

Human Rights
Network –
Uganda
HURINET-U

A Dummy's Guide to the Press
and Journalist Bill 2010



Introduction

In recent years, Uganda has seen an increase in legislation that directly limits the enjoyment of human rights and individual freedoms. Sadly, the Press and Journalist (amendment) Bill of 2010—which sharply curtails freedom of speech—falls squarely within this category of legislation. The following dummy guide has been developed to enable members of the community to understand how the different provisions within the bill are likely to affect their enjoyment of rights, while negatively influencing their day-to-day work.

HURINET-U believes that if every individual plays his or her role in the debate on the present Bill, we can make positive alterations to the Bill without infringing on other rights. HURINET-U calls upon every individual who reads this guide to take action, whether you're a journalist, a student, a private investor, a politician, a member of an NGO, or just a concerned individual within the community. This simplified guide will enable you to understand how the proposed bill affects you.

What is the Press and Journalist (amendment) Bill of 2010?

The Press and Journalist (amendment) Bill was introduced to the Cabinet of Uganda on January 29, 2010 by the minister of information and national guidance, with the goal of amending the existing Press and Journalist Act Cap 109 [enacted in 1995]. This bill aims to:

1. Require the registration of newspapers;
2. Require editors of a newspaper to ensure that what is published is not prejudicial to national security;
3. Rationalise the composition of the media council;
4. Empower the Media Council to arbitrate and judge the professionalism of journalism in Uganda, and to mediate conflicts between the government and media houses, and between individual media houses themselves.
5. Require the licensing of newspapers;
6. Increase the membership of the disciplinary committee;
7. Provide for expeditious disposal of complaints before the disciplinary committee;
8. Determine offences and penalties for media violations.¹

What does the Press and Journalist Act (1995) aim to do?

The Press and Journalist Act aims to:

1. Ensure media freedom in Uganda in accordance with Article 29 of the Constitution of Uganda 1995;
2. Provide for a council to regulate the media industry (by facilitating the media in ensuring professional media freedom);
3. Establish an institute for journalists.²

How does the Press and Journalist Act (1995) regulate journalists?

1. The current law requires the registration of newspaper editors, outlines the functions of editors, and discloses the grounds for disqualification of an editor. The editor of a newspaper can be disqualified if he or she does not meet the various requirements listed in the law. By regulating editors, the law hopes to ensure a degree of professionalism within the media.
2. The current law established the Media Council, which is a body charged with the general regulation of Uganda's print media. The council oversees the activities of media houses throughout the country.
3. The current law establishes a disciplinary committee, which is a body responsible for punishing journalists who act unprofessionally. When a formal complaint is lodged against a journalist who has been accused of acting unprofessionally, that journalist will face the disciplinary committee.
4. The current law requires the registration and regulation of journalists in Uganda, and provides code of conduct for journalists.
5. The current law established the Institute of Journalists, which is charged with promoting professional journalism in Uganda.

Are there any loopholes in the existing Act? And if so, what needs to be addressed?

¹ Preamble to the Press and Journalist (Amendment) Bill 2010

² Preamble to the Press and Journalist Act

Yes: the present law has loopholes that need to be addressed. However, in addressing these loopholes, we need to be careful not to violate the freedom of media and other freedoms.

Key loopholes in the present Press and Journalist Act (1995) include the following:

1. The current law only focuses on trained journalists and does not cater for other people doing journalistic work like DJs, MCs, or radio and TV presenters.
2. The current law does not allow untrained journalists to register with the media council. As a result the council may not punish them in the event of unprofessional conduct.
3. The current law does not provide journalists with a code of conduct, nor does it adopt any other international standards. This has left the media council and other stakeholders uncertain as to what professional journalism in Uganda should entail. (Remember that professional journalism should be based on internationally accepted standards, taking into considerations of the levels of development of the media in Uganda.)
4. The current law has been grossly unenforced and remains unknown to members of the public who are supposed to be able to make complaints against journalists who act unprofessionally.
5. The current law does not provide for the distribution and access of pornographic materials in print, audio, and video formats, which has limited the Media Council's ability to control the distribution of such information.

Does the new Bill address the loopholes in the existing law? What are the new issues in the Bill?

No, generally the bill does not address the above needs, but seeks to create a law likely to limit the enjoyment of media freedom and freedom of speech in Uganda, including:

1. Increasing the minister of information's power to appoint (and dismiss) members of the broadcasting council. With this new power, the council will cease to be independent, and will fall under the direct control of the minister.
2. Reducing the number of professional journalists currently on the council (from 3 to 1). This is likely to lead to a council that does not understand the industry as well as it might otherwise.
3. Reducing public representation on the council (from 2 to 1). This limits the role of the public in collaborating with and regulating public media. (See clause 4 of the Bill and S. 8 of the Act.)
4. Requiring newspapers to be licensed, and providing for steep conditions in licensing of newspapers. This is likely to affect newspaper production, given that licenses can be removed or refused depending on what government (read: the minister of information) thinks is right. This will limit media freedom.
5. Empowering the council to cancel the license of a newspaper that publishes information considered prejudicial to state security or economic development. However, what amounts to economic sabotage or prejudice to state security is not defined in the bill. This makes it difficult for members of the media to publish any information about the state and will affect the community generally (clauses 5 and 9 of the bill). Furthermore, the lack of definitions in the bill Violates article 28(12) of the Constitution, which states that every offence must be defined and its penalty provided for.
6. The Bill proposes to punish journalists, newspapers, and editors for the same offense—a fact that creates a situation of double jeopardy. (Double jeopardy is a

principle of criminal law in which a person or entity is punished twice for a single offense. It is illegal. In the case of the current media bill, journalists, editors, and newspapers are all part a single institution.)

The above and other provisions in the Bill will adversely affect media freedom in Uganda and will directly affect the community.

What is the legal basis for the protection of media freedom?

Media freedom is important as a right recognized under article 29 of the Ugandan constitution, article 19 of the UDHR, and article 19 of the ICCPR—all ratified by Uganda. The government of Uganda is thus under obligation to promote and protect this right.

Media freedom is important in a democratic society as it enables citizens participate in their own governance. Citizens participate through analyzing what government is doing and by holding their leaders accountable. This is enshrined in article 59 of the constitution and article 2 of ICCPR.

Media freedom is also an important tool of evaluating the effectiveness of government and CSO programmes, policies, and projects. Reports on the failures and successes of different projects are often relayed through a free media.

Media freedom has enabled neglected societies to access services. Oftentimes, for example, the media draw attention to persons most in need, such as those hit by disasters like famine, floods, and earthquakes. Indeed, media reports often provide the information that eventually spurs on humanitarian interventions. Free media, in this sense, has been the first point of contact for those in need.

During the 2009 famine in Karamoja and Teso regions, the media reported people dying of hunger—a fact that the government initially denied. However, several CSOs intervened to provide relief for the affected communities and lives were saved. If media had been quiet, many more people would have perished before government finally took action.

Several times the media in Uganda have publicly exposed bad practices by various organizations and groups, resulting in the Chopper Scandal, the NSSF scandals, and the recent CHOGM report. In all these scandals, government resources were wasted. But as a result of intrepid investigative reporting, action was often taken to ensure that government resources were recovered. Such would likely not be the case with a controlled media.

What happens when media freedom is controlled?

The curtailing of press freedom will help create an uninformed public whose decisions and participation in governance is limited. Among other things, this could result in the development of myths and misconceptions that exacerbate conflicts.

It is easier to promote hatred in a closed media environment than in an open one, given that in an open society the public has the opportunity to access various sources of information, with the possibility of differentiating propaganda from truth.

How does the Bill affect:

In Rwanda prior to 1994, there was total government control of the media. There were two radio stations--the government-owned Radio Rwanda, and the RTLM, which was generally supported by the government. Along with these stations were two newspapers and one government TV outlet. Members of the opposition were not given access to the country's radio waves. Without other media sources available to dispute what RTLM was airing, its monopoly allowed it to spread hate propaganda during the genocide. This might have been avoided if Rwanda had an independent regulatory body (independent of government and highly connected individuals), and had a diversified media industry where people could crosscheck what they are given.

a. Members of the community?

Whereas the bill fully focuses on print media to devastating effect, it is likely to have negative consequences for the community at large.

In Uganda, most information is disseminated through the media, which is instrumental in informing the public on that which is taking place in their communities. It is this that helps governments and communities design intervention strategies to alleviate various problems, political and otherwise. Oftentimes, journalists report on the successes and failures of government. Ideally, this helps government and other stakeholders to intervene and address the failures at hand. This function will be difficult to undertake in for a controlled media environment.

b. Journalists or media practitioners

All media practitioners and journalists need to be concerned about the provisions of the new Bill, because it will not only target print media, but also who rely on print media. The Bill is an extension of an already bad law that restricts electronic media and allows the government to close radio stations at will.

All media houses (including electronic media such as radio and TV) can be guilty of “sabotaging” government under the Press and Journalist Bill of 2010 if they republish information deemed to run counter to the perceived interests of various governmental parties. The challenge is that a media house will not be able to determine what constitutes sabotage before it is aired. (As the bill currently reads, it is only the minister who will determine this.) And even if such media could determine what constitutes sabotage, censoring themselves to appease the interests of government parties is anathema to the free-flow of information and the spirit of Ugandan democracy.

Example of news that might be considered the sabotaging of government interests include: a report that workers in a hospital are on strike; a report that the national sports team has not been paid or is going without food; a report of corruption by some government officials; or a report of misbehavior by a public figure.

By requiring that newspapers be licensed, the bill is in effect reducing the employment security of media practitioners. Media practitioners and journalists will no longer be assured of employment until the licenses for their employers (media houses) are secured. (With this it will be easier to employ journalists on a part-time contract basis so as to be able to meet operational costs.)

The provisions of the bill will also have a direct effect on the development of professionalism within the industry. Because of the job insecurity that will come with the increased unpredictability in the industry, it may make little business sense for individual journalists and their employers to invest in training (especially of part-time writers).

c. Universities, institutions of learning, students in such institutions, and researchers?

The Press and Journalist Act of 1995 defines a newspaper as any publication that carries news, articles, opinions, entertainment, advertisements, reports of occurrences, views, and comments or observations that are published for distribution to the public either daily or periodically.

From the above definition, student or university journals, newspapers, and publications of research findings will all be required to be registered with the government. Any person who publishes research reports, analyses, opinions, articles, entertainment, or news that is considered to affect state security or the economic standing of the state will be censored.

Examples of student work that could be censored include

- i. Student and university journals
- ii. Research findings on government performance and some social and economic findings
- iii. Any entertainment news

In effect student research and findings could be fully censored and may not be deemed publishable or shared with the general public.

On the other hand, the media are a major source of information for academics and researchers generally. Curtailing media freedom will limit researchers from having access to balanced information, which could likely affect the quality of their research.

d. Politicians (members of parliament, local leaders, and ministers belonging to any political group)

In the past, many politicians have been able to gauge their work through public opinion. Many others have come out of difficult situations using the media. Free media are an effective tool for politicians to air their views and to effectively represent their constituents. The present Bill will likely lead to self-censorship among journalists, with the views of politicians considered “anti-government” (whether a member of the ruling party or the opposition) less likely to be published.

e. Private investors

The proposed Bill has a direct effect on investors. Clause 4A of the Bill prohibits foreign investors from owning more than a 50 per cent stake in a local newspaper.

Private investors, on the other hand, may cease to invest in newspapers given the annual licensing requirements. For many investors, it will simply not make business sense to underwrite a newspaper when the state yields so much control of media house closures. From a purely logistical perspective, the fact that a newspaper can be closed at any time means it will be difficult for investors to get loans for investment in newspaper production. It will also be difficult for any businesses to run long advertising plans with newspapers because of the uncertainty in publishing that the bill creates. This will affect both the private investor and the newspaper.

The Bill also prohibits advertisement considered to economically sabotage the country. Economic sabotage is not defined and as a result any kind of advertisement especially if it is in conflict with the state ran agencies can be considered an economic sabotage.

f. Civil Society Organisations (CSOs)

Civil society in Uganda often reaches into the community through mainstream newspapers and through their own publications, such as newsletters, periodicals, journals, and other materials which by the broad definition in the current law qualifies them to be “newspapers.” If the bill is passed, CSOs will be required to register all their regular publications with the council and get licenses for such publications. The council will also have powers to close an NGO whose publication contravenes the Act.

If a leading Ugandan media house ran adverts in a newspaper to show that other media houses—including those owned by the government—are substandard, it might be considered economic sabotage if the government stations loose business.

Likewise, if a private individual ran adverts showing that he or she has superior products compared to those produced by the government, it also might be considered economic sabotage.

CSOs whose work involves analysis of government policies, programmes, and laws may not have their findings published or even shared within the wider public, depending on the content of such analyses.

g. Development partner

Generally, development partners have a duty to ensure that governments are transparent and accountable to their citizens in whatever they do. Nearly all grant agreements and multilateral cooperation agreements signed between Uganda and development partners require accountability and openness. The new law will limit openness and accountability on the part of government since it cannot be subject to public scrutiny through the media. The law will also limit criticizing government actions through the media. As a consequence, citizens’ participation in governance will be limited, which is a basis on which development partners give grants and loans to the government itself.

The Bill violates article 2 and 9 of the Cotonou Partnership Agreement between the European Union (EU) and African, Caribbean, and Pacific countries, which provides for private sector participation, openness, accountability, and the promotion of human rights. Development partners thus have a duty to ensure that the government of Uganda promotes the principles set out in the agreement.

h. The Executive (central government)

The government of Uganda is obligated under objective II of the National Objectives and Directive Principles of State Policy and article 8A of the Ugandan constitution to promote democratic principles and specifically to encourage the active participation of all citizens at all levels in their own governance.

The government is also obligated to promote and protect human rights under article 20(2) of the constitution, which provides that the rights and freedoms of individuals and groups enshrined in the constitution shall be respected, upheld, and promoted by all organs and agencies of government and by all persons.

The above makes it a duty of the state to observe, promote, and protect human rights. The Ugandan government is also under obligations to respect human rights under the International Convention on Civil and Political Rights, the Universal Declaration of Human Rights, the African Charter on People's and Human Rights, and the Cotonou agreement. Passing of the above Bill will lead to the violation of state obligations in the above national, regional, and international human rights instruments.

What can I do about the bill?

As an individual or group, you have a duty to protect your rights and the rights of others as provided for under article 50 of the Ugandan constitution. Such rights can be protected through engaging your leaders and ensuring that this bill is not passed in its present state. You can also educate your peers and other members of the community through debates and the sharing of information on the bill, and encouraging them to engage their members of parliament.

As a media practitioner, you can create awareness among the public and your fellow media practitioners about the Bill's infringement on the rights of individuals and the promotion of a free and democratic society.

As an academic or student, you can generate debate on the bill within your college or university, publicise the effects of the bill on your work, and discuss how it will affect the general community in Uganda.

As an NGO, you can create awareness, inform others, debate, lobby parliament, and advise the government on appropriate amendments to the bill, so as to align it with internationally accepted media freedom standards.

As a development partner, you need to advise the government of Uganda on the human rights consequences of passing the Press and Journalist Bill into law. Development partners can also emphasize the potential consequences to the government if it violates its obligations under the different international conventions and agreements to which it is a party.

The central government/executive has a duty to revisit and alter the proposed BILL, given its negative effects on the country's operations, both nationally and internationally.