

ROUNDTABLE ON UGANDA'S MEDIA LAWS

PROTEA HOTEL, KAMPALA

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RAPPORTEUR'S REPORT

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INTRODUCTION

A roundtable meeting on Uganda's media laws was held on Monday, May 31, 2010 at Protea Hotel in Kampala. It was organised by the African Centre for Media Excellence (ACME) with support from the Deepening Democracy Programme (DDP) in Uganda. It was the latest meeting of specially invited players from the media industry, civil society, academia, and regulators to discuss the proposed Press and Journalist (Amendment) Bill, 2010. The Bill contains several provisions that threaten to erode press freedom in Uganda. It requires the statutory Media Council to register and license newspapers if they can show, for example, that they have the right equipment, and the right social, cultural and economic values. To get the licence renewed every year, a newspaper will not publish material the government deems harmful to national security, stability, unity; foreign relations; and the economy. These provisions have alarmed media owners and practitioners and the broader civil society.

Dr. Peter Mwesige, the executive director of ACME, opened the discussion saying that the meeting needed to come up with concrete proposals that could inform, for example, the preparation of a model media law to present to the government. "The government may be willing to listen to one or two things," he said. "We should not simply reject what the government is saying." He said that the DDP facilitated Ambassador Kabral Blay-Amihere, a veteran Ghanaian journalist, newspaper owner and former diplomat, to speak on the Ghana experience because that country has progressive media laws. Said Dr. Mwesige: "We can borrow a thing or two from them. Ghana has a lot in common with Uganda. It had a soldier in power, like in Uganda. But how did they come up with such progressive laws?" He said the Ugandan government is asking and expecting a memorandum from media players. "President Museveni said so on Saturday at the CNN MultiChoice African Journalist Awards. At the very minimum, we owe it to ourselves to provide our side of the story."

Dr. Mwesige provided further context for the roundtable discussion by referring to the key issues that emerged from another discussion on the same subject a month earlier at the Serena Kampala Hotel. Those issues are listed below.

- a. The thrust of the government's argument is that Ugandan media are in infancy and therefore not yet capable of regulating themselves. The government thus must regulate them.
- b. The government says it wants to regulate the media but the draft Bill is all about control.
- c. If the government is acting in good faith, how come it is not moving quickly enough to operationalise the Access to Information Act, 2005, by giving the attendant regulations force through issuance of the relevant instrument?
- d. The draft Bill is inconsistent with other laws and may be unconstitutional.
- e. The draft Bill must enumerate offences instead of hiding behind generalities like economic sabotage.
- f. It is the government that will determine what is national security, economic sabotage, etc.
- g. Subject draft Bill to the human rights principles for imposing restrictions on free speech and see whether it passes the test. Essentially, the human rights principles say restrictions must be constructed in a narrow and focussed way to address a specific and serious concern.
- h. Training of journalists is important for improving professional and ethical standards.
- i. Self-regulation is the way to go borrowing from especially the Zambian model that merged the statutory and independent media councils. Ghana's model is also worth emulating. Self-regulation is the best way to ensure responsibility in the media.
- j. By coming up with the draft Bill, Uganda is effectively renegeing on its international commitments it signed up to in documents like the International Covenant on Civil and Political Rights and the Declaration of Principles on Freedom of Expression in Africa.

- k. There is no single offence the media can commit today that cannot be tried under the present legislation.

MEDIA REGULATION IN AFRICA: LESSONS FROM GHANA

By Ambassador Kabral Blay-Amihere, chairman, National Media Commission of Ghana

Ambassador Blay-Amihere, a 1991 Nieman Fellow at Harvard University, spoke on the basis of his experience having been a journalist for 25 years, then an ambassador, and now chairman of a media regulatory body, the National Media Commission in his country of Ghana.

He began by referring to separate encounters with two African ministers a few days before the roundtable meeting. Ambassador Blay-Amihere's visit coincided with the review conference in Kampala of the Rome Statute that created the International Criminal Court. The Ghanaian minister of justice and attorney general was one of the delegates at the conference. In their meeting, the minister spoke of the need to do something about media laws and standards in Ghana. Earlier, Mr. Blay-Amihere had met with Uganda's Minister of Information and National Guidance Kabakumba Matsiko. "She was worried about media responsibility in relation to national stability," the Ghanaian reported. "I also gathered that your government is open to suggestions, hoping to debate."

From the two ministers' concerns, there is a problem with the media landscape in Africa, Blay-Amihere said. He said there is abuse of freedoms we enjoy today. He also said that we should be concerned as journalists by the influx of charlatans into the profession. "There are aberrations in the media landscape," he said. "In Ghana, you would think it is a nation at war. There is hate speech. Governments see these trends and want to react. How they react, we should think about."

The Ghana Experience

Ghana was the first black African country to gain independence – in 1957. Like most African countries, Ghana started its modern media journey with the colonial press. After independence the press came under the command of the government, which was then under successive military leaders. "Each coup meant tightening control over the media," Mr. Blay-Amihere said. "Governments dismissed editors because the landscape was dominated by state media. The minister of information was like the editor-in-chief. The news agenda for the week was set at the ministry."

Founding President Kwame Nkrumah did a lot for the media but brought censorship and a newspaper licensing law that vested vast powers in the minister responsible for information. That law would later be abolished, and then reinstated. Said Ambassador Blay-Amihere: "I was a victim – the three papers denied a licence had something in common: me." From 1957 to 1992 when Ghana adopted a new constitution "we had seen it all". Media control had been justified in the name of preserving national security and securing the national interest.

Based on Ghana's history of military coups where leaders promised either redemption or revolution or liberation only to deliver tyranny, the transition period allowed Ghanaians to deliberately choose a new media regime where the government did not dictate things but would be just another stakeholder. In changing things, Ghana was guided by international instruments such as Article 19 of the Universal Declaration of Human Rights [UDHR] and good governance practices from around the world. "There was no need to reinvent the wheel," Ambassador Blay-Amihere said. "We sought press freedom not just for journalists but for everybody."

Chapter 12 of the 1992 Ghanaian Constitution lays out standards that the country has to uphold in relation to media and free expression. Among others, it requires the promotion of media freedom, protection of media from government control, and promotion of higher media standards. “Freedom and independence of the media are hereby guaranteed,” the Ghanaian Constitution declares in very clear language. The Constitution makes it difficult to put any restrictions on media practice. “The government cannot say that because you did not get a degree you cannot be a journalist,” Mr. Blay-Amihere said. “Our Constitution does not look at your qualifications before you are allowed to practice journalism.” He added that under the new dispensation, the government has no direct hand in who becomes head of the state-owned media institutions. The mandate lies with the National Media Commission, which is an independent body provided for in the Constitution. He said that to start a media house, all one needs is to register as a business, then go to the Media Commission to fill out a simple form. “The Media Commission cannot ban a publication.”

The mission of the Media Commission is “to promote free, independent and responsible media so as to sustain democracy and national development”. It is made up of 18 members nominated by various groups. For example, the executive appoints two people, parliament nominates three, and the Ghana Journalists Association two. Those who nominate one member each include associations of media owners, lawyers, and women. Members elect their own chairperson at their first meeting. No government nominee has ever won the chairmanship. “As chairman, I owe no allegiance to the government save my own conscience,” Mr. Blay-Amihere said. “We have tried to de-emphasise partisan politics. The government has come to accept that. We have changing governments – today you are in government, tomorrow in opposition.”

The Media Commission’s Complaints Settlement Committee receives and adjudicates complaints from the public.

The Draft Ugandan Bill

Turning to Uganda’s draft Press and Journalist (Amendment) Bill, 2010, Ambassador Blay-Amihere said that the requirement to license newspapers and journalists was obnoxious. He said that if tomorrow Ghanaian journalists were required to have degrees to be full members of the national journalists union, like it is in Uganda, few would make the cut. They have no degrees. Besides, the degree requirement does not meet universal standards, and also goes against the Ugandan constitution that talks about freedom of association. In Latin America, a similar requirement exists in countries such as Brazil. However the Inter-American Court of Human Rights ruled that it is against fundamental human rights to deny anyone the freedom to practice journalism because such a person has no university degree. The Brazil Supreme Court also reversed that requirement although the journalists union there thinks a journalist’s possession of a degree is important. “If you look at Article 19 [of the UDHR], journalism cannot be equated to law or medicine,” Mr. Blay-Amihere said, echoing a 1985 ruling by the Inter-American Court. “It is about expression of opinion. If the proposed law is passed, what will you do with citizen journalism, blogging, social media? Journalism is a mental activity. The thing is to encourage bettering of the mind.”

He said that the proposed licensing of newspapers is too restrictive. The draft Bill says you can appeal when denied a licence but given how slow our legal systems are, it may take two years for the courts to rule on the appeal. That is not fair because one would not operate during that time as he waits for the courts to settle the matter and that would deny him or her employment and income.

Mr. Blay-Amihere cautioned opponents of the draft Bill to not dismiss the government’s concerns in as

far as they relate to things like pornography and inaccuracies. He called for more schools to train journalists. He said self-regulation was important because “if you don't check yourself, others will, as we are seeing”.

He added that Ghana has a free press today but there are still many concerns. “Even myself, I am concerned. But the solution is not control.” He said Ghana had gained enormous dividends for having a free press: there is donor confidence because there are checks and balances, politicians are more careful. Besides, Ghana has not fallen apart because the press promotes divisions, and other such “vices”. Ambassador Blay-Amihere concluded his remarks saying the government must never have the sole right to define national interest, national security, and public safety. “Uganda should be part of the global world.”

PRINCIPLES TO INFORM BETTER MEDIA LAWS

The discussion yielded some principles that should inform any new media law in Uganda. The starting point is that provisions on freedom of expression in the Ugandan Constitution, as in the Ghanaian one, are quite sufficient. If the government wanted to enact a law that promotes media freedom, there is a good basis.

Media freedom is for everybody. Article 19’s Guideline 3, obviously drawing from Article 19 of the UDHR, and Article 29 of the Ugandan Constitution guarantee that freedom of expression, including freedom of the media, is for everybody. Says Article 19, paraphrasing a 1985 ruling of the Inter-American Court of Human Rights: “The right to freedom of expression applies to everyone and through any media. As such, it clearly protects the right of everyone to engage in journalism.” Therefore, media freedom is not a favour that any government magnanimously grants its citizens. It is, in fact, under obligation to facilitate citizens’ enjoyment of the right to free expression.

The primary object of any media law in a democratic society should be to promote press freedom and free expression. However, all stakeholders also recognise that freedom comes with responsibility. As Article 43 of the Ugandan Constitution says, “In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedom of others or the public interest.” The Uganda Human Rights Commission has noted that human rights and freedoms can be and are limited on the grounds of public interest (public security, public order, public health, and public morality), safeguarding and protecting the human rights of others; preventing propaganda for war; and preventing advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence.¹

But as Article 43 of the Ugandan Constitution goes on to say, “public interest shall not permit ...any limitation beyond what is acceptable and demonstrably justifiable in a free and democratic society.”

According to international human rights instruments, limitations on human rights must follow the following principles²:

- They must be **necessary** to protect a number of public areas as well as the rights of others.

¹ UHRC (2010). “Regulation of Freedom of the Press and Other Media: The Human Rights Considerations.” Paper presented at a Panel Discussion on Ugandan Media Laws. Kampala, April 30.

² UHRC (2010). “Regulation of Freedom of the Press and Other Media: The Human Rights Considerations.”

There must be **exceptional reasons** for such restrictions and they must serve a **legitimate interest**.

- The restrictions must be **clearly and narrowly defined**; they must not be left open to multiple interpretation or abuse.
- They must be applied by a body that is **independent** of political, commercial or other unwarranted influences.
- They must be applied in a manner which is **neither arbitrary nor discriminatory**, and which is subject to **adequate safeguards against abuse**.
- They must respect the **truth principle** i.e. no one should be penalised for statements that are true.
- Criminal sanctions should only be used for dissemination of certain information after it has been proven beyond a reasonable doubt that it was disseminated with the intention of inciting discrimination or violence.

Media regulatory bodies must be **independent** from political, commercial, and other interests. They must be **protected** against political, economic or any other **undue influence**.

Licensing or registration systems for the media should **not impose substantive restrictions** on the right to freedom of expression.

Entry into journalism should be free and open to allow people to enjoy free speech. To be a Member of Parliament in Uganda, one needs a minimum qualification of S6 certificate or its equivalent. So why should one need a degree to be a journalist? International law holds the requirement of possession of a degree for one to practise journalism to be illegitimate. “Such conditions place unjustifiable restrictions on the right of everyone to express themselves through the print media”, says Article 19, drawing from the 1985 ruling of the Inter-American Court.

Education does not make one a good journalist; one’s by-line does.

Discussion of self-regulation should not be confused with discussion of media freedom. The draft Bill seeks to erode media freedoms yet there is need for self-regulation with or without the law.

Media regulation should not necessarily be about bodies or councils. There are laws in every country that regulate media, for example the law on libel. Where media councils come in, they depend on the goodwill of stakeholders.

Pornography will unite people against media, but that does not mean hamstringing the media. Charlatans exist in churches but rarely, if ever, does one hear calls to ban churches. If they must be banned, an independent body should.

Licensing systems for journalists, whereby individuals are prohibited from practising journalism unless they are licensed, are illegitimate. Ruled the Inter-American Court:

...[J]ournalism is the primary and principle manifestation of freedom of expression and thought. For that reason, because it is linked with freedom of expression, which is an inherent right of each individual, journalism cannot be equated to a profession that is merely granting a service to the public through the application of some knowledge or training acquired in a university or through those who are enrolled in a certain professional “colegio” [association]

Yet the draft Bill focuses on making it difficult for one to start a newspaper and easy to withdraw the

licence to run a newspaper or practice journalism.

Accreditation schemes should not be used as a means to interfere with or influence the work of journalists, or to exclude journalists known to be critical. An independent body should therefore oversee accreditation and its decisions should be based on objective criteria.

Definition of a journalist. Recognise the transition from old to new media and affirm that **anyone who earns an income through editorial work**, irrespective of medium or platform, **is a journalist**.

Introduction of a press card, like in Ghana and the UK, is one way media players **could help deal with the persistent question of lack of responsibility** in the media. To get the card, however, journalists would have to agree to follow a professional ethical code such as the one developed by the Independent Media Council of Uganda. But who issues such a card? How? And what do you do with citizen journalists? Or should it be the case that the press cards are issued only to institution-based journalists such as those working for *Daily Monitor*, *New Vision*, or Radio One.

STRATEGY

Draft an alternative media law looking at the entire media spectrum i.e. print, broadcast, online. Roll in anything useful from the government's proposals.

Deploy high-calibre people to make representations before Parliament against the government's draft Bill.

Involve other stakeholders in the campaign and expand the scope of engagement. Move the debate away from one between representatives of the media and the government to one between the people of Uganda and their government. Make it politically risky for anyone to ignore the freedom of expression/media message.

While the focus is on the draft Bill, **attention should also be paid routine things like the state's prevention of opposition politicians from being interviewed on rural FM radio stations**.

Attention should be paid to **both print and electronic media**.

Media do not have public goodwill and therefore need to put their houses in order. "The public is not with us because we are infringing private people's lives" and making careless mistakes.

Conduct a public awareness campaign to let people know that they can legally defend themselves against the media using the Penal Code provisions and therefore there is no need for draconian laws.

Consider challenging the government's move to centralise advertising – with the Media Centre being given authority to clear all government adverts going out to the media. A big percentage of advertising in Uganda is from the government. This new administrative policy could deny some media houses considered hostile adverts from the government, if the Media Centre chooses to operate politically and not professionally.

Take advantage of the coming national campaigns to get presidential and parliamentary candidates to commit themselves on free expression. They should be on record so it can be used

should the Bill be tabled in the ninth Parliament.

Question the role of politicians in perpetuating irresponsible journalism because they set up newspapers and FM radios for propaganda, to attack opponents. They end up polluting the journalism.

Use informal networks – with MPs, ministers, diplomats – as much as possible to push back at the draft Bill.

FOLLOW-UP

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African Centre for Media Excellence

Wider civil society

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