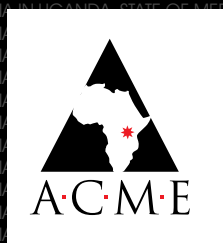


# OVERVIEW OF THE **STATE OF MEDIA FREEDOM** IN UGANDA



## A RESEARCH REPORT



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**F R E E D O M**  
IN UGANDA

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# Introduction

In principle, if not in practice, the laws and regulations governing the media and journalism in Uganda hinge on article 29 (1) (a) of the constitution, which provides that “Every person shall have the right to freedom of speech and expression, which shall include freedom of the press and other media.”

This constitution was promulgated in 1995 and it was the first in which the country’s supreme law expressly guaranteed freedom of the press and other media. Previous constitutions spoke only of freedom of speech and expression. In the same year, the government enacted a new press law, The Press and Journalist Statute 1995, now The Press and Journalist Act (Cap 105) 2000. It repealed The Newspaper and Publications Act and The Press Censorship and Correction Act. The new constitution and the new press law promised a better world for the media and free expression generally. The practice, however, turned out differently in significant ways.

Thus, the media and journalism are primarily regulated by The Press and Journalist Act. Its aim, among other things, is “...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.” This law requires journalists to register with a statutory Media Council in order to receive a “practising certificate” that has to be renewed every year. Section 28 (3) states that “No person shall practise journalism unless he is in possession of a valid practising certificate.” The certificate may be suspended for up to six months if a journalist is found guilty of “professional misconduct.”

It is telling that the process and debates out of which The Press and Journalist Act emerged were vigorously contested by the media fraternity. The controversies aside, the enactment of the law was a milestone. It was the first opportunity that a generation of journalists had to participate in and influence the laws and regulations that would govern their practice. The most animated of these debates revolved around the issue of ‘professionalising’ journalism. By establishing the National Institute of Journalists of Uganda (NIJU), the law sought to set “professional standards,” nurture “professional fellowship,” provide for “professional education,” and generally cater to the “advancement of professionalism.”

Yet, not only was the creation of NIJU as a statutory professional body for journalists opposed by many; but what seemed to incense them the most

had to do with the attributes of a professional journalist that the law implied. Full membership of NIJU was reserved for (a) holders of a university degree in journalism or mass communication or (b) holders of a university degree in addition to a qualification in journalism or mass communication, on top of having practised journalism for at least a year.

Whereas the law did not prohibit those without a university degree to practice as journalists – it provided for them as either associate or honorary members – veterans of the trade appeared to be especially offended by the apparent insinuation that what they had accomplished without university credentials did not measure up to the standards. Regardless of the controversy, there was consensus that the debate about the standards of journalism and the calibre of practitioners was a good one to have at that point in the development of the industry.

By the time The Press and Journalist Act came into being, the government and other groups and individuals in the public had been fretting with increasing levels of agitation about the conduct of the media and journalists. As Charles Onyango-Obbo<sup>1</sup> noted a few years later while reflecting on the circumstances under which the law came up, journalists had misread the mood both within the political class and the public by assuming that the law was so obviously objectionable that it would not attract support.

Within the industry, some felt strongly that a degree of soul-searching about the state and direction of the profession was needed. They also believed that engaging the government politically and intellectually was a more productive strategy than rejecting its concerns outright or being overly defensive. It was on this premise that many journalists were persuaded to engage with the issues and process that was unfolding. The resultant law was the sum of all the compromises and concessions made both by the government and by the journalism fraternity. If the statute did not repeal some singularly oppressive laws that existed such as sedition, for a while it certainly tempered the political mood towards the media.

The Press and Journalist Act provides the overall framework for regulating and controlling the news media industry as a whole, while the broadcasting sector is taken care of by The Electronic Media Act (Cap 105) 2000, which was enacted as a statute in 1996. Although in public and in media circles

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<sup>1</sup> Charles Onyango-Obbo (1999). Uganda's Press Law: Are Journalists in Touch with Public Opinion? Uganda Journalism Review Vol.1 No.1.

the question of professionalization appears to have generated the most vigorous discussions, in practice such issues as the composition and powers of the Media Council have been sources of sustained contention.

The eventual failure of NIJU to get a firm footing on the ground and to assert its mandate as the leader of the industry on professional matters ensured that no journalist ever bothered to register with it. Registration with NIJU was meant to be the basis for a practising license that would be issued by the Media Council. The lack of a formal government policy to operationalize NIJU left it on its own devices and at the mercy of the motivations of individual leaders. The focus on professionalism was therefore lost to the vagaries of changes in the personal commitment of the institute's leaders.

Most journalists, and for good reason, do not comply with this law and simply refuse to register with the Media Council, for media freedom belongs to everybody. Paraphrasing a 1985 ruling of the Inter-American Court of Human Rights, Article 19 has noted: "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."<sup>2</sup> Also, international law treats as illegitimate the requirement of possession of a degree as a condition to practise journalism. "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. The 2003 joint declaration by the special international mandates on freedom of expression could not be clearer:

- Individual journalists should not be required to be licensed or to register.
- There should be no legal restrictions on who may practise journalism.

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<sup>2</sup> Article 19, "Memorandum on the Press and Journalist Act and Press and Journalist (Amendment) Bill, 2010 of Uganda," March 2010.

# History of Uganda's Media

The next sections discuss the history of the media in Uganda focusing on regulation and control both through legislation and practice. Like many countries in Black Africa, Uganda's formal media trace their origins back to the colonial period. The British colonialists introduced formal education as well as formal media. In both instances the intent was the deepening of colonial penetration and domination. The largely missionary-type education aimed to produce clerks and other such lower-cadre staff to help the big, White masters. Ultimately, it was also to produce 'natives' with habits not unlike their masters' as these would be easier to manage. The media were introduced to help the colonial administrators gather knowledge regarding what the natives were thinking or conspiring about so that they could respond appropriately. As more Africans got educated, some used their new knowledge to fight colonialism, the same system that had sent them to school in the first place. One of the tools they employed was the same media introduced by the colonialists. Talk of unintended consequences. But if both factors helped end colonialism, it was not without a robust response from the colonial administrators – especially against the media.

## 1900-1962

Published by the Church Missionary Society in 1900, *Mengo Notes* was the first newsletter in Uganda.<sup>3</sup> *Uganda Notes* followed in 1902. *Ebifa mu Buganda* came in 1907. The White Fathers introduced *Munno*, a Luganda monthly, in 1911. All these publications, it should be emphasised, were religious newsletters. The nature of the press had begun changing by 1920. In that year, *Sekanyolya* hit the streets as the "first independent African newspaper."<sup>4</sup> Its editor was Daudi Basudde.<sup>5</sup> The emergence of publications

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<sup>3</sup> For a fuller treatment of the early press in Uganda, see Zie Gariyo, "The Press and Democratic Struggles in Uganda, 1900-1962," Centre for Basic Research [Kampala], Working Paper No. 24, 1992.

<sup>4</sup> Gariyo, "The Press" 11.

<sup>5</sup> Basudde is a good exemplar of the nexus between education and the press in colonial Uganda. According to Gariyo, ("The Press" 11), Basudde was a son of a Catholic chief, studied at Namilyango, a highly regarded school then and now, and was a well travelled man having been to Burma (Myanmar), Ceylon (Sri Lanka), India, and Britain. He edited *Sekanyolya* (which was owned by S.W. Kulubya, a prominent educated Muganda and anti-colonial activist) from 1920-1922; *Munyonyozi*, 1922-1924; *Matalisi*, 1924-1926. He also wrote letters frequently (see footnote 33) in the English-language papers such as *Uganda Herald* (started as a tri-weekly in 1912 until bought out in 1955 by Lonrho-owned *Uganda Argus*) attacking, among others, "the resident white community for mistreating the African wage worker ..."

such as *Sekanyolya* marked the beginnings of real and sustained challenge to the colonial order, which had been effectively established in 1894 when Sir Gerald Portal declared Uganda a British Protectorate on the back of vicious religious wars in Buganda involving Anglicans, Catholics, and Muslims.

The African press appeared at a specific time not merely as a protest press but to present specific and popular grievances directed both at the colonial regime and their allies the Buganda establishment. By the 1920s a few Africans had accumulated large incomes from the land holdings granted to them or their fathers by the 1900 Anglo-Buganda agreement. Through education, travel, and interaction with other African peoples and people outside the continent, they had acquired new experiences. These new experiences were used to question the logic of colonial rule and especially the discrimination, oppression and exploitation of the African. They questioned the logic of restricting Africans from carrying out the lucrative import and export trade; the middleman's role of the Asian traders and businessmen and land grants to white settlers in Uganda.<sup>6</sup>

The argument went even further. *Gambuze*, a monthly that emerged in 1927, questioned the introduction of compulsory "free" labour, Kiswahili, closer union in East Africa, and cotton pricing and ginning. It also raised the issue of class.<sup>7</sup>

Inevitably, the colonial regime struck back. Thus began the state's regulation and control of the media through legislation and practice in Uganda. The template that the colonial regime introduced was the same that the leaders of post-independent Uganda adopted and, in many ways, perfected. One of the more known cases was that of *Buganda Nyaffe*, started in 1944 by Daudi Mukubira, the president of the Uganda Growers Co-operative Union. His publication accused the colonial regime of pursuing policies aimed at enslaving black people a second time. The regime banned *Buganda Nyaffe*. "Mukubira was arrested, charged with publishing a seditious document and fined Shs. 100 for breach of war-time censorship regulations."<sup>8</sup>

During a general workers strike in 1945, the colonial authorities would

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<sup>6</sup> Gariyo, "The Press" 7

<sup>7</sup> Gariyo, "The Press" 18-19.

<sup>8</sup> Gariyo, "The Press" 18-19.

send Mukubira into internal exile in northern Uganda. Things got worse for the press in 1949. Aggrieved over the king (Kabaka) of Buganda's failure to have chiefs and members of the Lukiiko (parliament) elected so the inequities resulting from the 1900 Agreement could be addressed, and over the colonial regime's failure to address issues around cotton ginning and selling, the Bataka Party and Uganda African Farmers Union orchestrated riots. The regime pointed fingers at several newspapers – *The Uganda Star*, *Mugobansonga* and *Munyonyozi* – for having stirred up the people. It introduced The Press Censorship and Publications Act of 1949. The law limited the circulation of these papers and they were later banned altogether. For criticising the Kabaka, the editor of *Dobozi Iya Buganda* was arrested and convicted.

Those journalists who agreed with the colonial policies, men like J. W. Kiwanuka, the editor of *Matalisi*, were rewarded – in classic divide and rule style. For his strong attacks against the strike organisers and sympathetic publications, the colonial regime granted Kiwanuka a scholarship to study journalism in Britain. But then, when he returned, something had changed in the man. He started attacking the colonial authorities in his new publication, *The Uganda Post*, founded in 1951. When he criticised the Protectorate Government for exiling the Kabaka in 1953 over disagreements especially about formation of an East African Federation, he was arrested under emergency laws for publishing material aimed at fostering confusion. He was fined Shs. 1,005. In 1954, the regime banned *Uganda Post*, *Uganda Express*, and *Uganda Eyogera* over the same question of the Kabaka's forced exile. The first two publications were banned again two years later. Governor Andrew Cohen said the banning would teach newspapers to be "responsible and objective" in their reporting.<sup>9</sup> Because of constant harassment, *Uganda Express* ceased publication in 1960 and *Uganda Post* the following year.

As the 1950s wore on, the demands of the Africans grew ever louder. More and more were going to school and demanding self-rule so as to get into power and enjoy some of the privileges the colonial leaders were enjoying. The louder the demands, the more the colonial regime fought back. In 1956, Paulo Muwanga, a man who would go on to play a key role in the immediate post-Amin politics of 1979-1985, published an article in the paper *Emambya Esaze*, calling Britain a chief enemy of the people of Uganda. With a colleague, he was arrested and charged with sedition

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<sup>9</sup> Gariyo, "The Press" (footnote 249) 72.

and promoting dissension amongst the people. His paper was banned for more than a year.<sup>10</sup>

The Newspapers Surety Ordinance No. 9 of 1910 was the earliest anti-media law in Uganda. It stated in part:

no person or company shall print or publish or cause to be printed or published within the protectorate unless executed and registered in the office of the Registrar of Documents under the Registration of Documents Ordinance a bond in the sum of shs.6000 with one or more [surety].

The Press Censorship Ordinance No. 4 of 1915 provided that the “governor may at any time establish a press censorship and may at any time revoke such order.” The Penal Code provided for the offences of seditious conspiracy and libel, possessing seditious documents, and publishing a false report. The police were granted powers to arrest suspects without warrant. The regime did not stop at newspaper banning and arrests of editors. It also confiscated printing machines and sometimes sold them by public auction.

The Newspaper and Publications Ordinance No. 33 of 1960 increased licence fees for newspaper publication from Shs. 5,000 to Shs. 10,000. Most small newspapers could not afford these fees. Thus by independence, only a handful of papers such as *Uganda Eyogera* and *Munno* were active. “This type of attitude against free expression and particularly against comment on political issues was also to shape the post-colonial regime’s policies ...”<sup>11</sup>

## 1962-1971

The colonialists eventually left and Uganda became independent in 1962. Lacking in a sense of irony, the African Ugandan leaders continued the draconian press order that the colonialists, whom they had fought under the broad banner of freedom, had established to rein them in. The successive leaders said one good thing about free speech and democracy and did quite the opposite. Two months to independence on October 9, 1962,

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<sup>10</sup> Gariyo, “The Press” 47.

<sup>11</sup> Gariyo, “The Press” 76.

Milton Obote, soon to be executive prime minister, addressed his party's delegates at a conference saying, amongst other things, that "every human being is free to seek the truth and to express the truth as he may understand it" [and] "science, the arts of expression, and learning must be free and their products freely exchangeable."<sup>12</sup>

What he did not make clear is that there were serious limits to the search and the expression of the truth in his Uganda. Back in the 1960s, modernisation thinking demanded that the press address itself to questions of development not politics, as if the two were mutually exclusive. A syllogism informed their approach. It went:

- nation building is the goal
- criticism (euphemism: subversion or division) interferes with nation building
- the goal cannot tolerate criticism<sup>13</sup>

Any criticism had to be 'constructive,' with the leaders retaining the right to define what the phrase means or should mean.

A month after independence, the ruling party's secretary general warned *The Uganda Argus* that the government might take action against it for cataloguing challenges the new government faced. It was an ominous start. In 1966, the government deported Ted Jones, the Uganda correspondent for two Nairobi-based publications, the *Kenya Weekly News* and the *Reporter*. It also threw out Billy Chibber, a *Daily Nation* reporter. And *Ssekanyolya*, back from the dead and loudly championing Buganda interests, was banned. It was all building up to a climax. It came in 1968 with what has come to be known as the Transition<sup>14</sup> Affair.<sup>15</sup> First, a minister said on national television in January 1968 that the magazine was subversive and threatened government action. The action came in October 1968 with the arrest and solitary confinement, under emergency laws, of writer and politician Abu Mayanja and *Transition* founder and editor Rajat Neogy.

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<sup>12</sup> A. Milton Obote, "A Plan for Nationhood," *Transition* No. 6/7, Oct. 1967: 18.

<sup>13</sup> "A Matter of Transition," *Transition* No. 38, June-July 1971: 43.

<sup>14</sup> *Transition* magazine was founded in 1961 as a monthly but later started coming out every two months.

<sup>15</sup> For a full treatment of the Transition Affair and the general government approach to the press in the 1960s, see Bernard Tabaire (2007) 'The Press and Political Repression in Uganda: Back to the Future?', *Journal of Eastern African Studies*, 1: 2, 193 — 211. Access it online at <[http://pdfserve.informaworld.com/35856\\_\\_780826062.pdf](http://pdfserve.informaworld.com/35856__780826062.pdf)>.

Mayanja had given Milton Obote a hard time over the 1967 constitution. He said it was designed to create “a one-man dictatorship.” He accused the prime minister of tribalism and dismissed his party as one devoid of any ideology. The detainees were charged with six counts of sedition. They were acquitted. But *Transition*, the ‘subversive’ publication, relocated to Ghana, closed shop, changed names, closed shop again, and re-opened doors in the United States in its original name in the 1990s. All this had a context: “Sensitive to the fact that his popularity was diminishing with time, Obote became less and less tolerant of criticisms and political activities of his actual and potential political opponents.”<sup>16</sup>

## 1971-1985

When army chief Idi Amin overthrew Milton Obote in January in 1971, he cited lack of freedom to air views as reason number three, out of 18, for his action. Many were happy. The happiness did not last. Within a year, the killing of journalists had started. *Munno* editor Fr Clement Kiggundu, John Serwaniko, also of *Munno*, news photographer Jimmy Parma, and TV journalist James Bwogi were all murdered. “Many more were jailed. Others chose exile. The news business as we know it died. So did Uganda.”<sup>17</sup>

Tanzanian forces fighting alongside Ugandan exiles overthrew Amin in 1979; and the press revived itself. After nearly two years of political chaos, Milton Obote returned to power to run a government commonly referred to as Obote II. It lasted until July 1985. For the press, Obote II was even worse than Obote I. His government banned seven newspapers in 1981 alone. The then-influential *Weekly Topic* was one of those banned. He sacked the editor of the government-owned *Uganda Times* over an article on military killings of civilians. Journalists were cowed.

## Post-1986 and Birth of the Current Media Era

President Yoweri Museveni’s triumphant National Resistance Army (NRA) guerrillas captured power in January 1986. Mr Museveni’s, like Amin’s, was one of the most popularly received governments by the public. It promised not just a “mere change of guards,” in Mr Museveni’s rousing words at

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<sup>16</sup> Peter M. Gukiina, *Uganda: A Case Study in African Political Development* (Notre Dame and London: University of Notre Dame Press, 1972) 168.

<sup>17</sup> Tabaire, “The Press and Political Repression” 203.

his swearing-in ceremony, but a “fundamental change” in running the Ugandan state.

“[T]he NRM government at its inception exemplified a commitment to democratic rule and norms that was apparent in its record on the elimination of systematic abuses of power, state-sanctioned violence, and inter-ethnic animosities as well as respect for the rule of law, human rights, and freedom of expression.”<sup>18</sup>

Specifically on the media, an observer wrote:

In the six-month interregnum between the fall of Obote and the emergence of Museveni’s NRM, the press once again seized its opportunity. Many of the banned newspapers, including *Weekly Topic*, appeared once more on the streets of Kampala, but this time they survived the emergence of a new regime which, if not wholeheartedly committed to the ideals of press freedom, has certainly shown itself infinitely more tolerant than any of its predecessors.<sup>19</sup>

The Museveni government was better than its predecessors, but only just. It banned the *Weekend Digest* within six months of taking power for a report on alleged plans to oust it. From March 1986 through 1992, the government dragged before the courts at least a journalist a year.<sup>20</sup> That record has remained virtually unchanged to-date. Sedition and criminal defamation were the often-cited offences. After 1995, the state added promotion of sectarianism as well. In 1988, the government changed the penal code to stop reporters from writing about military installations, equipment or supplies, and soldiers. A seven-year jail term awaited a convicted offender. The year before, Mr Museveni threatened to use the Detention Act to prosecute those who smeared the army.

When the government was not using legislation to harass the media, it was using administrative means. In 1993, for example, it stopped its departments from advertising in *The Monitor*, a paper that was formed by seven independent journalists the year before when they quit their jobs

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<sup>18</sup> George W. Lugalambi, “An Assessment of Democratic Deliberation in Uganda: A Case Study of the Framing of Key Political Issues in the Press,” unpublished doctoral thesis, The Pennsylvania State University, USA, 2006.

<sup>19</sup> Adewale Maja-Pearce, “The Press in East Africa,” *Index on Censorship* Vol. 21 No. 7, July- Aug. 1992: 63.

<sup>20</sup> See Maja-Pearce 63 for details of the cases.

at Weekly Topic. The ban would last four years. Given that back then the government was the biggest advertiser because the economy was just beginning to recover after decades of collapse, the ban was all the more punitive.

## Post-1995 Constitution

No newspaper has been banned since 1995. No journalist is known to have been killed for his or her journalistic work per se at the behest of the government. The government enacted an Access to Information Act in 2006. But without a doubt, the most significant happening of the post-1995 media dispensation has been the explosion in electronic media following the liberalisation of the communications sector in 1992. Up until then, the government had never even bothered with the electronic media because it owned both Uganda Television and Radio Uganda, the two outlets that served as all of broadcast media in the country.<sup>21</sup>

According to the Uganda Communications Commission,<sup>22</sup> there were 202 FM stations on air as of June 2009 compared to 166 in June 2008. There were 40 television stations on air in June 2009 compared to 26 a year earlier. There were 27,590 Internet subscriptions with an estimated number of users standing at 2.8 million (nine percent of the population) in 2009 compared to 15,500 subscriptions and an estimated one million users in 2007. By July 2010 the number of licensed FM radio stations had risen to 244 and that of licensed TV stations had shot up to 41, going by the Media Council's count. According to the African Media Barometer, about 80 percent of Ugandans get their news and related information from radio. More and more Ugandans are blogging and *tweeting* as well. For print media, there are about 15 newspapers both daily and weekly. Media watchdogs have praised the government for enabling a "relatively liberal media climate."<sup>23</sup> Local journalists have rated media freedom to be at a moderate level.<sup>24</sup> The media explosion accelerated the government's interest in control. It

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<sup>21</sup> Uganda Television and Radio Uganda were merged in 2005 and reconstituted into a new public broadcaster, the Uganda Broadcasting Corporation.

<sup>22</sup> A Review of the Post and Telecommunications Market 2008/09.

<sup>23</sup> "Attacks on the Press 2003: Documented Cases from Africa 2003," CPJ, 11 Dec. 2006 <<http://www.cpj.org/attacks03/africa03/uganda.html>>.

<sup>24</sup> Peter G. Mwesige, "A Profile of Ugandan Journalists in the New Millennium," *The East African Media and Globalisation: Defining the Public Interest*, ed. Goretti Linda Nassanga (Kampala: Mass Communication Department, Makerere University, 2003) 213.

has relied on a raft of laws and public denunciations and threats. Between 1986 and 2004, more than 24 journalists were charged in the courts of law on criminal publication offences.<sup>25</sup> Between 2007 and February 2010, the authorities summoned 34 journalists on matters related to their work and 25 were charged with various offenses.<sup>26</sup> Here is a sample of cases that have been prosecuted against journalists:

1. Andrew Mwenda (The Independent) – sedition and promoting sectarianism
2. James Tumusiime (The Observer) - promoting sectarianism
3. Ssemujju Ibrahim Nganda (The Observer) - promoting sectarianism
4. Charles Bichachi (formerly with The Independent) - sedition
5. John Njoroge (The Independent) - sedition
6. Joachim Buwembo (formerly with Daily Monitor) - criminal defamation
7. Robert Mukasa (formerly with Daily Monitor) - criminal defamation
8. Bernard Tabaire (formerly with Daily Monitor) - criminal defamation
9. Emmanuel Gyezaho (Daily Monitor) - criminal defamation
10. Richard Tusiime (Red Pepper) - criminal defamation
11. Francis Mutazindwa (Red Pepper) - criminal defamation
12. Daniel Kalinaki (Daily Monitor) - forgery and uttering a false document
13. Henry Ochieng (Sunday Monitor) - forgery and uttering a false document
14. Moses Akena (Daily Monitor) - criminal defamation
15. Kalundi Serumaga (Radio One) - sedition and incitement of violence

Basically, every year Museveni has been in power there has been at least one reported case of media harassment.<sup>27</sup> Apart from the Penal Code and its provisions on sedition and criminal libel, there are several pieces of legislation that have been passed that affect the work of journalists.<sup>28</sup>

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<sup>25</sup> Peter G. Mwesige, "Can You Hear Me Now? Radio Talk Shows and Political Participation in Uganda," unpublished doctoral thesis, Indiana University, Indiana, USA, 2004.

<sup>26</sup> "African Media Barometer Uganda 2010: The First Home Grown Analysis of the Media Landscape in Africa," Friedrich-Ebert-Stiftung (fesmedia Africa), Windhoek, 2010: 19.

<sup>27</sup> Tabaire, "The Press and Political Repression" 205.

<sup>28</sup> For details on the various laws, see "African Media Barometer Uganda 2010".

# Other Legislation Affecting the Work of Journalists

The Anti-Terrorism Act, 2002, under section 9 (1) makes it a criminal offence, among others, to publish and disseminate news or materials “that promote terrorism.” However, this provision does not precisely define “terrorism.” 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 excluding “journalistic material which a person holds in confidence and which consists of documents or of records other than documents” from the list of items that are subject to legal privilege during terrorism investigations.

In the aftermath of the Kampala bombings on July 11, 2010 that were blamed on the Somali terrorist group Al Shabab, the government rammed through Parliament The Regulation of Interception of Communications Bill, 2007. The law is likely to make it very difficult for journalists to protect confidential sources. The Police Statute, 1994, empowers the Inspector General of Police to restrict people from exercising their right of freedom of expression and assembly as a group.

In its 2008 report, like that of 2000/2001, the Uganda Human Rights Commission (UHRC) called for the repeal of the laws on sedition, sectarianism, criminal libel, criminal trespass, some sections of the Penal Code Act (Cap 120), some sections of The Press and Journalist Act, The Official Secrets Act, The Emergency Powers Act 1968, and sections of the Anti-Terrorism Act. The report said that although many of these laws and sections were not invoked in 2008, they continued to be “an ever-present threat.” According to the UHRC: “Some of these laws are archaic, having been inherited from the colonial administration. They have no place in a democracy as they prevent not only the media, but the citizens as well, from addressing controversial issues.”<sup>29</sup>

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<sup>29</sup> Uganda Human Rights Commission. “11th Annual Report of the Uganda Human Rights Commission to the Parliament of the Republic of Uganda,” 2008: 115.

Much as the government has lost almost all cases against journalists, it has continued to rely on the law because it serves to not only make it appear enlightened but also keeps journalists permanently on tenterhooks and perpetually second-guessing themselves.<sup>30</sup>

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<sup>30</sup> For a revealing first-hand narrative of how the state uses the law to nail journalists, see Charles Onyango-Obbo, "A Ugandan Journalist is Taken to Court by His Government," *Nieman Reports* Vol. 53 No. 2, Summer 1999, 22 Mar. 2007 <<http://www.nieman.harvard.edu/reports/99-2NRsummer99/Onyango-Obbo.html>>. He recounts his ordeal following a September 21, 1997, story in *Sunday Monitor* that said the DR Congo had rewarded Uganda with gold for helping remove Mobutu Sese Seko from power in 1996.

# Recent Developments

## Political Threats

When it is not the law, the state has used some fairly crude methods. President Museveni has routinely denounced and threatened the media. In April 2007, for example, the president met media owners and editors at State House, the seat of the presidency. He accused them of granting his opponents room to abuse him. After reminding them of existing laws, an attendee said, he warned: "I am going to shut down your radios." After the meeting, some radio owners told their producers not to allow certain individuals to appear on their political talk shows any longer. And one Wednesday in August 2005, President Museveni spoke at a public function as the chief mourner for Sudanese First Vice President John Garang who had died on July 31 in one of Mr Museveni's helicopters as he rode home to South Sudan from a Kampala visit.

The president did not like the attendant media coverage. He let loose. Just in case anyone needed reminding, he declared: "I am the President of Uganda. The people elected me. I therefore have the ultimate mandate to run their affairs." He added: "Now, any newspaper which plays around with regional security, I will not tolerate. I will simply close it. End. Finish. *Gasiya tu* ... It's the least of my problems."<sup>31</sup> He singled out *Daily Monitor*, *The Weekly Observer* (now *The Observer*), and *Red Pepper*. He referred to then-*Daily Monitor* political editor Andrew Mwenda, who also hosted a political show on KFM, a *Monitor* sister station, as a "boy." The next day, the Broadcasting Council, which regulates the sector, shut down KFM and suspended its broadcasting licence indefinitely reportedly because the station had disregarded minimum broadcasting standards as per the first schedule of the Electronic Media Act (Cap 104) 2000. The day after, police detectives summoned Mr Mwenda to the headquarters of the Directorate of Criminal Investigations<sup>32</sup> and kept him in the cells for the weekend. He was charged with sedition. KFM would remain closed for one week. Earlier, stations such

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<sup>31</sup> Various media houses – Daily Monitor, New Vision, Weekly Observer, and the radio and TV station carried the remarks the same day, August 10, 2005 and the day after.

<sup>32</sup> The CID now runs a Media Crimes Department dedicated to monitoring media and questioning of journalists, with a view to charging them in the courts. The offices of the resident district commissioners (RDCs) have also established units to monitor media. In districts such as Jinja and Soroti, RDCs have sent officials to ask radio station managers to provide names, titles, phone numbers, and residential addresses of journalists under the guise of monitoring security. This is done, or is meant to be done, without the knowledge of the journalists.

as Radio Kyoga Veritas<sup>33</sup> and newspapers such as *Daily Monitor*<sup>34</sup> had had their operations suspended and closed. But this seemed like a precursor to what would come in September 2009.

## September 2009 Riots and the Aftermath

From September 10-12, 2009, riots erupted in Kampala following a confrontation between the central government and the authorities of the Kingdom of Buganda, Uganda's oldest monarchy and the country's most populous region. According to the police, the riots left 27 dead, mainly from gunshot wounds. In the course of the riots, the Broadcasting Council shut down four radio stations: Central Broadcasting Service (CBS), Suubi, Sapientia, and Akaboozi ku Bbiri. They were accused of inciting violence, promoting sectarianism, campaigning against the government, and abusing Mr Museveni. A year on, CBS, largely owned by the Kingdom of Buganda and about whose programming the president had repeatedly complained for years, is still off the air. The others were allowed back on air after many weeks, with the Catholic Church-owned Radio Sapientia ordered to stick to religious programming. To re-open, the government wants CBS to, among other conditions, apologise for inciting violence and civil unrest, relocate its studios away from the headquarters of the Buganda government, drop programmes that incite violence and disorder, and adhere to broadcasting standards. "I will order the reopening of CBS when Mengo [the seat of the kingdom] implements the conditions given by the government," President Museveni told a rally at the end of January 2010. Several journalists were also barred from broadcasting; some are yet to return to work a year later.

The government also banned *ebimeeza*, the public out-of-studio open-air

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<sup>33</sup> The government closed the station, run by the Roman Catholic Church, on June 22, 2003 for nine weeks, following an attack on Teso sub-region by Lord's Resistance Army (LRA). The radio was accused of indiscriminately broadcasting rebel-related news that reportedly caused panic, fear, and tension in the population. See more here <<http://www.mail-archive.com/ugandanet@kym.net/msg04682.html>> and <[http://www.ifex.org/uganda/2003/06/26/police\\_close\\_church\\_owned\\_radio/](http://www.ifex.org/uganda/2003/06/26/police_close_church_owned_radio/)>. Accessed Sep. 7, 2010.

<sup>34</sup> On October 10, 2002, agents from military intelligence, internal security, and police besieged the publication's offices for seven hours beginning about 6 p.m. before shutting it down for a week over a story that stated that a military helicopter had come down while pursuing rebels of the Lord's Resistance Army in northern Uganda. The security personnel frisked journalists, turned their desk drawers inside out and carried off central processing units and servers. One of the authors of this report was a chief sub-editor and witnessed the operation.

discussions that used to be broadcast live on various radio stations. The *ebimeeza*, started ahead of the 2001 elections, provided the people the opportunity to discuss public issues openly. The government's first attempt to ban these shows, contending that radio licences allowed only indoor and not outdoor broadcasting, was in December 2002.

## Media Freedom Rankings

The latest world rankings on media freedoms present a stable, sometimes mixed, picture. According to Freedom House's Freedom of the Press Rankings of 2010, Uganda placed 110th out of 196 countries surveyed. It is tied with Congo (Brazzaville), Fiji, Guinea-Bissau, and Nigeria. In 2009, it ranked 109 out of 195 countries. It tied with Congo (Brazzaville), Haiti, and Senegal. In 2008 it was 110th out of 195. According to Reporters Without Borders' Press Freedom Index, Uganda placed 86th out of 175 countries in 2009; 107th out of 173 in 2008; and 96th out of 169 the year before. Freedom House has consistently rated Uganda partly free regarding media freedom. Possibly, the ranking would be worse if it were not for the dogged struggle of media practitioners to push back at the state's zeal to control speech.

## The Media Fight Back

The state's sustained attack on the media in Uganda for the last 100 years – starting with the Newspapers Surety Ordinance No. 9 of 1910 – has not always gone unchallenged. In 1956, *Uganda Express* questioned the colonial laws against free expression. It argued that the Protectorate Government, as the colonial regime was sometimes known, was using laws such as sedition as “a political weapon to punish those who happen to oppose its policies in strong terms.”<sup>35</sup> Years after colonialism ended, things had not changed much. This prompted Mayanja to write in *Transition* criticising the government for being “quite happy in retaining ... and utilising ... especially those laws designed by the Colonial Regime to suppress freedom of association and expression.”<sup>36</sup> Three years into the Museveni regime, a newspaper carried an editorial saying:

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<sup>35</sup> Quoted in Gariyo, “The Press” 43.

<sup>36</sup> A.K. Mayanja, “The Fact that We Hate Apartheid Should Have No Relevance in the Way We Punish Traffic Offenders,” *Transition* No. 37, 1968: 15.

One honourable member of the NRC [the parliament at the time] Mr. William Naburi has gone to the extent of suggesting that newspapers should be banned in order to achieve peace ... We have always stated that we appreciate the difficulties under which our government is working ... we do not enjoy painting a gloomy picture of the country. But at the same time we would be doing injustice to ourselves to see the danger signals and keep quiet ... Talking about gagging the press cannot be an alternative solution to this reality ... Papers may be banned, journalists may be imprisoned but even that will do nothing to alleviate the situation.<sup>37</sup>

When appeal to reason failed, the journalists changed tack. They took their concerns to the courts. And they had something big going for them: the new national constitution, promulgated in October 1995. The constitution provides for a Bill of Rights that is progressive on free speech. Because any Ugandan is free to file a petition in the Constitutional Court on any matter touching on the constitution, journalists chose to take full advantage. They have since filed several constitutional petitions challenging laws such as criminal libel/defamation. The first win came in February 2004 when the Supreme Court, reversing a decision of the Constitutional Court, unanimously nullified section 50 of the Penal Code that made publication of false news an offence. The second big win came in August 2010. In a unanimous decision, the Constitutional Court struck down the law of sedition but upheld that of promoting sectarianism. A year earlier, the same court showed unanimity in maintaining that the law of criminal defamation was constitutional. That decision has been appealed to the Supreme Court. If the state follows through, the same court, the highest in the land, will hear an appeal to keep the sedition law on the statute books.

Individual journalists are also suing the state in other courts. Following the closure of four radio stations last year, talk show hosts Kalundi Serumaga (Akaboozi ku Bbiri) and Geoffrey Ssebaggala (Sapientia) sued the chairperson of the Broadcasting Council and the Attorney General for unlawful suspension from broadcasting. Several journalists from CBS have sued the government for compensation for loss of employment with the continued closure of their station. Even before these cases were resolved, the government proposed making changes to the press law, something that left many alarmed and underlined the fact that the struggle for free media in Uganda is not anywhere near over.

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<sup>37</sup> Editorial, *The Citizen*, weekending 20 Sept. 1989 quoted in Zie Gariyo, "The Media, Constitutionalism and Democracy in Uganda," Centre for Basic Research [Kampala], Working Paper No. 32, 1993: 39.

# Proposed Press and Journalist (Amendment) Bill, 2010

Compared to previous governments, the current one under President Museveni has expanded various freedoms both in practice and by the enactment of a Bill of Rights. The liberalisation of the communications sector in the early 1990s led to an explosion of media. This upsurge in media has necessarily led to an increase in the number of critical voices that can be heard against the government. Over time, the government has sought to mute those voices. In a way, the government is scared of its own success. It is as if having let the genie out of the bottle, it wants it back in. That has proved difficult. It is now resorting, partly, to the force of legislation to achieve its aim of having a pliant population. The government is doing this well aware it can get its way because the ruling party dominates parliament.

On April 18, 2007, President Museveni wrote in *The New Vision* about how he persuaded his ministers as to the benefits of licensing private broadcast media. He then added: "I am, however, disappointed about the irresponsibility, irrationality of the use of your media houses and the propensity to allow your media houses to be used by saboteurs of Uganda's and Africa's future."

The theme of media responsibility is one that government officials harp on all the time. As already noted, colonial governor Cohen obsessed about media responsibility as well. The Minister of Information and National Guidance, Kabakumba Matsiko, told *Saturday Monitor* in an interview carried on March 27, 2010: "It has been realised that after we liberalised the press, we have not had a responsible media and now we are looking at how we can regulate the media." On April 30, 2010, the leading newspapers convened a consultative forum on the proposed changes to the media law. Minister Matsiko said at that occasion:

The increase in the number of media outlets, following liberalisation, has not been matched by laws and monitoring and supervisory mechanisms. So the government has not been able to regulate the activities of the media. As a result of the shortcomings in the legal framework, various interest groups have taken advantage under the guise of freedom of expression to publish material that endangers stability and national security...Our media cannot regulate itself because it is in its infancy. It needs nurturing and guidance. Left on their own, some media houses would cause incitement to anarchy and even to genocide.

It is as if it is the government rather than the constitution that guarantees rights and freedoms. It is as though it is the government that gives and takes them away and by giving them it is doing Ugandans a favour. Certainly that is the impression the government's actions create.

And so in January 2010, the government came up with a draft bill to regulate the print media. The Press and Journalist (Amendment) Bill, 2010, announces in its long title that it seeks:

To amend the Press and Journalist Act in order to provide for registration of newspapers; to require that the editor of a newspaper shall ensure that what is published is not prejudicial to national security; to rationalize the composition of the media council; to provide for licensing of newspapers; to increase the membership of the disciplinary committee; to provide for expeditious disposal of complaints before the disciplinary committee; to provide for offences and penalties and to provide for other related matters.

The most controversial proposal in the draft bill is the licensing of newspapers. Today, newspapers, magazines and other such publications must register with the General Post Office but as a formality. The draft bill intends to empower the statutory Media Council to license newspapers annually and to revoke the licence in case of breach of licensing conditions. A new section is being introduced to address licensing and it provides that:

- (1) A person shall not operate a newspaper unless there is in force in relation to the newspaper a license issued by the Council.
- (2) An application for a license shall be in the form prescribed by Regulations.
- (3) The Council shall before issuing a license under this section take in account the following-
  - (a) that the applicant –

- (i) in the case of an individual, is a resident of Uganda; or
    - (ii) is a locally registered partnership or company;
  - (b) proof of existence of adequate technical facilities; and
  - (c) social, cultural and economic values of the newspaper.
- (4) A license issued under this section is valid for one year and is renewable subject to the requirements under subsections (2) and (3).
- (5) Where the Council refuses to grant a license in respect of a newspaper, it shall state in writing the reasons for the refusal.
- (6) A person whose application for a license under this section has been refused may appeal to the High Court and the High Court may confirm or set aside the refusal and may give such orders as it may consider appropriate.
- (7) The Council may revoke a license issued under this section on the following grounds –
- (a) publishing material that is prejudicial to national security, stability and unity;
  - (b) publishing any matter that is injurious to Uganda’s relations with new (sic) neighbours or friendly countries;
  - (c) publishing material that amounts to economic sabotage; and
  - (d) contravention of any condition imposed in the license.
- (8) A person whose license has been revoked may appeal to the High Court against the revocation and the High Court may confirm or set aside the revocation and make such other order as it may consider appropriate.
- (9) A person who –
- (a) operates a newspaper without a license issued under this section; or
  - (b) contravenes the provision of a license issued under this section, commits an offence and is liable on conviction to a fine not exceeding forty eight currency points or imprisonment not exceeding two years or both.

## **The Case against the Proposed Amendments**

At the April 2010 consultative forum, participants praised Uganda for making progress by passing the Access to Information Act and The Whistleblowers Protection Act. It was therefore ironical that the same country that offered leadership in the region on these issues now wants to offer guidance, nurture and regulate the media because of its so-called infancy. Even if that were necessary, asked Mr Henry Maina from Article 19, “is the proposed way

the best way to nurture a child? No, you don't tie him up and ask him to walk." Uganda cannot sign on to the International Covenant on Civil and Political Rights, the Declaration of Principles on Freedom of Expression in Africa and other such declarations and instruments and then renege on them by proposing obnoxious media laws. Indeed, the proposed changes contravene the letter and spirit of article 29 (1) (a) of the Ugandan constitution as well.

The ultimate aim of the government's proposed amendments, it seems clear, is to silence dissent. The government says it wants to regulate the media but the draft bill is all about control. If the government is acting in good faith, argue journalists and free speech activists, how come it is not moving fast enough to operationalise the Access to Information Act, 2005? Regulations making the law operational were laid out in 2008, but the government is yet to issue a legal instrument that gives those regulations force by defining which information can and cannot be released to the public. Consequently, government officials continue to hide behind the discredited Official Secrets Act, which the Access to Information Act did not repeal, to not release information to the public.

The proposals give excessive powers to the Media Council to determine what, for instance, counts for "material that is prejudicial to national security, stability and unity." Yet composition of this same Media Council is being changed as to erode what little independence it still had. Crucially, the minister responsible for information will directly appoint the chairperson of the Media Council unlike under the current law whereby members elect one of their own as chairperson. This will increase the minister's powers over the Council. If the bill becomes law, the Media Council will have excessive powers similar to those of the Broadcasting Council under the Electronic Media Act. Under this Act, the minister appoints the chairperson of the Broadcasting Council and the minister can issue policy directives which the "Council shall comply with." It is little wonder that radio stations get shut down all the time. The proposed licensing terms thus provide a basis for the government to whip into line those supposedly stubborn publications by undermining, instead of enhancing, the independence of the Media Council.

The proposals mandate the Media Council to register and license newspapers. The draft bill provides that none shall operate a newspaper "unless it is registered with the Council and has complied with the requirements ...". Contravention of this provision may lead, upon conviction, to a "fine not

exceeding forty eight currency points or imprisonment not exceeding two years or both.” According to Article 19, the UK-based freedom of expression advocacy organisation, international law recognises the licensing of broadcasters to ensure order in the usage of the spectrum and to prevent chaos in the airwaves; but it rules out licensing of newspapers. Principle 8 (1) of the Declaration of Principles on Freedom of Expression in Africa states: “Any registration system for the print media shall not impose substantive restrictions on the right to freedom of expression.” And the 2003 joint declaration of the special mandates on freedom of expression states:

Imposing special registration requirements on the print media is unnecessary and may be abused and should be avoided. Registration systems which allow for discretion to refuse registration, which impose substantive conditions on the print media or which are overseen by bodies which are not independent of government are particularly problematical.

Accordingly, Article 19 notes that registration of the print media is unnecessary and may be abused. As a result, it is not required in many countries.

The draft bill says one can appeal when denied a licence but given how slow Uganda’s legal system is and its heavy case backlog, it may take years for the courts to rule on the appeal. One would not operate during that time as he or she waits for the courts to settle the matter. This state of affairs would deny him or her employment and income in the intervening period.

In seeking to regulate content, the draft bill prohibits publication of material that amounts to economic sabotage, or that endangers national security, stability and unity, and Uganda’s relations with foreign countries. Minister Matsiko has said it is the government that will determine what is national security, economic sabotage, etc. “But the process will not be arbitrary and a one-man matter,” she said at the April 2010 meeting. “Not everything will be put in the law but there will be regulations. Everything will be clarified and defined.” However, it will still be up to the Media Council to determine whether a publication has run afoul. In any case, any limitation should not override the right to free media but facilitate the enjoyment of the right. That is, a limitation is a secondary objective as was well articulated by Justice Joseph Mulenga in the judgement striking down the false news law.<sup>38</sup>

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<sup>38</sup> See Judgement of Mulenga, J.S.C. in *Onyango-Obbo and Mwenda v. Attorney General*, Constitutional Appeal No. 2 of 2002, Supreme Court of Uganda, 11 Feb. 2004.

On sanctions provided for in the draft bill, Article 19 has noted:

These are excessively harsh sanctions for breach of provisions which are, of themselves ... illegitimate. [T]he system of licensing and revocation of licences envisaged by the draft Bill would allow for extensive government control over any newspaper which it did not favour. A prison sentence of two years simply for operating a newspaper in breach of any licence condition, which might be something relatively minor, also cannot be justified.

The government, fairly, obsesses about entry standards and journalistic ethics and standards. But it has no competence in deciding how a radio presenter in some far-flung part of the country does his or her job. *The Observer* Managing Editor, Mr James Tumusiime, whose newspaper was one of the convenors of the April forum, put it thus:

[The government] must not be influenced by the few mistakes journalists make to control them. Should we abandon democracy because sometimes it produces bad leaders or leads to conflict or delays decisions? For the judiciary, when criminals are set free, it still remains sacrosanct. Media must be embraced with all the imperfections. This draft bill is not doing that.

Indeed, charlatans exist in churches but rarely, if ever, does one hear calls to ban churches or religion. If they must be banned, an independent body should. The *Daily Monitor* Managing Editor, Daniel Kalinaki, another co-convenor of the April forum, said: "Government took one step forward with the 1995 law; it should not take two steps backward with the [draft] bill." This therefore is a matter of self-regulation.

The Article 29 Coalition, a voluntary Ugandan network of media organisations working to promote media freedom and professionalism in journalism, is named after the constitutional provision that guarantees free expression and media. The Coalition argued in March 2010 in its rebuttal to the bill that the proposed newspaper licensing conditions such as "proof of existence of adequate technical facilities" and the "social, cultural and economic values of the newspaper" not only violated constitutional guarantees of freedom of expression but were also susceptible to arbitrary interpretation and therefore abuse. In particular, the Coalition contended that technological standards could not be used to determine who could or could not publish a newspaper.

Some of the newspapers that stood up to the oppressors of the past, including the colonialists, and highlighted human rights abuses were produced with rudimentary technology but the ideas they propagated were transformative. Freedom of expression and of the press cannot be the preserve of only those who have 'adequate' technical facilities and other resources.<sup>39</sup>

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<sup>39</sup> Article 29 Coalition, "Statement on the Proposed Press and Journalist (Amendment) Bill, 2010," 6 March 2010.

# Recommendations

The recommendations below are derived from two media forums on the draft bill held in April and May 2010 in Kampala and from a March 2010 critique by Article 19.

## *Self-regulation*

Media leaders in Uganda consistently acknowledge that there are problems regarding the quality of journalism as seen often in the lack of depth and accuracy, lack of balance and fairness, moralisation rather than analysis, provision of excitement and incitement rather than information, and unwarranted attacks on the lives of private citizens.<sup>40</sup> But the solution is to promote and enhance self-regulation mechanisms that already exist. The Independent Media Council of Uganda was established in 2006 by 42 media organisations. It has developed a journalism code of practice that has been distributed. It is now moving to hear and resolve complaints. All who care for a free media should support it. Alternatively, the model of an independent media council with statutory powers could be adopted as they did in Ghana, with the government represented by no more than two members as is the case of the National Media Commission of Ghana.

## *Consensus over national values*

The government should define what exactly constitutes national security, economic sabotage, and public morality. But the courts should have the power to determine whether what was published actually is harmful to, say, national security. The government should make its case to the court. Moreover, given that these will always remain contested notions, civil society organisations should, on behalf of the public, lead a national dialogue intended to reach a degree of consensus on the definitions of these concepts. This is especially so if they are to be accepted by the majority as national values worth of protection by everybody regardless of political persuasion. As an interested party, the government cannot serve

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<sup>40</sup> Daily Monitor Managing Editor Daniel Kalinaki acknowledged as much at the April 30, 2010, forum in Kampala to discuss the proposed changes to The Press and Journalist Act (Cap 105) 2000.

as a disinterested moderator of this dialogue.

### *Definition of a journalist*

It is critical to recognise the transition from old to new media and to affirm that anyone who earns an income through editorial work, irrespective of medium or platform, is a journalist. Universally, journalism is a unique profession because it derives its public mandate from the right to free expression that belongs to all citizens. Conceiving of journalism as an occupational category is only a pragmatic strategy for those who have chosen to dedicate their careers to the work of regularly informing citizens about public affairs. Otherwise, the practice of journalism should be accessible to all citizens who demonstrate commitment to the universal norms that have come to be associated with the practice. It is in the interest of Ugandan society that there are no unnecessary barriers to entry in journalism. Besides, the industry should organise itself to respond to the legitimate concerns of citizens who feel that they are often exploited by individuals who use the cover of journalism to gain access to information and places for self-serving intentions and rather than the public interest. Journalists should therefore be open to a form of occupational identification mechanism controlled by their duly elected or appointed representatives. This would ensure orderly access to information that is of public interest and to public places; and it would strengthen public confidence in journalism.

### *Accreditation of journalists*

As intimated above (see 'definition of a journalist'), introduction of a press card, like in Ghana and the UK, is one way media players could help deal with the persistent criticism of lack of professional responsibility in journalism. 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. Some have argued that citizen journalism would be undermined by such a system of accreditation. Conversely, accreditation is by definition designed for journalists who operate in, or on behalf of, news bureaucracies and it should be appreciated for just that purpose. It does not preclude citizen journalism in its various forms and the journalists who carry its mantle from performing their role and using their unique vantage points to bring those ignored and alternative stories and viewpoints out in the public domain.

## *Structure of the Media Council*

The proposed changes to the composition of the Media Council enhance the minister's control over this body and should be removed from the draft bill. The National Media Commission (NMC) of Ghana provides a model that Uganda should emulate. The NMC is absolutely independent of the government; yet its strength partly originates from the statutory backing it enjoys. The lesson for Uganda is that the confidence the practitioners would have in a Media Council so structured would be the primary source of its public legitimacy. It would be capable of protecting the interests of journalists working for the public/state media as vigorously as it would defend the interest of the journalists in private media. This approach would reinforce the idea that journalistic independence is fundamental to practice regardless of who owns or controls a particular media organisation. The best interests of Ugandan journalism will be best taken care of by embracing a middle-ground position which recognises self-regulation as the best way to nurture the media to maturity but which at the same time appreciates the legitimate concerns of government and citizens about the excesses of the media and the need to hold it accountable to society.

## *Media policy*

The powers of the Media Council to regulate investment in the print media sector should either be removed entirely from the draft bill or limited to pursuing legitimate objectives, such as the prevention of undue control by one individual over the print media sector. The regulation of the media sector generally should be guided by a clear and democratic national media policy akin to the national broadcasting policy. Media policy should inform and guide legislation and the public should have a say in the design and regular review of the policy. The spirit behind the media policy should be to ensure: that democratic space is available to all citizens and legitimate interests in society; that there is a level playing ground for all those who seek to invest in the sector; that there is access to media and information for all citizens including the means to produce and disseminate information; that regulation is done in the public interest rather than in response to political pressures and for the purpose of controlling; and that the media policy itself is founded on principles grounded in the national core values arrived at through the consensus-building dialogue referred to earlier (see 'consensus

over national values’).

## *Newspaper licensing and registration*

The newspaper licensing system proposed in the draft bill has no room in a democratising society and in a free market economy. The licensing regime that the government wants is vulnerable to political abuse as newspapers that will offend powerful people and interests will in all likelihood face stiff battles to have their licences renewed. The annual license will for that reason destabilise the newspaper market as it will expose media organisations to increased and unnecessary risk as business enterprises. The health of the media industry is as important to the health of the economy as are all other sectors. At the end of the day, newspapers compete in the marketplace as do all other businesses. Therefore, it would be unfair and counter-productive to subject them to constraints that other businesses do not ordinarily have to contend with. Similarly, the proposed registration system should either be removed entirely or completely revised to bring it in line with international standards, including by making it clear that the Media Council has no discretion to refuse to register a newspaper.

## *Application of the law*

To the extent that it is legitimate to criminalise the dissemination of information – for example, hate speech and incitement of violence – this should be done through a law of general application rather than a media-specific law. If an interest is worthy of criminal protection, it will need to be protected against all forms of dissemination, not just publication in the media. The case of Rwanda is often cited to illustrate how the media, when left on their own, can literally engineer the destruction of a society. Yet a more nuanced understanding of the Rwandan situation would show that it was the capture of the media by unaccountable political interests and actors that further paved the way for the atrocities that were visited upon that country. Media policy too would have a vital role to play in creating a media environment that would minimise, if not eliminate, the chances of what happened in Rwanda being played out in Uganda. Likewise, the system of sanctions in the draft bill should be substantially revised so that it only provides for proportionate sanctions for the breach of legitimate rules.

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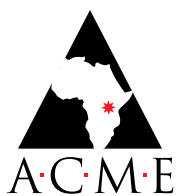
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# About ACME

The African Centre for Media Excellence (ACME) is a Kampala-based independent, non-governmental, non-partisan and non-profit professional organisation committed to helping African journalists to seek and achieve professional excellence and improving journalism and mass communication in Africa.

ACME conducts research and training that helps make our news media more reliable and credible sources of information on public affairs, effective tools for monitoring official power, and vibrant forums for public debate. We also work on interventions to equip the private sector, civil society, academia, and the government with skills to engage more effectively with the media, as well as educating the public on how to better appreciate the forces that shape the news. ACME is also involved in local and international advocacy to promote and defend freedom of expression and press freedom.



# AFRICAN CENTRE FOR MEDIA EXCELLENCE

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