The Impact of Legal Restrictions to the Freedom of Expression in Uganda

By Francis Kagolo

Freedom of expression is best known as the freedom to hold opinions, seek, receive, speak, and impart information without undue interference from the state or other actors. The right to freedom of expression is a fundamental right for all individuals and is key in media protection.

It is recognised as a human right under Article 19 of the Universal Declaration of Human Rights and recognized in international human rights law in the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR states that:

*Everyone shall have the right to hold opinions without interference.*

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

In Uganda, freedom of expression is guaranteed in Article 29 (1) (a) of the Constitution, which states; “Everyone shall have a right to freedom of speech and expression which shall include freedom of the press and other media.” Freedom of expression is a cornerstone of democratic rights and freedoms and thus lies at the foundation of a democratic society.

However, as Article 19 (3) of the ICCPR allows, nowhere in the world is this freedom absolute. In Uganda, it is restricted in Article 41 (1) which states:

*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 privacy of any other person.*

This provision of the law makes journalism and press freedom or freedom of expression very difficult as numerous questions are left unanswered. Whose privacy is protected, and who decides when privacy invasion has occurred? Such lack of clarity directly impedes the fact-finding and reporting capabilities of journalists, thus hampering their right to exercise freedom of expression.

Freedom of expression is further restricted under Article 43 of the Constitution which provides general restrictions on the enjoyment of rights for the good of others’ rights, public interest and security of the state. Indeed, the “rights of others” has become a broad and unspecific justification for limiting freedom of expression in Uganda.

Yet, the country still has a number of other legal limitations, both criminal and civil, that restrict the enjoyment of freedom of expression, as discussed below.

The major restriction is defamation, most especially libel. As enshrined under the Penal Code Act Section 179, a person commits libel when he publishes defamatory material concerning another person, with intent to defame that other person. It may be in form of print, writing, painting, or effigy. In Uganda, there’s both criminal and civil libel. The latter enables a person to sue a publisher for libel and recover damages.
Libel has not only resulted into self-censorship of the media, but it has also crippled the financial muscle of media houses, especially newspapers, as courts award colossal sums of money in form of damages to persons defamed.

For instance, in the Felix Onama V.Uganda Argus LTD (Civil Appeal No 33 of 1968), the Court of Appeal for East Africa awarded Onama, a former Uganda Minister of Defense, sh50,000, somewhat a huge amount then. And there are many such cases.

The High Court in in Peter Kaggwa v. New Vision and 2 Others (2002) awarded the plaintiff sh17m compensatory general damages with interest. Kaggwa, then an advertising and promotion coordinator with Uganda Telecom, sued New Vision newspaper following a story published on March 30, 2002, which claimed he had been caught “pants down with an underage girl” by his own mother.

Besides, the Government has often used/misused the libel law to suppress dissent and gag free speech and expression. When Daily Monitor’s senior reporter Angelo Izama wrote an opinion column in 2005 suggesting parallels between President Yoweri Museveni and former Philippine leader Ferdinand Marcos, the President preferred criminal libel charges both against Izama and his editor Henry Ochien.

Although this case is yet to be disposed of in Makindye Magistrates’ court, the charges have sent tongues wagging and the case shows that Ugandans, especially journalists, cannot enjoy the freedom of expression without fear of pending prosecution before courts of law.

The libel law has helped spur responsible speech and ethical journalism. It has saved many Ugandans, especially celebrities, from malicious baseless allegations that would otherwise lead society into a dilemma.

However, for crippling media financial muscle and forcing high-level censorship, the libel law has significantly hampered enjoyment of freedom of expression in Uganda. In fact, this law has restricted freedom of expression to seeking, receiving, and imparting only information deemed not defamatory.

Equally worth noting is the law on Incitement of Violence. This criminal offence as provided for under section 83 (1) of the Penal Code Act states that:

\[
\text{Any person who incites any other person to do an act of violence against any person by reason of his or her race, place of origin, political opinions, colour, creed or sex or office commits an offence and is liable on conviction to imprisonment for a term not exceeding fourteen years.}
\]

It is argued that criminalising incitement of violence has helped ensure peace and stability in the country. However, like libel, this law has been effectively used /misused by the Uganda Government to gag criticism, freedom of speech and expression.

This is especially so with the Uganda Police force and the Director of Public Prosecutions (DPP) who often arrest and detain opposition politicians on charges of inciting violence even at times when they are well aware there’s no substantial evidence.
For instance, at one point, at the height of the walk-to-work demonstrations in April, 2011, two opposition party leaders, Col. Kizza Besigye and Nobert Mao, as well as over 10 other politicians were arrested and charged with inciting violence as they tried demonstrating over rising commodity prices.\textsuperscript{iv}

Four months later, in August 2011, the Kasangati Magistrates’ Court dismissed the charges after the State failed to establish a \textit{prima facie} against the accused.\textsuperscript{iii} But justice came after their right to express themselves on the rising commodity prices had been blocked.

Various media products/publications have also been banned on account of inciting violence. A case in point is the open-air public radio talk-shows, commonly known as \textit{ebimeeza}, which the Government banned in 2009. Prior to being banned, \textit{Ebimeeza} had gained momentous support as the epitome of free speech and expression in the country. Thus, their ban was seen as one of the worst setbacks in the “struggle to protect and promote open dialogue, good governance and democratic rights in the country.”\textsuperscript{iv}

Then there’s the Copyright law, which, as enshrined in the Copyright and Neighbouring Rights Act, 2006, protects the owners of copyright, patents and trademarks from misuse of their intellectual property.

According to Section 5 of the Act, articles, books, pamphlets, lectures, addresses, sermons and other works of a similar nature are copyrightable. Others include dramatic, dramatic-musical and musical works; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science among others.

Although the Copyright law is good to advance the progress of knowledge by giving an author of a work an economic incentive to create new works\textsuperscript{v}, it is often somewhat in conflict with freedom of expression. This is because the law is fundamentally about restrictions on speech and on actions and handing such tools to oppressive governments, and believing that they’ll actually be used to protect content creators or inventors is fundamentally dangerous.\textsuperscript{vi}

The situation has not been any different in Uganda as various materials, including newspaper articles, are copyrighted and it is unlawful to reproduce them. Although there has not been much prosecution like in other cases, this law has impeded Ugandans’ freedom of expression to a certain degree.

The Uganda Performing Rights Society (UPRS), which brings together musicians/artistes and actors/actresses, has been at the forefront of blocking radio stations and individuals from unauthorised recording, compilation, and distribution of artistes’ musical products.

The High Court, in the Uganda Performing Rights Society Limited v. Fred Mukubira (Misc.App.No.818 Of 2003), ordered the Respondent to permit the Applicant access to both his residence and music shop to inspect all cassette tapes, documents, materials or articles relating to the alleged unauthorised recording, compilation, distribution and or sale of the Assignors’ musical works. The Court also permitted the respondent to remove into the custody of the Court all unauthorised recordings, compilation, and distribution and or sale of the Assignors musical works, which constitute or would constitute evidence in the trial of the main action.
Other than libel, inciting violence and protection of copyright, the Penal Code Act also provides for Blasphemy, another restriction to freedom of expression. Blasphemy is a contemptuous or profane act, utterance, or writing concerning God or a sacred entity or the act of claiming for oneself the attributes and rights of God.

Section 122 of the Penal Code Act, which creates an offence arising from writing or uttering words with intent to wound religious feelings, provides that;

*Any person who, with the deliberate intention of wounding the religious feelings of any other person, writes any word, or any person who, with the like intention, utters any word or makes any sound in the hearing of any other person or makes any gesture or places any object in the sight of any other person, commits a misdemeanour and is liable to imprisonment for one year.*

In Uganda, for fear of sounding blasphemous, newspapers have not critically analysed and commented on practices of the various religious groups. Neither are individuals free to comment on certain aspects of religion and what other people believe in. This undermines the free flow of information, free debate and open discussion of one of the issues – religion – that best concern the citizens of this country.

Then there’s the law on Obscenity And Pornography, which controls pornography and publication of pornographic content, enshrined under Section 166 of the Penal Code Act. Pornography means written, graphic (pictorial) or any other form of communication intended to excite sexual feeling.

This law is credited by moralists for preventing obscene publications from corrupting the morals of the people, especially children. But it has not been without shortcomings, especially in regard to freedom of expression and of the press in Uganda.

In 2005, an ad-hoc committee of Parliament, basing this Section 166 of the Penal Code, advised the House to ban media houses ‘dealing in pornographic material’ including the Red Pepper, Bukedde, Orumuri, Entango, The Mirror, The Extreme, East African Television and DSTV. It cited other outlets for pornographic material including nude dancing places, video halls and internet cafes.

Since then, there has been a ‘slow-but-sure’ crackdown on such media houses. For instance, ‘during Miria Matembe’s reign as Minister of Ethics and Integrity (2001-2005), Andrew Kagwa, then acting Bukedde editor, was summoned and interrogated several times at the Police Criminal Investigations Directorate (CID) over alleged publication of pornographic content until the paper (Interview with Michael Ssebowa, Bukedde Deputy Editor, on May 16, 2012).

On August 26, 20004, Radio Simba featured a discussion on discrimination against homosexual individuals in Uganda. The BC imposed a fine of $1000 on the station and ordered it to apologise for having offended a wide section of the Public. According to the BC the program offended public morality.
Also, over the years Police have arrested scores of girls from night clubs for staging nude dance shows, commonly called *Kimansulo*. The latest group of five was arrested in Fort Portal in February this year.\(^{ix}\)

Besides Section 166 of the Penal Code Act, which addresses pornography, the Press and Journalist Act Chapter 105 created the Media Council whose role includes censoring offensive materials like those which promote racism, sectarianism, pornography and tribalism among others. This Act also established The National Institute of Journalists to among others; promote the usage of journalism that is not contrary to public morality.

Although these two institutions have not been so active, Uganda’s commitment to the promotion of freedom of expression was seriously tested when the Media Council banned women rights’ activists from staging the *Vagina Monologues*, a play that portrays women suffering but which was also said to glorify lesbianism and homosexuality. The ban by the Media Council, in the promotion of national public policy/morality, amounted to intrusive regulation of freedom of expression.\(^{x}\)

This kind of protection by the anti-pornography law and the Media Council affects the full realization of one’s potential as a human being, in opposition to freedom of expression.

From the foregoing, it’s obvious the law impinges on freedom of expression in Uganda. Yet the restrictions always tend to worsen in times of political scandals. When widespread protests sprung up after the Government blocked the Kabaka (King of Buganda Kingdom) to visit his subjects in Kayunga district in 2009, for instance, the Government cracked the whip on independent media Broadcasting Council, a body responsible for regulating electronic media in Uganda, closed down FM 4 radio stations to wit Radio Sapencia, Radio Two (Akaboozi), Central Broadcasting Service (CBS) and Suubi FM. The Broadcasting Council blamed the radios for mobilizing masses for demonstration and promoting hatred in their programmes. The same Council moved on to put a ban on 3 radio and TV show hosts from hosting TV and radio programmes. Another ban was placed on the popular open talk-shows, *Ebimeeza*, on grounds that they were illegal.

The restrictions on the freedom of expression increased last year in the wake of walk to work protest, when journalists, opposition politicians and activists faced arbitrary arrest, intimidation, threats and politically motivated criminal charges for expressing views deemed critical of the authorities.\(^{xi}\)

However, in the midst of all restrictions, a number of Ugandans, especially journalists, have remained steadfast in the struggle for free expression and some have instituted court proceedings and succeeded in challenging oppression and repressive laws.

In Andrew Mujuni Mwenda and 1 other v. Attorney General (constitutional petitions no. 12 of 2005 and no. 3 of 2006) the Constitutional Court concurred with the petitioners that the law on sedition was inconsistent with the Constitution. The Court thus declared it null and void and struck it out of the Penal Code.

Similarly, In *Francis Tumwekwasize, Timothy Sibasi and Ibrahim Sadik v. Attorney Genera* (HCT-00-CV-MC-0036-2009) the first 2 applicants successfully sued the Attorney General
for enforcement of their rights following denial of entry into Namboole stadium to report a story and consequently being beaten up by the Police.

7 New Vision, Ban porn, say MPs, (October 14, 2005), retrieved from: http://www.newvision.co.ug/D/8/13/460926, on May 16, 2012
11 Amnesty International Report, Stifling Dissent: Restrictions on the rights to freedom of expression and peaceful assembly in Uganda