relating to sedition and publication of false news. These sorts of charges have had a chilling effect on many newsrooms with journalists and media houses getting fatigued with the constant trips they must make to police stations and courts of law only for the cases to be dismissed.

3.10.1 Defamation

Defamation suits represent probably the worst charges that can be brought against a media practitioner and has been systematically employed by both state and other actors to squeeze life out the media in Uganda.

According to the "Essential Law Dictionary",¹¹⁹ defamation refers to an intentional publication or public statement of false information that damages someone's reputation.

Section 180(1) of the Penal Code Act defines a defamatory matter as, "... matter likely to injure the reputation of any person by exposing that person to hatred, contempt or ridicule or likely to damage any person in his or her profession by an injury to his or her reputation."

¹¹⁷ *Lead Judgement by Justice Joseph Mulenga (Supreme Court of Uganda, 2004) in Constitutional Appeal No. 2 of 2002 between Charles Onyango Obbo and Andrew Mujuni Mwenda (Appellants) and Attorney General (Respondent).*

¹¹⁸ *an intention – (a) 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; (b) to excite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter in state as by law established; (c) to bring into hatred or contempt or to excite disaffection against the administration of justice; (d) to subvert or promote the subversion of the Government or the administration of justice.*

¹¹⁹ *Amy Hackney Blackwell (2008) Essential Law Dictionary; Sphinx Publishing; Naperville, Illinois, USA*

In other words, a defamatory statement has the effect of lowering the reputation of the affected person in the eyes of the right-thinking members of society. In **Francis Lukooya Mukoome & another v The Editor in Chief Bukedde News paper & 2 others CIVIL SUIT NO.351 OF 2007**, Justice Yokoram Bamwine, writes that;

Defamation is something more than an insult or derogatory comment. It is not capable of exact definition. How far a person is affected by unkind words will depend not just on the words used, but also on the people who must then judge him. That is why communication to the plaintiff alone will not suffice. (It) is an injury to one's reputation and reputation is what other people think about a man and not what a man thinks about himself.

In law every person is entitled to his good name and to the esteem in which he is held by others. It does not matter whether the 'person' is a natural or artificial one e.g. a company. Such a person has a right to claim that his reputation shall not be sullied by defamatory statements made about him to a third person without lawful justification.¹²⁰

Any person who sues for defamation must therefore prove to court that the statements in question had the following attributes;

- a) that the statement was false. If the statement is in fact true, no defamation action may be advanced, no matter how defamatory the statement is.
- b) that the statement was defamatory in nature, i.e. the statement has capacity to harm the person's reputation in the eyes of right-thinking members of society. A statement can be defamatory on its "face" (e.g., labeling someone "corrupt", or "adulterous" or it can imply a defamatory meaning. Thus, a statement that is, on its face, not defamatory is nonetheless actionable if the defamatory implication or innuendo becomes reasonably apparent with the addition of other facts.

Context is critically important in determining whether a statement is defamatory. A statement standing alone may be rendered non-defamatory when considered in the larger context; conversely, an otherwise innocuous statement may be construed to be defamatory in light of the surrounding statements¹²¹

- c) that the statement referred to the claimant and identified him or her, directly or indirectly, and
- d) that the statement was published, i.e. communicated, to a third party.

¹²⁰ Justice Bamwine in his judgement in *A.K Oils & Fats (U) Ltd V Bidco Uganda Ltd (HCT-00-CV-CS-0715-2005)*

¹²¹ Robert. C. (2004) *A LITTLE LIBEL, A LOT OF TROUBLE: DEFAMATION AND RELATED ISSUES IN HIGHER EDUCATION*

However, in **Ntagoba Vs Editor New Vision (2001-2005) 2 HCB 209**, Justice Gideon Tinyinondi confirms that in situations where the words complained of are defamatory in their ordinary and natural meaning the Plaintiff need prove nothing more than their Publication.¹²²

There are two forms of defamation:

Libel; which refers to a defamatory statement of a permanent nature – such as written, pictures, art, etc,. On the other hand, slander is essentially a defamatory statement in short-lived form, especially the spoken word. We need to note here that libel can actually be prosecuted both as a crime and as tort, while slander is only treated as a tort. Indeed, section 179 of the Uganda penal code states that,

“any person who, by print, writing, painting, effigy or by any means otherwise that solely gestures, spoken words or other sounds,, unlawfully publishes any defamatory matter concerning another person, with intent to defame that person, commits the misdemeanor turned libel”

In defamation suits, the burden of proof shifts to the defendant to plead his innocence using any of the following defences.

- a) that the statement was a matter of truth/fact (or justification),
- b) that the statement was actually a fair comment on a matter of public interest, or
- c) that it was made on a privileged occasion.

3.10.2 Defenses against defamation

There are three defenses to defamation; Truth; fair comment or privilege.

a) Truth (or Justification)

As discussed earlier, one of the characteristics needed for a defamatory statement to be actionable, is that it must be false. Therefore, if the said statement is a fact then there can be no action for defamation.

According to section 182 of the penal code,

“Any publication of a defamatory matter concerning a person is unlawful within the meaning of this Chapter, UNLESS (a) the matter is true and it was for the benefit that it should be published.”

¹²² Quoted in J.W. Kwesiga's Judgement in *Chaina Movat & Another v Kyarimpa CIVIL APPEAL NO. 42 OF 2008*

The burden of proof is therefore on the defendant to prove that the statement made was true, rather than on the claimant to prove that it was false. Once the defendant proves that the defamatory statement was true, the purpose or motive with which it was published becomes irrelevant.

Justice Byamugisha (as she then was) In **BLAZE BABIGUMIRA VS HANNS BESIGYE HCCS NO 744 OF 1992 (un reported)** held, inter-alia, that the Defense of Justification means that the Defendant is contending that the words complained of were true. The burden of is on the Defendant to prove that in fact these words were true.¹²³

Once this has been proved, it is them up to the plaintiff to challenge the truthfulness of the defendant's assertions. In **Francis Lukooya Mukoome & another v The Editor in Chief Bukedde News paper & 2 others CIVIL SUIT NO.351 OF 2007**, Justice Yokoram Bamwine, writes that;

"... when a party adduces evidence sufficient to raise a presumption that what he is asserting is true, he is said to shift the burden of proof, that is, his allegation is presumed to be true, unless his opponent adduces evidence that rebuts the presumption."

b) Fair comment

Fair comment as a defence in defamation suits is designed to protect statements of opinion on matters of public concern and ensures that the public can express themselves freely on matters that affect their livelihoods.

The defence only applies to comments made on matters of public interest, such as comments on works of literature, music, art, plays, radio and television; and the activities of public figures. A publication made 'maliciously' (spitefully, or with ill-will or recklessness as to whether it was true or false) will destroy the defence of fair comment.¹²⁴

In **Francis Lukooya Mukoome & another v The Editor in Chief Bukedde News paper & 2 others CIVIL SUIT NO.351 OF 2007**, Justice Yokoram Bamwine, writes that;

¹²³ Quoted in *J.W. Kwesiga's Judgement in Chaina Movat & Another v Kyarimpa CIVIL APPEAL NO. 42 OF 2008*

¹²⁴ Robert. C. (2004) *A LITTLE LIBEL, A LOT OF TROUBLE: DEFAMATION AND RELATED ISSUES IN HIGHER EDUCATION*

(Fair comment) is a defence to an action for defamation that the statement made was fair comment on a matter of public interest. The facts on which the comment is based must be true and the comment must be fair. Any honest expression of opinion, however exaggerated, can be fair comment but remarks inspired by personal spite and mere abuse are not. (however), the judge decides whether or not the matter is one of public interest.

A four-point test for fair comment has been developed to provide some guidelines, thus the statement in questions must have been: a) an opinion; b) relating to an action; c) not made against an individual; and d) the reader can see the factual basis for the comment and draw his or her own conclusions and of course lastly; that it relates to a matter of public interest.¹²⁵

c) Privilege

As a form of defence to defamation suits, privilege recognizes the importance of freedom of expression in certain situations regardless of how false or malicious the defamatory statement is, it cannot be actionable.

There are two types of privileges: absolute privilege and qualified privilege.

Under the doctrine of absolute privilege, it is generally accepted that proper functioning of government and promotion of freedom of expression and democracy, certain officials and citizens must be completely protected from suits of defamation.

According to section 183(1) of the penal code, “The publication of defamatory matter is absolutely privileged, and no person in any circumstances be liable to punishment under this code in respect of such publication, in any of the following cases-

- a) If the matter is published by the President, the Government or Parliament;
- b) If the matter is published in Parliament by the Government or by any member of that Parliament or by the Speaker;
- c) If the matter is published by order of the President or the Government;
- d) If the matter is published concerning a person subject to military, naval or air force discipline for the time being and reduces to his or her conduct as a person subject to such discipline, and is published by some person having authority over him or her in respect of such conduct and to some person having authority over him or her in respect of such conduct;

¹²⁵ Obonyo. L; Nyamboga. E (2011) *Journalists and the Rule of Law; The Kenyan Section of the International Commission of Jurists; Nairobi-Kenya*

Additionally, section 183(2) notes that,

“where a publication is absolutely privileged, it is immaterial for the purposes of this chapter where the matter is true or false and whether it is or is not known or believed to be false and whether it is or is not published in good faith but nothing in this section shall exempt a person from any liability to punishment under any other chapter of this code or under any other written law in force in Uganda.”

On the other hand, with qualified privileges, it means that the immunity from defamation suits is conditional and must thus not be abused. Abuse typically occurs where the defendant had no reason to make the statement to the recipient, or if he or she made the statement, it was out of spite or ill will.

S.185 of the penal code emphasizes that; “a publication of defamatory matter shall not be deemed to have been made in good faith by a person, within the meaning of section 184 if it is made to appear either-

- a) That the matter was untrue and that he or she did not believe it to be true;
- b) That the matter was untrue and that he or she published it without having taken reasonable care to ascertain whether it was true or false; or
- c) That in publishing the matter, he or she acted with intent to injure the person defamed in a substantially greater degree or substantially otherwise that was reasonably necessary for the interest of the public or for the protection of the private right or interest in respect of which he or she claims to be privileged.”

3.11 The Anti-Pornography Act, 2014¹²⁶

Unknown to many journalists, this Act seems to primarily be targeting media industries and NOT the “mini skirt” as has been popularly written/published.

The Act under Sections 13 and 14 creates 7 offences of which 4 rotate around production and distribution of pornographic materials. Specifically, S.3(1) states that;

“A person shall not produce, traffic in, publish, broadcast, procure, import, export, sell or abet any form of pornography.”

On conviction, the offences attract a fine up to Uganda shillings ten(10) million (about USD 4,000) or imprisonment not exceeding 10 years or both (S.3(2).

On the other hand, S.14 goes further to prohibit child pornography which involves the production, publication, broadcasting, procuring, importing, exporting or any form of abetting materials that depict images of children. This offence attracts a fine not exceeding Uganda shillings fifteen (15) millions about (about USD 6000).

The above two sections should however be read together with S.2 which provides specific interpretations of terms such as pornography and the offences referred to, including (broadcasting, publishing, trafficking, procuring, etc.) for which people will be charged. The Act defines pornography as;

“any representation through publication, exhibition, cinematography, indecent show, information technology or by whatever means, of a person engaged in real, or(simulated) explicit sexual activities or any representation of sexual parts of a person for primarily sexual excitement”

According to Act, “broadcast” refers to the dissemination of information to the public or person through any electronic media; “publish” refers to the dissemination of written information through the print medium; while “traffic” refers to the circulation of pornographic matter through sales or publishing, entertainment, or programming or unrestricted internet access or any other means or purpose.

¹²⁶ The Anti-Pornography Act 2014, https://www.newvision.co.ug/digital_assets/ee309f7c-2fc9-42bf-89db-4a2133d4cd81/The-Anti-Pornography-Act-2014.pdf

Consumers of pornographic matter are also not spared by the Act as it is an offence under the Act to import or be found in possession, custody or being found viewing/reading pornographic matter, “except when authorised in writing by the Committee for appropriate anti-pornographic purposes such as education.”

More importantly for media freedom and freedom of expression is the fact that a police officer under S.16 can write to a media house and direct them to stop a likely production at the discretion of the said officer if he/she deems the matter to be pornographic. With failure to comply with the directive constituting an offence attract a fine not exceeding Uganda shillings five (5) million (about USD 2000) or imprisonment not exceeding five year or both.

Section 3 of the Act provides for the establishment of a Pornography Control Committee charged with the implementation of law, including ensuring that perpetrators of pornography are apprehended and prosecuted as well as collecting and destroying pornographic materials, among other functions.

Section 17 requires Internet Service Providers (ISPs) not to allow their protocols and systems to be used for publishing pornography. It places an obligation on ISPs to monitor and carry out surveillance on their subscribers for them to be able to identify and remove content considered pornographic.

In 2014, a nine-member committee, chaired by Dr. Annette Kezaabu Kasimbazi, was set up.¹²⁷

Since its enactment, the law has been used to arrest and charge several people. In 2018, a Ugandan online broadcaster and founder of the Ghetto TV, Ashiraf Kato, was charged with and remanded for broadcasting pornographic materials.¹²⁸ In November 2014, a Ugandan musician, Kansiime Jemimah, was arrested together with her manager, Didi Muchwa Mugisha and later charged under the anti-Pornography law.¹²⁹ In 2019, there were threats by the chair of the Pornography

¹²⁷ *New Vision* (2014) Pornography control committee named https://www.newvision.co.ug/new_vision/news/1422110/anti-pornographic-committee-named

¹²⁸ *Uganda Radio Network* (2018). Ghetto TV Founder Remanded for Broadcasting Pornography <https://ugandaradionetwork.net/story/blogger-remanded-over-publication-of-pornographic-material->

¹²⁹ *The Guardian* (2015) Ugandan singer faces 10 years in jail for risqué pop video <https://www.theguardian.com/world/2015/may/21/ugandan-jemimah-kansiime-video-anti-pornography>

Committee to shut-down two popular facebook groups, Mama Tendo¹³⁰ and Rebel Parents,¹³¹ accusing them of spreading pornography.¹³²

Again in 2018, there were media reports that the Committee was set to arrest at least 6 people and charge them under the Anti-Pornography Act. The six include Ugandan socialites – Judith Heard, Jack Pemba and a police constable among others.¹³³ Both Jack Pemba¹³⁴ and Judith Heard¹³⁴ were alleged to have separately leaked sex videos in which they involved.

It has been argued that this law is mostly unfavourable to women as section 13 is likely to discourage victims of revenge pornography from reporting cases to authorities in fear of retribution as the victim and perpetrator are equally liable.¹³⁶

¹³⁰ <https://web.facebook.com/groups/mamatendo/>

¹³¹ <https://web.facebook.com/groups/678063942960952/>

¹³² Watchdog News (2019) *Mama Tendo, Rebel Parents Facebook groups to be shut down* <https://www.watchdoguganda.com/entertainment/lifestyle/20190807/74087/mama-tendo-rebel-parents-facebook-groups-to-be-shut-down.html>

¹³³ The Observer (2018) *Anti-porn body set to arrest six* <https://observer.ug/news/headlines/57869-anti-porn-body-set-to-arrest-six.html>

¹³⁴ The Daily Monitor (2018) *Minister Lokodo hunting for socialite Jack Pemba over leaked sex tape* <https://www.monitor.co.ug/News/National/Minister-Lokodo-hunting-socialite-Jack-Pemba-leaked-sex-tape/688334-4541942-10oj1t/monitor.co.ug>

¹³⁵ PMLDaily (2018) *Socialite Judith Heard arrested over leaked nude photos as govt intensifies crackdown on pornography* <https://www.pml-daily.com/news/crime/2018/07/socialite-judith-heard-arrested-over-leaked-nude-photos-as-govt-intensifies-crackdown-on-pornography.html>

¹³⁶ Cipesa (2016) *State of Internet Freedom in Uganda* http://cipesa.org/?wpjfb_dl=235

3.12 The Referendum and other Provisions Act, 2005¹³⁷

The most important sections in this Act relate to the use and access to state owned media by the respective sides during the referendum campaigns. Section 23(1) of the act states that; “Agents of each side shall be given equal access and opportunity to use the State-owned communication media.” As to whether the managers of the then state-owned communication media (Uganda Television and Radio Uganda)¹³⁸ complied with this provision is a question of academic interrogation on the media coverage of the 2005 referendum.

Primarily, the Act allowed the sides participating in the referendum to use all communications media available to them, including electronic media and print, but also to avoid making malicious and false statements, abusive as well as sectarian statements.

For media managers and proprietors, section 6 specifically bars them from allowing their media houses to be used by the competing sides to malign one another, thus;

“A proprietor or operator of an electronic media shall not knowingly use the media or allow it to be used to do any of the acts prohibited....”

Contravention of the provisions of the act is an offence and the person was liable on conviction to a maximum of one year in jail.

¹³⁷ It was assented to on 10th February, 2005 and came into force on 22nd February 2005

¹³⁸ After the enactment of the Uganda Broadcasting Corporations Act 2005, the two were turned into the Uganda Broadcasting Corporation (UBC)

3.13 The Presidential Elections Act, 2005¹³⁹

This Act sought to, “provide for elections to the office of President; to repeal and replace the Presidential Elections Act; to provide for qualifications and disqualifications for candidates and the manner of establishing equivalent qualifications; to provide for the nomination, campaigning, polling procedure, counting and tallying and declaration of results of a presidential election and the procedure for challenging the results; and for other related matters.”

As media stakeholders, our focus is drawn onto sections 23; 24; 66; 68; and 69; which deal with issues of freedom of expression and access to information; the rights of candidates; publication of false statements; the penalties involved; and false statements regarding characters of fellow candidates respectively.

Section 23(2) for example states that; “Subject to the Constitution and any other law, every candidate shall enjoy complete and unhindered freedom of expression and access to information in the exercise of the right to campaign under this Act.”

The same section however prohibits the use of language that can incite violence and threatens war. Additionally, defamatory language that also incites hatred is also prohibited and punishable.

Presidential candidates are also entitled to equal treatment on state-owned media to present their manifestos and campaigns (section 24(1), as well as being allowed to use private electronic media for their campaign (section 24(4). Again, there are caveats in this section that prohibit candidates not to use abusive and derogatory language to other candidates while campaigning. In addition, media proprietors and practitioners are thus required not to permit candidates use their media to insult and abuse other candidates.

Journalists need to be very wary of sections 66 and 69 which prohibit publication of false statements of the illness, death or withdrawal of a candidate at given election as well as personal character of a candidate “for the purpose of promoting or procuring the election of another candidate knowing that statement to be false or not knowing or believing it on reasonable grounds to be true;”. This is because, there is a lot of allegations that candidates make for the sake of discrediting their competitors and win over voters. Care should be taken to crosscheck all statements made by candidates, as failure to do this can land the journalist and media house into trouble.

¹³⁹ Assented to on 16th November 2005 and commenced on the 21st of November 2005

3.14 The Parliamentary Elections Act, 2005¹⁴⁰

This Act provides for parliamentary elections and related matters in accordance with article 76 of the Constitution; to repeal and replace the Parliamentary and Elections Act, 2001; to provide for the qualifications and disqualifications for election, the manner of establishing equivalent of advanced level, nomination, campaigning, polling, counting of votes, tallying and declaration of election results; to provide for petitions for challenging election results, election offences, parliamentary constituencies and tenure of office of members of Parliament; to make provision for parliamentary elections whether under the movement political system or under the multiparty political system; and to provide for other matters related to the foregoing.

Just like the Presidential Elections Act discussed above; the Parliamentary Elections Act guarantees candidates the right to unhindered freedom of expression and access to information; as well as reasonable access to and use of state-owned communication media under sections 21(2) and 22(1) respectively. The candidates are also permitted to use private electronic media during their campaigns.

The candidates are however barred from making false statements or using any language that is derogatory abusive and defamatory as well insulting to fellow candidates, or incites violence during the campaigns, including using private electronic media to de-campaign fellow or any other candidates. Under section 22(6), it is the responsibility of the proprietor of operators of private electronic media to disallow candidates to use their media to abuse or defame others.

Just like as discussed under the Presidential Elections Act, journalists need to be very wary of sections 70 and 73 which prohibit publication of false statements of the illness, death or withdrawal of a candidate at given election as well as personal character of a candidate “for the purpose of promoting or procuring the election of another candidate knowing that statement to be false or not knowing or believing it on reasonable grounds to be true,”. This is because, there is a lot of allegations that candidates make for the sake of discrediting their competitors and win over voters. Care should be taken to cross-check all statements made by candidates, as failure to do this can land the journalist and media house into trouble.

¹⁴⁰ Assented to on 16th November 2005 and commenced on 21st November 2005.

3.15 The Copyright and Neighbouring Rights Act 2006

This is a very critical piece of legislation that media practitioners in Uganda need to familiarize themselves with, as it touches on the core of their work as both originators as well as publishers of knowledge and information. This act which came into force on the 4th August 2006 repealed and replaced the Copyright Act, and provides for the protection of literary, scientific, and artistic intellectual works and their neighbouring rights.

According to S.4 (1), The author of any work specified in S. 5 (below) shall have a right of protection of the work, where work is original and is reduced to material form in whatever method irrespective of quality of the work or the purpose for which it is created.

The literary, scientific and artistic works that are eligible for copyright (S. 5) include; articles, books, pamphlets, lectures, addresses, sermons and other works of a similar nature; dramatic, dramatic-musical and musical works; audio-visual works and sound recording, including cinematographic works and other work of a similar nature; choreographic works and pantomimes; computer programmes and electronic data banks and other accompanying materials; works of drawing, painting, photography, typography, mosaic, architecture, sculpture, engraving, lithography and tapestry; works of applied art, whether handicraft or produced on industrial scale, and works of all types of designing; illustrations, maps, plans, sketches and three dimensional works relative to geography, topography, architecture or science; derivative work which by selection and arrangement of its content, constitute original work; any other work in the field of literature, traditional folklore and knowledge, science and art in whatever manner delivered, known or to be known in the future.

Other protected materials according include derivative works such as translations, adaptations and other transformations of pre-existing works and collections of preexisting works like encyclopedia and anthologies; which by selection and arrangement of their contents constitute original works.

However, the Act under S. 6 does not protect ideas, concepts, procedures, methods or other things of similar nature.

The Act gives exclusive economic rights to the owner of a protected work to do or authorise other persons to do the following to publish, produce or reproduce the work; to distribute or make available to the public the original or copies of the work through sale or other means of transfer of ownership; as well broadcast the work. The owner could as well commercially rent or sell the original or copies of the work.

According to S.10, the author of any work protected by copyright also has a moral right to claim authorship of that work, except where the work is included incidentally or accidentally in reporting of current events through the media. The moral right also extends to the author to have his/her name or pseudonym mentioned or acknowledged each time the work is used.

Infringements of Copyright

According to S. 46, Infringement of copyright or neighbouring right occurs where, without a valid transfer, licence, assignment or other authorisation under this Act a person deals with any work or performance contrary to the permitted free use and in particular where that person does or causes or permits another person to—

- a) reproduce, fix, duplicate, extract, imitate or import into Uganda otherwise than for his or her own private use;*
- b) distribute in Uganda by way of sale, hire, rental or like manner; or*
- c) exhibit to the public for commercial purposes by way of broadcast, public performance or otherwise.*

Additionally, the use of a piece of work in a manner prejudicial to the honour or reputation of the author shall be deemed an infringement of the right of the owner of the right.

In December 2019, Daily Monitor photojournalist Alex Esagala filed a lawsuit against New Vision Printing and Publishing Company Limited, alleging copyright infringement. The suit claims, Vision Group didn't get the authority to publish one of his images in its Luganda paper the Bukedde.¹⁴¹

¹⁴¹ Daily Monitor lensman Esagala takes on Vision Group in court copyright battle

<https://www.pmldaily.com/news/2019/12/daily-monitor-lensman-esagala-takes-on-vision-group-in-court-copyright-battle.html>

Offences and Penalties

Any person who does any of the following; publishes, distributes or reproduces the work; performs the work in public; broadcasts the work; communicates the work to the public; or imports any work and uses it in a manner which, were it work made in Uganda, would constitute an infringement of copyright; without the authorisation of or licence from the rights owner or his or her agent commits an offence and is liable on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both.

However, fair use of the copyrighted materials is a defense against an infringement suit. Section 15 provides instances of fair use, which include; where the production, translation, adaptation, arrangement or other transformation of the work is for private personal use only; also, where a quotation from a published work is used in another work, including a quotation from a newspaper or periodical in the form of press summary.

Also, it is considered fair where a published work is used for teaching purpose to the extent justified for the purpose by way of illustration in a publication, broadcast or sound or visual recording in so far as the use is compatible with fair practice and acknowledgment is given to the work and the author;

And if the work is communicated to the public for teaching purposes for schools, colleges, universities or other educational institution or for professional training or public education in so far as the use is compatible with fair practice and acknowledgment is given to the work and the author;

Fair use can also be cited where the work is reproduced, broadcast or communicated to the public with acknowledgment of the work, in any article printed in a newspaper, periodical or work broadcast on current economic, social, political or religious topic unless the article or work expressly prohibits its reproduction, broadcast or communication to the public;

4.0 INTERNATIONAL INSTRUMENTS ON MEDIA AND FREEDOM OF EXPRESSION

Uganda is a signatory to several international instruments that guarantee media freedom and freedom of expression. Chief among these is the 1945 Universal Declaration of Human Rights; others being the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights (ACHPR).

Some of these instruments are binding and thus form part and parcel of laws of Uganda because they were either ratified or assented to by the government of Uganda. The government is therefore under obligation to respect the key provisions. For purposes of this handbook, only sections/articles of the various instruments that deal with media and or freedom of expression will be discussed.

4.1 Universal Declaration of Human Rights¹⁴²

One of the first international instruments to guarantee media freedom and freedom of expression is the 1948 Universal Declaration on Human Rights. Specifically, article 19 of the declaration states that;

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

While the UDHR is not a treaty that must be ratified (meaning it's not legally binding), it is widely regarded and treated as an international customary law that states must respect its provisions.

¹⁴² UN General Assembly Resolution 217A(III), 10 December 1948

4.2 The International Covenant on Civil and Political Rights¹⁴³

The ICCPR, to which Uganda acceded on 21 June 1995, imposes formal legal obligations on State parties to respect its provisions.

Article 19(2) of the ICCPR guarantees the right to freedom of expression and that of the media in the following terms:

Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice.

For the media therefore, this is a very critical provision that should be used to demand the government to respect the freedom of the media and enact legislations that not only protect but also are progressive enough to promote the rights to peoples' freedom of expression.

As mentioned earlier, the right to freedom of expression is not absolute and it must thus be exercised with some level of responsibilities and duties. However, any limitations should remain within strictly defined parameters. Indeed article 19(3) of the ICCPR stipulates conditions to which any restriction on freedom of expression must conform:

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

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

¹⁴³ UN General Assembly Resolution 2200A (XXI), 16 December 1966, in force 23 March 1976

4.3 The African Charter on Human and Peoples' Rights¹⁴⁴

Article 9 of the ACHPR provides that;

Every individual shall have the right to receive information.

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

Again, the key phrase here is, “within the law.” This phrase underscores the importance of the media to exercise their freedoms as stipulated in the legislation of the land. The challenge therefore is for media to ensure that the laws enacted by the state respect these rights and comply with international standards.

The African Commission on Human and Peoples' Rights (ACHPR) has also adopted several resolutions aimed at promoting right to information and freedom of expression on the internet in Africa amongst which include ACHPR/Res. 362 (LIX) 2016,¹⁴⁵ adopted in Banjul on 4 November 2016. The resolution reaffirms the fundamental right to freedom of information and expression enshrined under Article 9 of the African Charter on Human and People's Rights and in other international human rights instruments and recognizes the role of the internet in advancing human and people's rights in Africa.

¹⁴⁴ Adopted 26 June 1981, in force 21 October 1986

¹⁴⁵ <https://www.achpr.org/sessions/resolutions?id=374>

4.4 The African Charter on Democracy, Elections and Governance (2007)¹⁴⁶

Relevant articles under this charter for media practitioners and freedom of expression advocates in Uganda include; article 2(10) where state parties commit to; “Promote the establishment of the necessary conditions to foster citizen participation, transparency, access to information, freedom of the press and accountability in the management of public affairs;”

Under article 17, State Parties further re-affirm their commitment to regularly holding transparent, free and fair elections in accordance with the Union’s Declaration on the Principles Governing Democratic Elections in Africa. For us again, we need to take cognizant of article 17(3); where the state parties are obligated to; “Ensure fair and equitable access by contesting parties and candidates to state controlled media during elections.”

This particular provision is in line with provisions sections 23(1); 24(1) and section 22(1) of the Referendum and other Provisions Act; Presidential Elections Act and the Parliamentary Elections Act respectively, which also provide for equal and fair access to state media by the parties in an election.

¹⁴⁶ article 1, 2, 17 adopted by the Eighth Ordinary Session of the Assembly, held in Addis Ababa, Ethiopia, 30 January 2007

4.5 The Windhoek Declaration on Promoting an Independent and Pluralistic African Press¹⁴⁷

Under article 9 of the Windhoek Declaration, states made commitments to ensure the existence of free and independent media in their respective countries, free from government interference and market forces that could otherwise hamper the development of a pluralistic press;

We (declare) that;

- 1) Consistent with article 19 of the Universal Declaration of Human Rights, the establishment, maintenance and fostering of an independent, pluralistic and free press is essential to the development and maintenance of democracy in a nation, and for economic development.
- 2) By an independent press, we mean a press independent from governmental, political or economic control or from control of materials and infrastructure essential for the production and dissemination of newspapers, magazines and periodicals.
- 3) By a pluralistic press, we mean the end of monopolies of any kind and the existence of the greatest possible number of newspapers, magazines and periodicals reflecting the widest possible range of opinion within the community

For this to work however, governments must indeed enact laws that seek to achieve the above undertakings. Legal and policy frameworks relating to the media are however a matter of both form and substance. This is because a country may have good laws relating to freedom of expression and the right to information, but they may not be implemented or enforced. Their functionality may be hampered by a culture of secrecy or corruption, institutional resistance, or a lack of technical and institutional capacity in the public administration.¹⁴⁸

¹⁴⁷ Adopted by the general assembly of the UN Educational, Scientific and Cultural Organisation - UNESCO - in 1991

¹⁴⁸ UNESCO (2008) *Media Development Indicators: A framework for assessing media development*; Paris, France.

4.6 Declaration of Principles of Freedom of Expression in Africa.¹⁴⁹

In 2002, the African Commission adopted this Declaration to provide a detailed interpretation for member states of the AU of the rights to freedom of expression outlined in the African Charter.¹⁵⁰ Article 1 of the declaration states that;

Freedom of expression and information, including the right to seek, receive and impart information and ideas, either orally, in writing or in print, in the form of art, or through any other form of communication, including across frontiers, is a fundamental and inalienable human right and an indispensable component of democracy. Everyone shall have an equal opportunity to exercise the right to freedom of expression and to access information without discrimination.

The Declaration goes on to say in Article II:

No one shall be subject to arbitrary interference with his or her freedom of expression; and Any restrictions on freedom of expression shall be provided by law, serve a legitimate interest and be necessary in a democratic society.

This declaration is especially relevant to the media in Uganda, as it is very detailed and provides guidelines on how states can ensure that freedom of expression is achieved. Specifically, article VI;

State and government controlled broadcasters should be transformed into public service broadcasters, accountable to the public through the legislature rather than the government, in accordance with the following principles:

- 1) *public broadcasters should be governed by a board which • is protected against interference, particularly of a political or economic nature;*
- 2) *the editorial independence of public service broadcasters should be guaranteed;*
- 3) *public broadcasters should be adequately funded in a manner that protects them from arbitrary interference with their budgets;*

¹⁴⁹ Adopted by the African Commission on Human and Peoples' Rights at its 32nd Session, 17-23 October 2002

¹⁵⁰ Open Society Initiative for Eastern Africa (2010) *Public Broadcasting in Africa Series: Uganda* Pg. 25

- 4) *public broadcasters should strive to ensure that their transmission system covers the whole territory of the country; and*
- 5) *the public service ambit of public broadcasters should be clearly defined and include an obligation to ensure that the public receive adequate, politically balanced information, particularly during election periods.*

The Declaration furthermore provides for freedom of access to information and states that ‘the right to information shall be guaranteed by law’ (Article IV).¹⁵¹

¹⁵¹ *Ibid* Pg 26

4.7 Protocol on Management of Information and Communication

Uganda is a member of the International Conference on the Great Lakes Region, established in 2000 in response to UN Security Council resolutions calling for an international conference on peace, security, democracy and development in the Great Lakes region.¹⁵² In December 2006 heads of state and government of the member states agreed a Pact on Security, Stability and Development in the Great Lakes Region, with several protocols, including a Protocol on Management of Information and Communication which enjoins member states to respect a wide range of principles related to freedom of expression and the media.¹⁵³ Among the objectives of the protocol established by Article 2 are for member states to:

- 1) *Promote freedom of opinion and expression and the free exchange of ideas in the Great Lakes Region;*
- 2) *Promote freedom of the media to receive and to impart information and ideas in the Great Lakes Region;*
- 3) *Promote pluralistic media and the new information and communications technologies, and expand access to information in the Great lakes Region;*
- 4) *Foster the emergence of independent and responsible media in the Great Lakes Region, namely by promoting media regulation and self-regulation bodies;*
- 5) *Promote professionalism in the media, namely through the establishment of adequate financial assistance mechanisms and strategies for strengthening Press professionals capacities.*

These regional and international instruments can be used to challenge the government on provisions in the national legislations that are inconsistent with the constitution, particularly article 29, as well as international principles on freedom of expression.

¹⁵² *Open Society Initiative for Eastern Africa (2010) Public Broadcasting in Africa Series: Uganda; Nairobi, Kenya Page 27*

¹⁵³ *Ibid*

4.8 International Events and Plans on Media Freedom and Access to Information

The United Nations, through its agencies, such as the UNESCO is the United Nations Educational, Scientific and Cultural Organization (UNESCO),¹⁵⁴ has adopted several resolutions and set aside key events or plans such as the World Press Freedom Day, the International day for Universal Access to Information and UN Plan of Action Against Impunity for Crimes Against Journalists to celebrate media freedoms including access to information and raise awareness on the rights and freedoms of journalists, including their safety.

4.8.1 United Nations World Press Freedom Day

Every year, May 3rd is a date which celebrates the fundamental principles of press freedom; to evaluate press freedom around the world, to defend the media from attacks on their independence and to pay tribute to journalists who have lost their lives in the exercise of their profession.¹⁵⁵ The Day was proclaimed by the UN General Assembly in December 1993, following the recommendation of UNESCO's General Conference at the 26th session in 1991. Since then, 3 May, the anniversary of the Declaration of Windhoek is celebrated worldwide as World Press Freedom Day.

The day serves as an occasion to inform citizens of violations of press freedom - a reminder that in dozens of countries around the world, publications are censored, fined, suspended and closed down, while journalists, editors and publishers are harassed, attacked, detained and even murdered.¹⁵⁶ It also provides an annual opportunity to encourage and develop initiatives in favour of press freedom, and to assess the state of press freedom worldwide.

¹⁵⁴ <https://en.unesco.org/about-us/introducing-unesco>

¹⁵⁵ <http://www.unesco.org/new/en/unesco/events/prizes-and-celebrations/celebrations/international-days/world-press-freedom-day/about-world-press-freedom-day/>

¹⁵⁶ *Ibid*

4.8.2 International Day for Universal Access to Information

On 17 November 2015, the United Nations Educational, Scientific and Cultural Organization (UNESCO) declared 28 September as International Day for Universal Access to Information.¹⁵⁷ And since September 2016, UNESCO marks 28 September as the “**International Day for Universal Access to Information**” (IDUAI).¹⁵⁸ Considering that several civil society organizations and government bodies in the world have adopted and currently celebrate this observance, the UN General Assembly, in its resolution 74/5¹⁵⁹ from 15 October 2019, also adopted 28 September as the International Day for Universal Access to Information.¹⁶⁰

The African Platform on Access to Information, an inter-agency working group supported by UNESCO, the African Union, and others, even recognized the right to information as a human right and as a fundamental to development.¹⁶¹

4.8.3 UN Plan of Action on the Safety of Journalists and the Issue of Impunity

In the course of their work, journalists face a lot of threats and attacks, including physical assaults on their person and equipment. Unfortunately, many of the perpetrators of these attacks walk scot-free and are not brought to book.

On 12th April 2012, the United Nations Executives Board endorsed what is now known as the UN Plan of Action on the Safety of Journalists and the Issue of Impunity. The UN Plan of Action on the Safety of Journalists and the Issue of Impunity is the result of a process that began in 2010 upon request of the Intergovernmental Council of the International Programme for the Development of Communication (IPDC) and aims to creating of a free and safe environment for journalists and media workers, both in conflict and non-conflict situations, with a view to strengthening peace, democracy and development worldwide.

¹⁵⁷ <https://www.un.org/en/events/informationaccessday/background.shtml>

¹⁵⁸ <https://en.unesco.org/commemorations/acesstoinformationday>

¹⁵⁹ <https://unesdoc.unesco.org/ark:/48223/pf0000243325.locale=en>

¹⁶⁰ <https://www.un.org/en/events/informationaccessday/background.shtml>

¹⁶¹ *Ibid*

The Plan's measures include, among others; undertakings, the establishment of a coordinated inter-agency mechanism to handle issues related to the safety of journalists as well as assisting countries to develop legislation and mechanisms favourable to freedom of expression and information. To further reinforce prevention, the Plan recommends working in cooperation with governments, media houses, professional associations and civil society to conduct awareness raising campaigns on a wide range of issues such as existing international instruments and conventions, the growing dangers posed by emerging threats to media professionals, including non-state actors, as well as various existing practical guides on the safety of journalists.⁶⁵ Prior to this action plan, the United Nations Security Council had on December 23, 2006 unanimously adopted a resolution calling for more action to protect journalists in conflict zones.

The campaign for a United Nations resolution had been launched by the International Federation of Journalists which prepared the draft resolution. With the support of the International News Safety Institute and the European Broadcasting Union as well as national journalists' unions, the campaign lobbied Security Council members for action. Resolution 1738 as adopted condemns intentional attacks against journalists "and calls upon all parties to put an end to such practices".⁶⁶ The resolution "urges all parties involved in situations of armed conflict to respect the professional independence and rights of journalists, media professionals and associated personnel as civilians", and urges warring parties "to do their utmost to prevent violations of international humanitarian law against civilians, including journalists, media professionals and associated personnel."

Appendix I – Code of Conduct Developed by the IMCU

Media Practitioners in Uganda developed a code of ethics to govern their conduct and as a basis for adjudication of disputes between them and the public.

PREAMBLE We the media practitioners in Uganda:

Conscious of the central role of the press freedom in a free and democratic Uganda;

Aware that an independent and honourable profession is indispensable to the maintenance of press freedom;

Recognising our role in the preservation of democracy in Uganda;
Aware of our professional responsibilities requiring us to maintain highest standards of professional conduct;

Resolve to have this Code of Ethics to govern the conduct and practice of all media practitioners, media owners and media institutions and as a basis for adjudication of disputes between the press, the public and government in Uganda by the Independent Media Council of Uganda.

1. Scope

This code shall apply to media practitioners involved in all stages of sourcing, processing media content for print, graphic and electronic platforms.

2. Professional Integrity

2.1 A journalist shall assist and participate in establishing, maintaining, enforcing and observing high standards of conduct so that the integrity and independence of the profession is preserved.

2.2 A journalist shall always identify him/herself and the media house where he/she works. Use of undercover or subterfuge methods to gain entry into restricted places or access to information shall be done only as matter of public interest and with the permission of the editor.

2.3 A journalist shall not tape or record anyone without the person's knowledge. An exception may be made only if the recording is necessary to protect the journalist in a legal action or for some other compelling reason.

2.4 A journalist shall not solicit, accept bribes or any form of inducement meant to bend or influence professional performance. However, facilitation by third parties to enable a journalist to perform a bonafide assignment in specific situations shall not be deemed as an inducement provided that the assigning editor sanctions such facilitation.

3. Conflict of Interest

3.1 A journalist shall always declare to the editor any conflict of interest that arises in the execution of duty and from such assignment to avoid the conflict.

3.2 A journalist shall endeavour to remain free of associations and activities that compromises personal integrity or undermines the reputation of the profession.

4. Accuracy, Fairness and Balance

4.1 A journalist has the responsibility for the accuracy of the information he/she disseminates. The journalist shall also ensure that such information is fair and balanced. Journalists shall not indulge in unfair comment, falsification, distortion or misrepresentation of facts.

4.2 A journalist and the employing media house shall endeavour to thoroughly investigate allegations affecting individuals and institutions before disseminating them.

4.3 In the spirit of fairness and balance, the journalist shall endeavour to seek and include comment from the affected individuals or institutions in the same story or as quickly as practicable. Fairness shall also include reporting facts in the proper context. Where the affected party declines to comment or where the media house genuinely tries but fails to extract a comment, such position shall be explained in the story published or broadcast.

4.4 Whenever it is recognised that an inaccurate, misleading or distorted story has been published or broadcast, it shall

be corrected or clarified promptly, without waiting for a complaint to be raised first.

4.5 Corrections should also be reasonably proportional to the error in terms of impact.

4.6 Corrections shall be clear and shall carry an apology to affected parties. For purposes of clarity, corrections shall apply to errors of fact and inaccuracies while clarifications shall apply to misleading or distorted information.

5. Right of Reply

5.1 Media houses shall accord aggrieved parties the right of reply to material published or broadcast about them.

5.2 Journalists shall distinguish clearly in their reports between comment, conjecture and fact. News shall remain objective but a journalist may be partisan in commentaries and opinion pieces.

5.3 A comment shall be a genuine expression of opinion relating to fact. Comment or conjecture shall not be presented in such a way as to create the impression that it is an established fact.

6. Social responsibility

6.1 A journalist shall, in the dissemination of information, bear in mind his/her responsibility of educating and informing the public on matters affecting them and their responsibility in society. The journalist's responsibility shall include monitoring government and other centers of influence and power on behalf of the public; and this responsibility shall not be abused for whatever reason.

6.2 A media practitioner shall at all times defend the principle of the freedom of the press and other mass media by striving to eliminate unjustified news suppression and censorship.

7. Respect for privacy and human dignity

7.1 The public's right to know shall always be weighed vis-à-vis the individual's right to privacy.

7.2 Publications about the private lives of individuals, without their consent, are not acceptable except where public interest overrides the right of privacy.

7.3 It is justified to publish information about individuals where this is for: detecting or exposing criminal conduct; detecting or exposing seriously anti-social conduct; protecting public health and safety; and preventing the public from being misled by some statement or action of that individual where such a person is doing something in private which he or she is publicly condemning.

7.4 Journalists shall seek to understand the boundaries of public and private space. In this regard, journalists can legitimately report about activities of individuals in a public place but not in a private environment.

8. Letters to the Editor

8.1 For purposes of the Code, Letters to the Editor shall include normal letters sent physically or electronically.

8.2 An editor who decides to open columns on a controversial subject is not

obliged to publish all the letters received in regard to that subject. The Editor may select and publish only some of them either in their entirety or the gist thereof. The Editor shall, however, present a fair balance between the pros and cons of the principal issue and reserve the discretion to decide at which point to close the debate.

8.3 In case of radio and TV discussion programs, hosts shall make reasonable effort to reach out for comment from persons mentioned. Hosts shall also encourage and balance comments from the audience sent by any of the modern means of interactivity.

9. Plagiarism

9.1 No media practitioner shall engage in plagiarism. Plagiarism consists of making use of another person's material or ideas without proper acknowledgement and attribution of the source of those ideas or material.

9.2 Words directly quoted from sources other than the writer's own reporting shall be attributed. In general, when other work is used as the source of ideas for stylistic inspiration the final report shall be clearly different from the original work.

9.3 The editor shall take final responsibility to ensure that published or broadcast content in stories or programs does not contain plagiarised material and that any borrowed content is properly attributed to the rightful author.

10. Non-disclosure of sources

10.1 A journalist shall protect the confidentiality of his/her sources of information and shall only divulge them at the demand of a competent court of law.

10.2 Journalists shall follow the in-house rules and get the editor's consent before granting confidentiality. Once such confidentiality has been granted, both the journalist and the media house shall honour it. It shall be the ultimate responsibility of the Editor to ensure that such protection is granted and guaranteed.

10.3 In order to have the clarity of mind and the confidence, the editor, being the final editorial authority, shall have liberty to demand of the journalist the source of the story. But the editor shall under no circumstances disclose the said sources to a third party.

10.4 The Editor shall also have the privilege to reject use of any story where he/she doubts the journalist's sources.

10.5 For the sake of the integrity and security of the profession, journalists shall not allow to be used as Police witnesses in the investigation of crime simply because the journalists covered the events where such crime was allegedly committed. Such compliance would erode the trust the public holds in the profession of journalism.

11. Intrusion into grief

11.1 Journalists shall not intrude into personal grief. Stories and pictures that may aggravate grief or cause distress to relatives and friends of the dead shall not be published. Any reports about the dead and gravely ill shall be carried out with utmost discretion and due sympathy.

11.2 Journalists and media houses shall

not profiteer from deliberate exploitation of the misfortune of those afflicted by grief. The media shall also avoid re-use of file pictures of situations of death and grave illnesses of persons likely to resurrect distress among relatives and friends.

12. Innocent relatives and friends

12.1 The media shall generally avoid identifying relatives or friends of persons convicted or accused of crime unless the reference to them is necessary for the full, fair and accurate reporting on the crime or legal proceedings and where such identification adds value to the story.

13 Victims of sex crimes

13.1 Media Institutions shall not identify victims of sexual assaults or publish or broadcast material likely to contribute to such identification unless the victims have given informed consent to such publications.

13.2 A journalist shall endeavour to explain to the concerned person the implications of such disclosure. In cases where consent is given subject to certain conditions, then such conditions shall be respected.

13.3 The journalists need to understand that ordinarily such publication does not serve any legitimate journalistic or public need and may bring social opprobrium (public disgrace and shame) to the victims and social embarrassment to their relations, family, friends, community, religious order or the institutions to which they belong.

13.4 Children shall particularly not be identified as victims, however remotely.

14. Protection of children

14.1 Children shall not be identified in cases concerning sexual offences, whether as victims, witnesses, or defendants.

14.2 Except in matters of public interest, e.g. cases of child abuse or abandonment, journalists shall not normally interview or photograph children on subjects involving their personal welfare in the absence of, or without the consent of a parent or other adult who is responsible for the children.

14.3 Children shall not be approached or photographed while in a formal institution without the permission of the institution's authority.

15 Children in criminal cases

15.1 Media institutions shall not publish or broadcast the names of any underage offenders (below 18 years) arrested by Police or tried in the criminal courts. Where such identification must be made, the media house shall explain the overriding reasons that led to such an editorial decision.

16 Publication of adults-only material

16.1 Out of respect to values of common decency, the media shall take extra care when dealing with adults-only material.

16.2 A media house, which publishes or broadcast adults-only material, shall ensure such material is not accessible to the underage (minors) and shall provide restricted places or time where willing adults can access such material.

16.3 Television stations shall also schedule adult movies later at night when children are in bed. Such programs shall

be properly labeled with appropriate advisories including in the TV schedules published in newspapers.

16.4 Radio stations shall air adults-only programs late at night when children are in bed and they shall make appropriate promotional advisories to that effect.

17 Use of pictures

17.1 The Media must exercise due caution when using pictures. Choice and use of pictures should not cause unnecessary harm to persons concerned e.g. exploiting minors and people with disabilities. Special care shall be taken when using pictures of disasters.

17.2 The use of grisly, grotesque and gruesome pictures should be avoided except where there is overriding public interest. Illustrations accompanying stories of adult material shall be measured both in content and in caption.

18 Hatred

18.1 Media Institutions shall not publish or broadcast material that is intended or is likely to cause hostility or hatred towards persons on the grounds of their race, ethnic origins, nationality, religion or political affiliation.

18.2 Media institutions shall take utmost care to avoid contributing to the spread of ethnic hatred when reporting events and statements of this nature.

18.3 Media shall endeavour to regulate and balance debate and discussion of sensitive issues, like corruption, nepotism, favouritism so that they do not degenerate into hate literature.

19. Disadvantaged and marginalized groups

19.1 The media shall not publish material that is intended to ridicule or impute ridicule of persons on grounds of their gender or physical disabilities.

19.2 The media shall also take steps to ensure that content for publication or broadcast, including paid-for content, is free of such contemptuous material.

20 Covering conflicts

20.1 The media shall exercise a high sense of individual and corporate citizen responsibility when covering conflict and while commenting on sectarian disputes. Covering conflict shall be done in a manner that is conducive to the creation of an atmosphere congenial to national harmony, amity and peace.

20.2 News, views and comments shall be backed by facts and measured in language and tone. But it shall be the responsibility of the media to highlight potential conflicts before they explode and seek to help society heal wounds after conflict.

21. Undue pressure or influence

21.1 Media owners, publishers and practitioners shall not suppress or distort information about which the public has a right to know because of undue pressure

or influence from commercial, political or social interest.

22. Payment for Information

22.1 Media Owners, Publishers and Practitioners shall not publish, broadcast or suppress an editorial report or omit or alter vital facts in that report in return for payment of money or for any other gift or reward.

22.2 This ethic shall, however, not apply to advertisements or advertorials. Media houses shall clearly distinguish between editorial content and advertisements or advertorials.

22.3 Media owners, publishers and media practitioners shall not pay people to act as information sources unless there is demonstrable public interest value in the information

24 Advertisements

24.1 The media shall strive to preserve the sanctity and impartiality of news. As such media houses shall not allow news bulletins to be sponsored. 24.2 Journalists shall always be seen to remain independent and shall not dress in corporate branded wear when presenting programs or covering sponsored events.

How does the Council handle complaints?

Appendix II - Key Penal Code Provisions Relating to Media

33. Interpretation of import, publication, etc.

For the purposes of sections 34, 35, 36, 38, 39, 40, 42, 43 and 44—

(a) “import” includes—

(i) to bring into Uganda; and

(ii) to bring within the inland waters of Uganda, whether or not the publication is brought ashore and whether or not there is an intention to bring the publication ashore;

“inland waters” includes all lakes, rivers, creeks and lagoons of Uganda;

“periodical publication” includes every publication issued periodically or in parts or numbers at intervals whether regular or irregular;

“publication” includes all written and printed matter and any gramophone or other record, perforated roll, cinematograph film or other contrivance by means of which any words or ideas may be mechanically produced, represented or conveyed, and everything whether of a nature similar to the foregoing or not, containing any visible representation or by its form, shape or in any manner capable of producing, representing or conveying words or ideas, and every copy and reproduction of any publication so defined;

“seditious publication” means a publication having a seditious intention.

34. Power to prohibit importation of publications, etc.

Whenever the Minister considers it in the public interest so to do, he or she may, in his or her absolute discretion, prohibit, by statutory order, the importation of all publications or any of them, periodical or

otherwise; and where the prohibition is in respect of any periodical publications, the same or any subsequent order may relate to all or any of the past or future issues of a periodical publication.

The Minister may, by writing under his or her hand, at any time, and from time to time, exempt any of the publications the importation of which has been prohibited under this section, or permit any person or class of persons to import all or any of such publications.

35. Offences in relation to publications, the importation of which is prohibited.

(1) Any person who imports, publishes, sells, offers for sale, distributes or reproduces any publication, the importation of which has been prohibited under section 34, or any extract from such publication, commits an offence and is liable for a first offence to imprisonment for two years or to a fine not exceeding two thousand shillings or to both such imprisonment and fine, and for a subsequent offence to imprisonment for three years; and such publication or extract from it shall be forfeited to the Government.

(2) Any person who without lawful excuse has in his or her possession any publication the importation of which has been prohibited under section 34, or any extract from such publication, commits an offence and is liable for a first offence to imprisonment for one year or to a fine not exceeding one thousand shillings or to both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication or extract from it shall be forfeited to the Government.

36. Delivery of prohibited publications.

(1) Any person—to whom any publication, the importation of which has been prohibited under section 34, or any extract from such publication, is sent without his or her knowledge, or in response to a request made before the prohibition of the importation of such publication came into effect; or who has any such publication or extract from such publication in his or her possession at the time when the prohibition of its importation comes into effect, shall forthwith, if or as soon as the nature of its contents has become known to him or her, or in the case of a publication or extract from such publication coming into the possession of such person before the order prohibiting its importation has been made, forthwith upon the coming into effect of an order prohibiting the importation of the publication, deliver such publication or extract from it to the nearest administrative officer or to the officer in charge of the nearest police station. Any person who contravenes any provision of subsection (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand shillings or to both such imprisonment and fine. Any publication or extract from it which is the subject matter of a conviction under subsection (2) shall be forfeited to the Government.

(4) Any person who complies with subsection (1), or who is convicted of an offence under that subsection, shall not be liable to be convicted for having imported or having in his or her possession the same publication or extract from it.

37. Publication of information prejudicial to security.

(1) A person who publishes or causes to be published in a book, newspaper, magazine, article or any other printed matter, information regarding military operations, strategies, troop location or movement, location of military supplies or equipment of the armed forces or of the enemy, which publication is likely to—endanger the safety of any military installations, equipment or supplies or of the members of the armed forces of Uganda; assist the enemy in its operations; or (c) disrupt public order and security, commits an offence and is liable on conviction to imprisonment for a term not exceeding seven years. For the purposes of this section, “enemy” includes a person or group of persons engaged in waging war or war-like activities against the Republic of Uganda. A person shall not be prosecuted for an offence under this section without the written consent of the Director of Public Prosecutions.

38. Power to examine packages.

(1) Any of the following officers—any police officer not below the rank of inspector; any other officer authorised in that behalf by the Minister, may detain, open and examine any package or article which he or she suspects to contain any publication or extract from a publication which it is an offence under section 35 to import, publish, sell, offer for sale, distribute, reproduce or possess and during such examination may detain any person importing, distributing or posting such package or article or in whose possession such package or article is found.

(2) If any such publication or extract from it is found in such package or article, the whole package or article may be impounded and retained by the officer; and the person importing, distributing or posting it or in whose possession it is found may forthwith be arrested and proceeded against for the commission of an offence under section 35 or 36, as the case may be.

39. Seditious intention.

(1) A seditious intention shall be an 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; to excite any person to attempt to procure the alteration, otherwise than by lawful means, of any matter in state as by law established; to bring into hatred or contempt or to excite disaffection against the administration of justice; to subvert or promote the subversion of the Government or the administration of a district.

(2) For the purposes of this section, an act, speech or publication shall not be deemed to be seditious by reason only that it intends—to show that the Government has been misled or mistaken in any of its measures; to point out errors or defects in the Government or the Constitution or in legislation or in the administration of justice with a view to remedying such errors or defects; to persuade any person to attempt to procure by lawful means the alteration of any matter as by law established.

(3) For the purposes of this section, in determining whether the intention with which any act was done, any words were spoken or any document was published was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his or her conduct at the time and in the circumstances in which he or she was conducting himself or herself.

40. Seditious offences.

(1) (a)

(b) Any person who—does or attempts to do or makes any preparation to do, or conspires with any person to do, any act with a seditious intention; utters any words with a seditious intention; prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; imports any seditious publication, unless he or she has no reason to believe, the proof of which shall lie on him or her, that it is seditious, commits an offence and is liable on first conviction to imprisonment for a term not exceeding five years or to a fine not exceeding fifty thousand shillings or to both such imprisonment and fine, and for a subsequent conviction to imprisonment for a term not exceeding seven years.

Any person who, without lawful excuse, has in his or her possession any seditious publication commits an offence and is liable on first conviction to imprisonment for a term not exceeding three years or to a fine not exceeding thirty thousand shillings or to both such imprisonment and fine, and on a subsequent conviction to imprisonment for five years.

Any publication in respect of a conviction under subsection (1) or (2) shall be forfeited to the Government.

It shall be a defense to a charge under subsection (2) that if the person charged did not know that the publication was seditious when it came into his or her possession, he or she did, as soon as the nature of the publication became known to him or her, deliver the publication to the nearest administrative officer or to the officer in charge of the nearest police station.

41. Promoting sectarianism.

(1) A person who prints, publishes, makes or utters any statement or does any act which is likely to—degrade, revile or expose to hatred or contempt; create alienation or despondency of; raise discontent or disaffection among; or promote, in any other way, feelings of ill will or hostility among or against, any group or body of persons on account of religion, tribe or ethnic or regional origin commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

(2) It shall be a defense to a charge under subsection (1) if the statement was printed, published, made or uttered, or the act was done with a view to exposing, discouraging or eliminating matters which promote or have a tendency to promote sectarianism.

(3) Sections 42, 43 and 44 shall apply to a charge under subsection (1).

42. Power of courts to confiscate printing machines and prohibit publication.

When any person is convicted of printing a seditious publication, the court may, in addition to any other penalty it may impose, order the printing machine on which the publication was printed to be confiscated for a period not exceeding one year, whether or not the person convicted is the owner of the machine. When any proprietor, publisher, printer or editor of a newspaper, as defined in the Press and Journalist Act, is convicted of printing or publishing a seditious publication in a newspaper, the court may, in addition to any other punishment it may impose and in addition to ordering the confiscation of the

printing machine, make an order prohibiting any further publication of the newspaper for a period not exceeding one year. A court may, at any time, on the application of the Director of Public Prosecutions, revoke any order made by it confiscating a printing machine or prohibiting further publication of a newspaper.

A court before ordering the confiscation of a printing machine under subsection (1) shall satisfy itself by evidence on oath as to the machine on which the seditious publication was printed.

For the purposes of this section, “printing machine” includes all the machines and type used in producing or reproducing the seditious publication.

In any case where the printing machine has been ordered to be confiscated under this section, the Inspector General of Police may in his or her discretion cause— the machine or any part of it to be removed; or any part of the machine to be sealed so as to prevent its use, but the owner of the machine or his or her agents shall be entitled to reasonable access to the machine to maintain it in proper working order.

The Inspector General of Police shall not be liable for any damage caused to the machine under subsection (6) either by neglect or otherwise except where he or she or his or her agents have willfully damaged the machine.

Any person who uses or attempts to use a printing machine confiscated under subsection (1) commits an offence and is liable on conviction to imprisonment for a period not exceeding three years.

Any person who prints or publishes a newspaper in contravention of an order made under subsection (2) commits an offence and is liable on conviction to imprisonment for a period not exceeding three years.

43. Legal proceedings.

(1) No prosecution for an offence under section 40 shall be begun except within six months after the offence is committed; except that where a person— commits such an offence from outside Uganda; or leaves Uganda within six months of committing such an offence, then the prosecution for the offence may be begun within six months from the date when the person first arrives in or returns to Uganda after committing the offence or leaving Uganda, as the case may be.

(2) A person shall not be prosecuted for an offence under section 40 without the written consent of the Director of Public Prosecutions.

44. Evidence.

No person shall be convicted of an offence under section 40 on the uncorroborated testimony of one witness.

About the Author

Paul is a media trainer and researcher with over 15 years' experience in journalism, media development, and human rights advocacy. His professional interests include media policy and regulation, digital rights and freedom of expression. He holds an MA in Communication Studies from the University of Nairobi, Kenya, and a BA in Mass Communication from Makerere University, Uganda. He has previously worked with and/or consulted for Daily Monitor, Panos Eastern Africa, ARTICLE 19 East Africa, African Centre for Media Excellence, Africa Freedom of Information Centre, PATH Uganda, Freedom House, Human Rights Network for Journalists in Uganda, Media Focus on Africa, among others. Currently, he works with the Collaboration on International ICT Policy for East and Southern Africa

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