

FREEDOM **OF EXPRESSION** **FACT SHEET**



While Uganda's Constitution complies with regional and international standards in guaranteeing the right to freedom of expression, including press freedom, in reality several obnoxious provisions that remain on the statute books negate these freedoms.

UGANDA

Constitutional

Provisions on freedom of expression

The Constitution of Uganda guarantees free speech and freedom of the press.

Article 29(1) (a) states:

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

Article 41 states:

- 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.

Article 43 states:

- 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.

Laws that affect media freedoms and free expression

The Press and Journalist Act (2000) (formerly Statute 1995)

The Act “seeks to ensure the freedom of the Press, to provide for a Council responsible for the regulation of mass media, to establish an Institute of Journalists of Uganda, and to repeal the Newspaper and Publications Act and the Press Censorship and Correction Act”.

The Act introduces restrictions on who can be a journalist, by compelling journalists to register with a statutory Media Council which is supposed to issue practising certificates. The certificate may be suspended for up to six months if a journalist is “guilty” of “professional misconduct”. These restrictions are considered an affront on free speech and freedom of expression.

The Electronic Media Act (2000)

Provides for the establishment of a Broadcasting Council “to license and regulate radio and television stations; to provide for the licensing of television sets, to amend and consolidate the law relating to electronic media, to amend the Uganda Posts and Telecommunications Corporation Act; to repeal the cinematography Act and Television Licensing Act; to provide for other related matters”.

The Act does not guarantee the independence of the Broadcasting Council from the government and other interests. Instead, it gives the Council excessively broad powers to grant or withhold licences on the basis of an opaque set of conditions as well as power to seize and confiscate transmission equipment without a hearing or other forms of due process.

The regulatory structure is vague and allows wide discretionary powers to the regulator. It is also susceptible to influence and manipulation by the executive.

The Penal Code Act (1950) as (Amended in 2007)

The Penal Code is perhaps the most frequently applied law in curtailing press freedom and freedom of expression. It has several provisions with adverse implications for reporting

on public affairs in general and the state in particular.

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 years.

Others are sections 179 and 180 on libel and defamation respectively. In 2010, 4 journalists were charged with this offence.

The Penal Code provision criminalising the publication of false news was annulled by the Supreme Court in 2004, while the one on sedition was in 2010 declared unconstitutional by the Constitutional Court. The government is appealing the decision.

The Uganda Broadcasting Corporation Act (2005)

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.

The Act neither defines public broadcasting nor identifies UBC explicitly as a public broadcaster. It is not clear whether the vagueness of the law was a result of innocent omission or a deliberate attempt by the government not to cede full control of the national broadcaster.

The Uganda Communications Commission Act (2000) 1997

It provides for the restructuring of the communications industry in Uganda by establishing the Uganda Communications Commission (UCC), providing for its functions and administration. The UCC is charged with regulating the communication industry, through issuing of radio, TV and telephone frequencies, licensing telephone operators, monitoring the use of frequencies and generally regulating the communication sector. UCC has powers over all modes of communication including postal, electronic and others as a regulatory and licensing body.

In practice, the distinction between the mandate of the UCC and the Broadcasting Council has never been clear. In 2010, the government gazetted a bill to merge the two regulatory authorities.

The Access to Information Act (2005)

The Act guarantees citizens the right of access to all information and records of government ministries, departments, local governments, statutory corporations and bodies, commissions and other government organs and agencies pursuant to article 41 of the Constitution. It also prescribes the classes of information referred to in that article; the procedure for obtaining access to that information, and for related matters.

Of particular interest to the media is one of the stated purposes of the act: "to empower the public to effectively scrutinise and participate in Government decisions that affect them".

A key drawback of the law is the omission to repeal the Official Secrets Act, which provides for the protection of official information especially that related to national security. The Act is not yet operational and requests for information are not granted because the government has not issued regulations defining which information can or cannot be released to the public. Besides, the law has been described as a "catalogue" of exceptions in so far as it appears to restrict several categories of information from being accessed by the public.

The Anti-Terrorism Act (2002)

The Anti-Terrorism Act was passed in the wake of the 2001 Al Qaeda led attacks on the United States. The Act lays out legal procedures required when conducting counterterrorism investigations, defines the crime of "terrorism" in much greater detail than the Penal Code and gives specific regulations for surveillance and interception of communications by terrorism suspects.

The most worrisome provision of the Act for the media is section 9 (1) which criminalises the publication and dissemination of news materials "that promote terrorism". News materials that promote terrorism are not precisely defined. A person convicted of this offence is liable "to suffer death" without the option of imprisonment. 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.

The Police Act (1994) (Amended in 2005)

The Police Act mandates the police to: “protect the life, property, and other rights of the individual; maintain security within Uganda; enforce the laws of Uganda; ensure public safety and order; prevent and detect crime in society; perform the services of a military force when empowered to do so by the Police Authority and perform any other functions assigned to it under the Act.”

The Police Act retains the outdated colonial model of policing that emphasises the need for the police to prevent and control crime and maintain security. Service oriented functions and respect and support for the rights and freedoms of Ugandans are absent.

The Regulation of Interception of Communications Act (2010)

The Regulation of Interception of Communications Act 2010 seeks to make it legal to intercept and monitor particular communication in telecommunications, postal or any other related system as a means of detecting and combating the coordination of international terrorism through telecommunications.

The Act mandates the Minister of security to establish a Monitoring Centre and gives him the ‘final responsibility over the administration and functioning’ of this Centre. Under the Act, an ‘interception warrant’ may be issued by a judge upon receipt of an oral application from selected government institutions if there are ‘reasonable grounds’ for them to believe that: a) felony has been or will probably be committed; b) the gathering of information concerning an actual threat to national security or any national economic interest is necessary; c) the gathering of information concerning a potential threat to public safety, national security, or any national interest is necessary; or d) there is a threat to the national interest involving the state’s international relations or obligations.

Journalists in particular are concerned that the confidentiality of their communication with major sources will no longer be guaranteed.

Proposed laws that will affect freedom of expression and press freedom

The Proposed Press and Journalist (Amendment) Bill, (2010)

The proposed changes include giving the Media Council the authority to license newspapers annually and to close those that violate the provisions of the Act; giving the minister of information the power to appoint the chairperson of the Media Council; and creating new criminal offences relating to the publication of information that is prejudicial to national security, public morality and the economic interests of the country. This information is not defined, and therefore these provisions remain subject to abuse.

The Public Order Management Bill (2010)

The Bill seeks to regulate public assemblies and gives sweeping powers to the police to break up public assemblies.

Under clause 4, the Inspector General of Police has the power to regulate the conduct of all public meetings. Public meeting is defined in the draft law as a gathering, assembly, concourse, procession or demonstration of three or more persons in a public place such as road, public open space or business premises.

Clause 9 inhibits free expression in so far as it empowers the police to block or disperse any meeting – whether authorised or not – where more than the expected number of people, for instance, turn up.

The bill further prohibits, without express clearance, discussions on politics or examining the performance of the elected government, not least its failures.

The bill is seen as an attempt to reverse a 2008 Constitutional Court ruling which repealed sections of the Police Act that granted the police powers to prohibit public assemblies and processions and a measure to control political activism and freedom of speech.



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