The Effects of Criminalising Publication Offences on the Freedom of the Press in Uganda 1986 – 2000

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DEDICATION

This work is dedicated to all those Ugandan journalists who work so hard under difficult conditions so that Ugandan society can get better, through the truth.

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LIST OF APPENDICES

TABLE OF CONTENTS

CHAPTER THREE: PRESS CONTROL AND REGULATION IN UGANDA SINCE 1986

CHAPTER FOUR: THE JOURNALISTS VERSUS CRIMINAL LAW

CHAPTER FIVE: TOWARDS MEDIA LAW REFORM

CHAPTER SIX: CONCLUSIONS AND RECOMMENDATIONS

ABSTRACT

The press in Uganda has come a long way right from the colonial days when newspapers sprang up, mainly from missionary activity, through the eras of Obote 1 (1962 – 1971), Idi Amin (1971 – 1979), Obote 11 (1980 – 1985), Tito Okello (1985 – 1986) and the Museveni administration (1986 – to date). For most of this time, the press in Uganda enjoyed very little or no freedom to do its work.

The year 1986 saw the ascendancy to power of the Yoweri Museveni as president after a five-year bush war with promised to restore peace, democracy, the rule of law, economic prosperity and civic rights and freedoms. Several achievements in these areas have been registered since 1986. Newspapers have sprouted and the broadcast industry liberalised to allow private ownership that has seen the proliferation of FM stations.

However, the relations between the government and the press remain strained with journalists arrested and/or prosecuted mainly for offences relating to sedition, publication of false news and criminal libel.

This study was intended to examine why journalists in Uganda continue to suffer arrests and incarceration when the country has been reported to be moving towards democratisation. The study was also aimed at assessing the impact of arresting journalists and arraigning them before the courts of law in the period under study and what this portends for freedom of the press and democratisation.

It is recommended, among others, that journalists in Uganda need more unity of purpose to pursue meaningful media law reform that will de-criminalise publication wrongs. The civil remedies available to people who feel offended by the press are sufficient, if not excessive. The efforts already undertaken by the Eastern Africa Media Institute (EAMI) Uganda Chapter in this direction should be pursued to a logical conclusion.

CHAPTER ONE

INTRODUCTION

1.1 Scope of Study

The year 1986 has a special significance for Uganda. It is on 26 January 1986 that the National Resistance Army (NRA), the armed wing of the National Resistance Movement (NRM), captured the capital Kampala and ushered in a new administration, after many years of chaos. The new administration was to be headed by the former guerrilla leader, Yoweri Museveni.[1]

Prior to Museveni's ascendancy to power after a gruesome five-year guerrilla war that lasted from 1981 to 1986, Uganda had become a byword for state-inspired violence, democracy had been subverted and the economy had decayed.

Karugire (1996) has quite ably described the situation that obtained in the country six months before the NRA captured Kampala, thus:

> …by 27 July 1985, when the coup of the Okellos took place, Uganda had no government in the usual sense of the term: the judiciary had been made redundant; the police ineffective; the local governments inoperative; the economy lay in shambles; the civil service completely demoralised; and the ruling party in fragments (p.95).

The short-lived government of Tito Okello, that was swept from power in January 1986, was neither different, nor capable of bringing a difference from the past maladministration. Mamdani (1988) has graphically described what the Okello administration was:

> …with the Lutwa-Okello coup of July 1985, civil military relations in Uganda resembled those in Beirut…and in Haiti…more than any other country (p.3).

In all senses, then, the Museveni administration was seen as a herald for a new beginning for the country; and this expectation was given momentum by the new president's

promise on being sworn in on 29 January 1986, that what had happened was: "…not a mere change of guards…but a fundamental change".

Guided by its ten-point programme, the NRM government set to reconstruct the country. The first point on this programme was the restoration of democracy.[2] Some of the most important pillars of democracy in NRM Uganda were to include the Resistance Council (RC) system (now renamed Local Councils [LCs]), with committees from village level up to national level (parliament).

The other was a free press. Museveni himself has stated, right from the beginning, his government's unwavering commitment to the respect of human rights and to the sanctity of human life. He said:

> We waged a protracted war against tyranny on a platform of restoring personal freedoms and the amelioration of the socio-economic conditions of our people. (Museveni, 1992: 200)

Indeed one of the very senior NRM cadres and then minister of state in the office of the prime minister, Mr Eriya Kategaya, was quoted in June 1986 by the nascent government paper, *The New Vision*, underscoring the necessity for the media to foster unity and a spirit of nationalism. Mr Kategaya highlighted the importance of journalists in national development and urged them to play a leading role in burying ethnic and religious differences.[3]

However, political party activities were to remain banned from 1986 onwards, ostensibly to give time to the new government to settle down and heal the country from the past turmoil, among other reasons. It would be a matter of time before this curious mix of a free press and restricted political party activity would be understood for its inadequacy, and the implications this would have for the freedom of the press in the country.

Thus from 1986, the press has become a prominent institution in Uganda and various commentators have labelled it as perhaps the freest in East Africa (Mamdani, 1988; Mutibwa, 1992).

The advent of the Museveni administration has therefore, unsurprisingly, seen a proliferation of newspapers. Many newspapers have since folded but this has been because of economic rather than political reasons. Yet this does not mean that the political atmosphere has been conducive to press freedom.. The new regime in Kampala soon found that it had a rebellion to fight in its first year in the northern part of the country. Thus from 1987, government began to feel uneasy with press coverage especially when it was not supportive of its prosecution of the war in the north. With time, political opposition to the regime also began to grow and with political party activities banned, the press became the mouthpiece, and was associated with, the opposition. The government resorted to the use of criminal law as one of the measures to hem in the press.

The press has a role to play in the democratisation process of any country. Increasingly, there is a tendency to measure the level of democracy enjoyed in any polity in relation to the freedom the media enjoys. This is why liberalising the media has become a serious issue in the past decade, and continues to be. The end of the cold war has also set in motion various processes that have elicited a re-thinking of the role of the media in society in general, and in democracies in particular. However, the media can only have a role to play depending on the political, social, economic and cultural environment it is operating in.

The main aim of this study is to examine the legal environment in which the press in Uganda operates, particularly with regard to the criminal sanctions in the penal code and the impact of their use against journalists from 1986 to 2000. The study will assess the implications of the arrests and prosecutions of journalists for their work, for journalism practice in Uganda during the Museveni administration. The study will also examine the support mechanisms available to journalists who find themselves in trouble with the criminal law in Uganda because of their work. Finally, the study will look into the possibility of alternative methods of dealing with conflicts between the state and the press, other than resorting to criminal law.

1.2 Importance of the study

The press as the earliest non-traditional medium of communication on the African continent, Uganda included, has played a critical role in virtually all aspects of life. Broadcasting was, for instance, started in Uganda in the second half of the twentieth century (radio in 1954 and television in 1963), more than half a century after the publication of the first newspaper (Okech, 1994). Even then, the broadcast stations were started as government monopolies and were to remain so till the dawn of privatisation and liberalisation in the early nineties. And for all intents and purposes, they served the interests of the successive governments.

Therefore, it was the press, particularly the privately owned newspapers, which have been on the Ugandan scene longest. They have influenced many issues and events, and suffered for them in different ways. One of the methods so elaborately and frequently used by the colonial and subsequent post-colonial governments was to jail journalists by invoking criminal legislation; notably sedition, publication of false news and criminal libel. The purpose was to frighten a questioning press.

An examination of the use of criminal law against the press and the implications of this, especially during the period 1986 to 2000 in Uganda, is necessary, as the country has generally been known to be going through the democratisation process during this time. Certainly the media has been prominent in this process, under whatever circumstances. The study will also be useful in contributing to the on-going debate on the need for media law reform.

There have been publications on state-media relations, in Uganda, in which the use of the law by the state to harass the media has been discussed. However, this has been mostly in the period up to the early 1990s thus leaving a whole decade out. On the other hand, most writers on this issue tend to be legal scholars whose concentration often goes to analyses of pieces of legislation and specific events. They thus leave out the views of journalists

and other primary players in the media who are almost always at the centre of these happenings.

This study is intended to address this missing link as it involves the journalists and records their views and feelings in an attempt to get to the very fundamental implications and impact of criminalising publication offences.

A free media is one of the cardinal pillars of a democratic society. It acts as a watchdog of the public and as a check against the potential of government's abuse of its power. However, if the press is going to play this role, the environment in which it works, particularly the legal one, ought to be supportive, rather than obstructive.

Additionally, freedom of the press does not entirely mean freedom of the journalists to do their work. Freedom of the press has wider implications for freedom of expression and human rights generally. The freedom of the press to question and analyse issues of public policy is certainly related to the freedom of other people to speak out on issues of governance, human rights, resource allocation, and accountability. All this has very serious implications for democratisation.

1.3 Methodology

The study has relied on qualitative methods. This is because the issues being dealt with; press freedom, press regulation and control are best investigated through the qualitative approach. In the final analysis, there are no quantifiable data to warrant the use of quantitative methodology. King et al (1994) have recommended that where research on an area or case study focuses on a particular decision, institution, issue or piece of legislation, qualitative methods are the most appropriate.

The study was done with the use of document analysis. The researcher considered such legal texts as the constitution of Uganda, the penal code, law reports and judgements in

certain cases of interest. Information was also obtained from press reports on the incidents involving government against the press in the period under study.

In-depth interviews were conducted with journalists, editors, human rights lawyers and government officials, using an interview guide. Most of the interviewees were journalists and editors that have been arrested and prosecuted for their work. Unfortunately a number of journalists who had been the subject of arrest and prosecution during the early years of the NRM regime could not be accessed because they had died or left the country. Some of those interviewed had not fallen in trouble with the law. This was done to strike a balance in the opinions about the issues. The interviewees were mainly picked from *The Monitor,* a privately owned daily newspaper started in 1992, that has had most of its journalists arrested and prosecuted by the government. Others were drawn from *The New Vision*, (government owned, daily). It was important to conduct the in-depth interviews from these categories of people in order to obtain their views on press freedom in Uganda from the perspective of the legal environment in which it operates.

Lastly, Focus Group Discussions (FGDs) were used to gather data. The researcher interviewed groups of journalists, composed of both male and female, and obtained their views about the use of criminal law by the government against them and how this affected them in their work. Questions were also put to them for purposes of gauging their understanding of the legal environment in which they operate, and how this affects their professional practice as a whole.

These groups consisted of mainly reporters and sub-editors from *The New Vision*, *The Monitor* and the Uganda Media Women's Association (UMWA) that runs a community service radio, MAMA FM, and a monthly magazine, *The Other Voice*. The UMWA group was, exclusively, female. This was deliberate because the researcher wanted to assess the views of women in respect of media practice as their numbers in media houses have remained low, mainly because journalism is considered a risky profession. On average, there were six people in each FGD.

The FGDs were used to obtain the views of the journalists, as a fraternity, about the incidents in which their colleagues get arrested and prosecuted and whether this affected their practice, and to which degree. The FGDs were also intended to measure the level of awareness among the journalists about the environment in which they operate, especially in respect with media law and how this could be improved.

1.4 Literature Review

Most literature on the subject of the press and the law that criminalises the written word is largely about the relations between the state and the press. It usually exposes the conflict between the state and the press, in the former's historical endeavour to be the undisputed source of the truth.

Apparently, the state was, from the distant past, not opposed to printing as such, but at the same time was weary of material that was likely to damage its image among its subjects and perhaps lead to loss of power. This paradox for the state was well captured by Milton (Areopagitica) as the earliest challenge to printing, as far back as the 16th century, thus:

> How to punish the writers of actually harmful books, how to prevent the publication of books likely to do harm, and yet leave a liberty of writing and publishing sufficient to maintain and increase the learning of the nation (Sweet and Maxwell, p.861).

Although this presented enough worry for future regulation, the press law that has continued to haunt purveyors of information to the public is traced from Tudors and early Stuart who employed three kinds of expedients:

> Firstly, they punished as criminal offences the publication of treasonable, seditious, heretical or blasphemous books. Secondly, they gave large powers of control over printing and publishing to the stationer's company, which they had incorporated mainly in order that it might supervise this new industry; and these powers they supplemented when necessary by direct governmental action. Thirdly, they issued comprehensive ordinances, based partly on the needs of the state, but chiefly upon the rules of which the stationer's company had devised for the organisation and control of printing. The body of law, thus formed, was the foundation of press law of the latter part of the 17th century, and to some extent of our modern law (Sweet and Maxwell p. 861).

The need to protect the British Crown inspired the coding of laws against crimes like sedition, criminal libel, publication of false news and incitement to mutiny. For example the offence of criminal libel was created by a Statute of 1275 in Britain with the purpose of protecting "the great men of the realm" against discomfiture from stories that might arouse the people against them (Robertson and Nicol, 1992:100). The offence of false news also emanates from the same Statute which provided that:

> ...henceforth none be so hardy to tell or publish any false news or tales whereby discord or slander may grow between the king and his people... (Kakuru, 1999: 24)

The political offence of sedition, created in the Star Chamber in 1606, was similarly intended to stop publication of materials that would incite, or raise discontent or disaffection against the powers that be (Robertson and Nicol, *ibid*: 447).

Kakuru (1999) has also emphasised that criminalising spoken and written word was specifically designed to shield those in authority from mere criticism, adding that:

> In a democracy, a particular political party or official wishing to stay in power should earn the respect of the people, not attempt to coerce it by locking up critics through the use of archaic penal laws.

In Uganda, as indeed in most countries that were colonised by Britain, these laws were used during the colonial period by the colonialists to curtail agitation. Gariyo (1992) has analysed the colonial government's hostile attitude towards the press in Uganda, arguing that this showed how far the colonial regime was prepared to go to contain any amount of protest and criticism of the regime. He points out that, unfortunately, this attitude against free expression, especially against comment on political issues, was to continue through the post-colonial era that has contributed to the near demise of the independent African press. The latter situation was possible because most of the laws that were used by the colonialists to throttle the press were saved over at independence and remain on our statute books, to serve the same purpose.[4]

Kakuru (1999) holds the view, and I think correctly so, that the prevention of mere criticism is constitutionally illegitimate and offends people's rights. He also appears justified to refer to some of these laws as archaic since the Law Commission in Britain, where they came from, has recommended the repeal of criminal libel (Robertson and Nicol, 1992). The offence of false news was also abolished in the UK in 1887, while the Law Commission (UK) has again recommended the repeal of the law of sedition; reasoning that any genuine threat to public order can be prosecuted under the conspiracy and incitement laws (Kakuru, 1999: 25). In any case there has been no prosecution for sedition in Britain since 1947, and the offence now serves no purpose in criminal law (Robertson and Nicol, 1992: 447).

Ndlela (1997) has also asserted that offences like criminal defamation are a relic of the past, now generally agreed to have no place in modern jurisprudence. He cites retired Justice Manyarara's recommendation that this law should be repealed, since it is an anomaly in a democracy, apart from being a great cause of concern for the media in Zimbabwe.

Oloka-Onyango (1998) has also written about the danger the Ugandan media faces from penal sanctions right from sections 37 to 40 of the penal code (that give the minister of information the power to prohibit the importation of any publication) to chapter XV111 that deals with criminal defamation; with sedition, sectarianism and all manner of prohibitions, "reminiscent of medieval ages", in between. He attaches very serious significance to the Museveni era (1986 to-date) in the way he expresses surprise that these laws should still exist in Uganda today:

> This would be acceptable for a government which simply emerged to continue with business as usual; not so for the "fundamental change" government of the NRM (Oloka-Onyango, 1998: 19).

The point has been made before that media freedoms have implications for the general freedoms of expression; and that when media freedoms suffer, the other will most likely follow in the same order. And Oloka-Onyango ties it up rather well in reasoning the unconstitutionality of these laws:

> The essential point of these provisions is not simply that they have a chilling effect on the media. Rather, it is that they are indiscriminately directed at anybody, but more specifically at opposition political expression (Ibid: 19).

He has a point, well illustrated by an incident in 1996 when Ugandan traders went on strike over the amount of money they were being required to pay as Value Added Tax (VAT). The government reacted harshly by arresting anybody who dared talk about the issue, especially from a perspective that was unfavourable. One of the victims was Mr Mulindwa Muwonge, then a presenter at an FM radio station, the Central Broadcasting Service (CBS), owned by the Buganda kingdom. An opposition politician and Member of Parliament, Mr John Ken Lukyamuzi, who happened to have been around the radio station to talk about the traders' strike was also arrested and jailed together with Mr Mulindwa Muwonge (Mbaine, 2001: 18).

The penal code provisions are incidentally not the only source of criminal sanctions against the Ugandan press. Media watchers have observed that although the Journalist Statute 1995 repealed the atrocious Newspaper and Publications Act 1964 and the Press Censorship and Correction Act 1948, the Statute still provides for the supervision and control of the profession of journalism; and is riddled with offences that carry either fines or prison terms that could have a detrimental effect on free expression if contravened (Twinomugisha-Shokoro, 1998:172; Oloka-Onyango,1999: 18).

There is also the law of civil libel that has been utilised mostly by politicians and senior civil servants to extract large sums of money from the press in the form of damages (Twinomugisha-Shokoro, 1998: 173), taking advantage of a hostile judicial mood against the press.

It is acknowledged that there must be a limit to freedom of expression and thus the civil law of libel is, by and large, the best way to settle disputes between members of the general public and the press. However, in Uganda this has jail implications for many editors arising out of their failure to pay the hefty damages often awarded by the courts. Thus threats of confinement to civil prison have become common for Ugandan editors.

Failure to pay damages could indeed also get worse, like in the case of *Uganda Confidential* editor, Mr Teddy Seezi-Cheeye, who had to battle bankruptcy proceedings brought against him in December 1995 for failure to pay 15 million Uganda shillings (Approximately 15.000 USD at that time) to businessman Gordon Wavamunno in respect of a defamation case. Indeed in January 1996, *Uganda Confidential* newsletter had been placed under receivership (Mbaine, 2001: 18).

The prospect of jail has a discouraging effect on many journalists and amounts to a disincentive to journalism practice. Therefore, the criminal prosecution of media players seems to be the best method to control the media, which is the aspiration of many African governments. Tusasirwe (2000: 12) has attempted to get to the bottom of the Uganda government's approach to the matter:

> By waving the prospect of jail before the collective face of the mass media, the government and its agents ensure that the media will censor itself, for fear of repercussions, without the government having to dirten its hands by closing media houses.

All available literature pointedly states that the effect of an unfavourable legal regime for the press is to deny the citizens democratic participation. As Gitobu-Imanyara (1995: 158) has so instructively stated, a cowed press cannot be useful in fighting corruption and promoting democracy and human rights:

> A journalist cannot give full meaning to his profession while he risks imprisonment under an archaic sedition law or an arbitrarily applied and undefined law of contempt of court…only a free and pluralistic press can ensure transparency and accountability.

Endnotes

1. Yoweri Museveni won his last constitutional five-year term with 69 percent of the vote in elections held in March 2001. Under the 1995 constitution, a person can be president of Uganda for a maximum of two five-year terms, although Mr Museveni will have ruled the country for 20 years when he relinquishes the presidency in 2006.

2. Mutibwa (1992) has recorded the NRM ten-point programme as having included the following: (1) democracy (2) security of all persons in Uganda and their property (3) consolidation of national unity and elimination of all forms of sectarianism (4) defence and consolidation of national independence (5) laying the foundation for an independent, integrated, self-sustaining national economy (6) restoration and improvement of social services and the rehabilitation of war-ravaged areas (7) elimination of corruption and abuse of power in public life (8) redressing errors that have resulted in the dislocation of sections of the population (9) cooperation with other African countries to defend human and democratic rights throughout Africa, and (10) pursuing the strategy of a mixed economy.

3. See The New Vision, Tuesday June 24, 1986 at page 3.

4. The Newspaper and Publications Act 1964 was a collection of, mostly, the colonial law relating to the press like the Newspaper and Surety Ordinance of 1910, while the Press Censorship and Correction Act 1948 was saved in its entirety. Both of these laws were repealed by the Press and Journalist Statute 1995.

CHAPTER TWO

BACKGROUND TO THE STUDY

2.1 A brief political history of Uganda

2.1.1 The advent of colonial rule

The country known as Uganda did not exist, like many other African countries, until the advent of colonialism on the continent towards the end of the 19th century.

At the time colonialists came to occupy the country that was later to be known as Uganda, the territory contained two broad types of societies: there were the segmentary societies that mainly included the communities in the northern and north-eastern parts like the Langi, Lugbara, Iteso and Bagishu which were managed on clan basis whereby elders played a big role. Then there were the kingdom areas of the south that included Buganda, Bunyoro and Ankole, with kings and a hierarchy of chiefs and centralised authority.

The first formal contacts with this territory by any European country were made with the kingdom of Buganda in the latter half of the 19th century. Buganda was then perhaps the most progressive and preponderant. A series of activities preceded the formal declaration of Uganda as a British protectorate in 1894, which at that time meant Buganda region in the minds of the British (Karugire, 1988). Karugire has further observed that the British government had originally assumed responsibility for the administration of Buganda region but extended to other areas that make up the present day Uganda for the security of Buganda.

The British colonisation of Uganda occurred in three stages; first there were explorers like Speke and Baker that came in the 1860s, later to be followed by Henry Stanley whose contact with Kabaka Muteesa of Buganda in 1875 triggered off the second stage – the coming of missionaries. The first missionaries arrived in 1877 from England (CMS) and were followed by the catholic white fathers from France in 1879. The third stage, the

actual take-over, was facilitated by chartered companies, particularly the Imperial British East African (IBEA) Company that had been operating in the East African region in the period immediately before 1894.

Karugire (1980) has intimated that in Uganda, missionaries were the most effective agents of colonialism, arguing that in neighbouring Tanzania, they never became a national issue while in Kenya, the missionaries were in a few years understood to be no different from the white settlers. According to him:

> In Uganda, the most effective agency of transition from the traditional way of life to colonialism was the missionary and the issues of religion have affected public life in Uganda to the present day (p.62).

In emphasising the role of missionaries in the colonisation of Uganda, Karugire (1988) has mentioned the rivalries between the British and French – including the hostility between the Anglican and Catholic religions that they were bringing to the country. To add to the conflict was the fact that the Arabs had had contact with Buganda as early as 1844 for trading purposes and had, in the process, established the Islam religion although they were not as keen about its spread. The existence of these antagonistic religions in Buganda is what, mostly, led to the inter-religious conflicts of the 1880s and early 1890s that hastened British colonial rule, as Karugire (1980) has further observed:

> …much as the British had imperial designs over Buganda where the source of the Nile was located, the troubles within the kingdom provided the opportunity for entrance, and these events were to move Uganda from the era of informal contacts with adventurers and missionaries into the era of colonial rule (p.71).

The foregoing, however, cannot obscure the main reason for British colonisation of Uganda, which was economic exploitation. Kabwegyere (1995) has explained that colonies like Uganda were founded to provide markets for manufactured goods and provide raw materials for British industries. He illustrates this point by citing the various methods that the British used to exploit the economic possibilities of Uganda that included: the establishment of cotton plantations, and the creation of the Empire Marketing Board, that was later replaced with the Colonial Marketing Board, which controlled the marketing of coffee and cotton.

Mwesige (1998) has also mentioned that in establishing control over Uganda, the British used various methods that ranged from elaborate negotiations in the case of Buganda, outright military conquest in Bunyoro, or a mixture of cajolery and threats of use of force in other areas.[1]

Whichever way the subjugation of any area was pursued, the British formalised their occupation with agreements. The most significant of these was the Buganda Agreement of 1900 which essentially stripped the Kabaka (king) of Buganda of most of his powers. The agreement also, among other things, donated large tracts of land to senior chiefs and other notables; or what came to be known as *mailoland.* Other agreements followed with Ankole in 1901 and Bunyoro, much later, in 1933, for example. It is however, safe to conclude that by 1921, most of what is Uganda today had taken shape.[2]

The British found the system of administration in Buganda – with a strong king and a hierarchy of chiefs – attractive and sought to use it to administer the whole protectorate, in a system known as indirect rule. In many areas, Baganda chiefs were assigned and posted in other parts of the country to do administration, a situation that resulted in resentment and sometimes rebellion. It has also been pointed out that the British used Baganda as agents because they did not have sufficient manpower to run the protectorate (Karugire, 1980; Mutibwa, 1992).

Having established authority over the country, the British then moved to raise local revenue to be able to pay for the costs of administration and also turn the protectorate into an export economy. This was largely done through cotton and coffee growing and was so successful that by the 1915-1916 financial year, the protectorate was able to dispense with the imperial grants-in-aid (Karugire, 1988: 28)

As a result of British economic policy, the southern parts of Uganda were turned into predominantly cash crop growing areas while most areas in the north were generally for recruitment of soldiers, policemen and prison warders in addition to being labour reserves, thus engendering uneven development. One other concern about colonial policy

in Uganda was that whereas the African peasants were the cash crop producers, the processing and marketing of the crops was entirely in the hands of Asians. This led to discontent.

2.1.2 The struggle for independence

The colonial policy of exploitation gave rise to several grievances. Organised political opposition had begun in the 1920s with the formation of the Young Bataka Party and was bound to increase. There was also, in addition, an African press that was articulating these grievances. In the 1940s, the Uganda Farmers' Union was also formed to champion the demands of farmers, mainly in Buganda (Mutibwa, 1992). But it was the riots of 1945 and 1949 in Buganda that were far-reaching. Mutibwa (1992) has also underscored the fact that the riots were directed against the ruling oligarchy in Mengo (seat of Buganda Kingdom) as well as against the Asian and European monopoly of crop marketing and processing.

The earlier opposition efforts, and the break-out of the Second World War that cost colonies a lot in men and resources, also raised the consciousness of the general population against colonial rule. Thus in 1952, the first political party in Uganda, the Uganda National Congress, was formed by Ignatius Musaazi. Other parties followed; the Democratic Party (DP) in 1954 [3], the Progressive Party (PP) in 1955, the Uganda Peoples Congress (UPC) in 1960 [4], and the Kabaka Yekka (KY) in 1961, among others.[5]

It has been argued by Karugire (1988) that in using indirect rule, the British established the district as a unit of administration except for Buganda which enjoyed provincial and privileged status. And further that each ethnic unit, as much as possible constituted a district, the result of which was the consolidation of political divisions. This view makes sense when one looks at the political parties that emerged, as they were formed on the basis of factional interests of either tribe or religion. It is also notable that in the run-up to independence, Buganda, from purely narrow considerations, became uncompromisingly obstructive towards efforts at self-rule.

After two constitutional conferences in London and two elections, all concluded in the years 1961 and 1962, Uganda finally became independent on 9th October 1962. The UPC merged with KY in 1962 (both led by Anglicans) for purposes of defeating the catholic-led DP. With the support of UPC, Buganda had also managed to have its representatives in parliament elected in an indirect election, different from the rest of the country. Milton Obote (the UPC leader) became executive prime minister while the Kabaka of Buganda was shortly to become non-executive president.

2.1.3 Post-independence Uganda

Various writers have pointed to the shaky start at independence for Uganda, mainly arising out of the marriage of convenience between the UPC and KY (Karugire, 1988; Mutibwa, 1992) since the two parties were diametrically opposed in vision and interests. In fact the first serious problems for the country were to come from this alliance.

The proximate cause of conflict the Buganda kingdom and the central government arose from the issue of the "lost counties" – the unfinished business from the Lancaster conferences relating to the counties of Buyaga and Bugangaizi that formerly belonged to Bunyora but had been awarded to Buganda by the British colonialists– over which a referendum was to be held, according to the constitution. The prime minister wanted it held. Indeed it was held in 1964, much to the chagrin of the president, and Kabaka of Buganda, and the two counties were returned to Bunyoro.[6]

Tensions within the central government and Buganda kingdom on one hand, and within the ruling party on the other culminated into the crisis of 1966 in which Milton Obote arrested five of his ministers (including the party secretary general, Mr Grace Ibingira) and abrogated the 1962 constitution. When Buganda protested, he ordered the army into the king's palace out of which Kabaka Muteesa was just lucky to escape alive into exile in England from where he died in destitution in 1969.

Subsequently, Obote had a new constitution enacted by parliament in September 1967 by which Uganda became a republic. Kingships were abolished and Milton Obote became

executive president. He was able to do this with ease by taking advantage of a partisan army that had been largely recruited from the north, his home region. (There was an interim constitution that filled the gap between May 1966 until the 1967 one was in place; often referred to as the "pigeon hole constitution", alluding to the absence of debate about it. The prime minister in introducing it to Members of Parliament summarised it and told them they would find copies in their pigeon holes).

In order to deal more easily with dissent, a state of emergency was declared on Buganda and a Preventive Detention Act was passed in 1967. Major General Idi Amin, who commanded the battle against the Kabaka of Buganda was made army commander. When an attempt was made on Obote life in December 1969, the incident was exploited to ban all the other political parties – thus making Uganda a one-party state.

Apparently the tensions in government never ceased and on 25 January 1971, while Obote was attending a commonwealth conference in Singapore, he was overthrown by Major General Idi Amin. After a few months of euphoria, Amin set on eliminating opponents to his regime with a hot and sordid passion that shocked the world (Kyemba, 1977). Hundreds of thousands of Ugandans lost their lives. He expelled all Asians, including those who were Ugandan citizens and donated their properties to his soldiers and other adherents of the regime. Consequently the economy slumped and the country completely degenerated. It took a combined force of the Tanzanian army and Ugandan exiles, mostly based in Tanzania, to dislodge Idi Amin and his murderous regime from power in April 1979, after a six months war.

However, the new government that replaced Amin failed to settle down in good time. At a meeting earlier held in March 1979 in the Tanzanian town of Moshi, a former Makerere University College principal, Prof Yusuf Lule, had been elected as the future president of Uganda. He was installed when Kampala was captured in April 1979. However, Mr Lule's reign was short-lived as he was removed from the presidency after only sixty eight days and replaced with Obote's former attorney general, Godfrey Binaisa. Meanwhile insecurity engulfed the country.

Binaisa himself was removed after eleven months in April 1980 after he attempted to tamper with army appointments. He was replaced with the Military Commission whose chairman, Mr Paulo Muwanga, was during this time the *de facto* president of Uganda.[7] It was thus Mr Muwanga that was responsible for organising the elections that were held in December 1980.

In the elections held on 10 December, 1980, Milton Obote and his UPC party were declared the winners. But the election that had been contested by four political parties: UPC, DP, the Uganda Patriotic Movement (UPM) and the Conservative Party (CP), was massively rigged in favour of the UPC (Karugire, 1988; Mutibwa, 1992). The UPM leader, Mr Yoweri Museveni, who had also actively participated in removing Amin, took to the bush in February 1981 to fight the second Obote regime.

Obote's second regime was characterised by massive insecurity, and was almost completely consumed by the rebellion as the guerrillas were fighting close to the capital city. Thousands of people died as the government soldiers tried to put down the rebellion. The economy also degenerated as illustrated by Mutibwa (1992), thus:

> The highlights of the economy were all excellent turn-around prescriptions for a declining, inflation-ridden, over-administered, export-dependent, entrepreneur-deficient economy, weak in foreign earnings and with a chronic budget deficit (p.175)

On 27 July 1985, Obote was for the second time overthrown by his own army and fled to Zambia where he still lives, at the time of writing. General Tito Okello, the illiterate former army commander, became president while Lt General Basilio Olara Okello, his similarly illiterate confidante who had been commanding the northern division and planned the coup, became the chief of defence forces. Their coup had been made possible by an alliance with former Amin's soldiers (Mutibwa, 1992).

The Okellos seemed quite unprepared to run a government. With all the fighting forces they had brought to the city in addition to Museveni's rebellion to ward off, they could

not hold. They were also resented by the population for bringing back elements of Amin's army.

However, from September 1985, the Okello regime engaged Museveni's National Resistance Army (NRA) into peace talks mediated by Kenya's president Daniel Arap Moi, in Nairobi. The talks culminated into the signing of a peace agreement between General Tito Okello and Yoweri Museveni, but in the words of Mutibwa (1992):

> The NRM/NRA's attitude towards the Nairobi peace agreement signed on 17 December, 1985 needs to be understood. Right from the start of the peace talks, they were not considered a priority in the programme of the NRM/NRA main task, which they never shirked, was to fight the UNLA and remove it and the regime it supported (p.175).

Thus on 26 January 1986, the NRA stormed Kampala and captured power from the Okellos, whereupon Mr Yoweri Museveni became president. The new government set upon the task of rehabilitating the country. The economy has been tackled especially since early 1987 with support from the World Bank and the IMF and additional support from bilateral aid.[8] Subsequently, the country has registered an annual growth rate of 6.5 percent over the years. Roads have been constructed and the reconstruction of the country has been on going since 1986. Most aspects of political participation have been revived largely through local councils (LCs) that have been a permanent feature of the Museveni administration since 1986. Through the policy of decentralisation, power has been devolved to the districts. However, the ban on political party activities, imposed since the NRM ascendancy to power in 1986, remains and raises doubt as to whether the country can really democratise without freedom of association.

A new constitution was promulgated in September 1995,[9] and since then the country has witnessed two presidential and parliamentary elections (in 1996 and 2001). Human rights issues have become central to the governance of the country, with a permanent Human Rights Commission in place to oversee their observance. Generally there is more protection for human life and property than previously.

However, war continues to ravage the northern part of the country where insurgents, mostly remnants of former armies, have been fighting the government since 1986. In

1996, another war front opened in the western part of the country when another rebel group, the Allied Democratic Forces (ADF), began fighting from the districts of Kasese, Bundibugyo and Kabarole. This latter rebellion has, largely, been defeated.

A decision by the president to send troops to the Democratic Republic of Congo in 1998 has also attracted condemnation from sections of the population as unwarranted and a wastage of resources, especially after Ugandan and Rwandan (former allies) armies fought between themselves in the Congolese town of Kisangani three times in 1999 and 2000.

It is this situation, from 1986 to 2000, that we discuss the environment in which the Ugandan press has been operating. However, this environment is also informed by the past.

Endnotes

1. See also Karugire, S, R (1980), A Political History of Uganda, Heinemann Educational Books, Nairobi, London, p.116.

2. Karugire (1980) has also enthused that by 1918, the British protectorate of Uganda had taken a definite shape and that by 1921, the whole protectorate was under a civilian administration.

3. Professor Karugire, S, R, (RIP) has in all his writings insisted that the DP was indeed formed in 1956 and provided evidence to prove his point, although the DP leadership is adamant about the party's formation in 1954.

4. The UPC was formed from a merger of a splinter group of the UNC (led by Milton Obote) and the Uganda People's Union (UPU). UPU was a loose grouping of independents that went to the Legislative Council (Parliament) after the elections of 1958.

5. Except the DP and UPC, all the other parties mentioned here have ceased to exist.

6. The two counties of Buyaga and Bugangaizi belonged to Bunyoro kingdom at the advent of British colonialism in Uganda but had been donated to Buganda for the latter's support to the British in subduing Bunyoro.They remained a contentious issue and the independence constitution provided that a referendum would be held within two years of independence, within the counties, to determine whether the inhabitants wanted to go back to Bunyoro or remain in Buganda.

7. The presidency of Uganda was during this time formally in the hands of a triumvirate of three people: Mr Wacha Olal, Mr Justice Nyamuconco and Mr Musoke.

8. The NRM government reformed the currency at the start of 1987, and embraced the IMF and World Bank formally in May the same year.

9. It has been the argument of Barya (2000) that the over-involvement of the NRM in the constitution-making exercise when it was an interested party, among other reasons, deprived the process of consensus; and that the 1995 constitution is therefore seen by many Ugandans as an NRM document.

2.2 The History of the Press in Uganda

2.2.1 The Press from 1900 to 1986

Christian missionaries pioneered newspapers in Uganda at the end of the 19th century, mainly for purposes of evangelisation. The first newspaper is believed to have been a church newsletter run by the Rev A. B. Crabtree who was then working in Eastern Uganda. But there is hardly any information about it.

The first newspaper, on the record, was the *Mengo Notes* that started publication in 1900. It was written in English and owned by the Church Missionary Society (CMS). It changed name to *Uganda Notes* in 1902. In 1907, another paper called *Ebifa mu Buganda* began publication. It was a monthly religious newsletter also owned by the CMS and written in Luganda language. It was mainly intended for the literate African leadership (Gariyo, 1992).

Not to be outdone, the White Fathers of the Catholic Church in Uganda also launched their own publication, *Munno*, in 1911. It was written in Luganda and, as expected, reflected the interests of the Catholic Church.

The first commercially run newspaper was the *Uganda Herald* which was established, largely, to cater for the white European residents' and planters' interests (Gariyo,1992). The earliest newspapers in Uganda emerged in and around the capital Kampala where the largest tribe, the Baganda, were centred (Mwesige, 1998). Newspaper readership in Kampala and Buganda, generally, was bound to be higher than in any other part of the country because the region had taken advantage of the fact that the first schools, started by the missionaries, were located in Buganda (Mutibwa, 1992).

Newspapers owned and run by the missionaries did not seem to amount to any serious threat to colonial rule, as missionaries were most unlikely to allow content in the paper likely to question the legitimacy of colonialism. But just in case the Africans began their

own newspapers, the Newspaper and Surety Ordinance 1910 was enacted and it stated, *inter alia*:

> No person or company shall publish or cause to be printed or published a newspaper within the protectorate unless he executed a bond and registered in the office of the Registrar of documents under the Registration of Documents Ordinance a bond in the sum of shs. 6,000 with one or more surety (Gariyo, 1992).

The penalty for non-compliance with this law was a sentence of six months in jail, or a fine not exceeding Shillings 1,500/=, on conviction. By any account, both the bond and the fines involved excessive amounts of money, at that time.

The colonial authorities tightened the conditions further with the enactment of the Press and Censorship Ordinance 1915 which provided that the governor could at any time establish a press censorship board and also revoke that order at any time. The penalty for breach of that law was similar to the previous ordinance.

In spite of these limitations, the first private African newspaper, *Sekanyolya*, began publication in 1920. Its editor, Daudi Basudde, was active in the Baganda Bataka Party and the Buganda Welfare Association both of which were agitating for land and political reforms in Buganda kingdom. The tone of the paper was thus predetermined.

Sekanyolya was followed by *Munyonyozi* in 1992. In 1928, another newspaper called *Dbozi lya Buganda* was launched by one Bamutta, who was also Secretary to the Buganda Lukiiko (Parliament). The paper was anti-colonial and anti-Buganda establishment, especially the new Katikkiro (Prime Minister), Kisokonkole. But Bamutta was to pay a heavy price for the stance of the paper as he was dismissed as Secretary of Buganda Lukiiko and later, in 1932, jailed on trumped up charges of rape (Gariyo, 1992).

The 1940s saw increased agitation against colonial rule and the newspapers that sprung up at this time reflected this state of affairs. For instance in 1944, Daudi Mukubira started a publication he called *Buganda Nyaffe* that was highly anti-colonial and anti-British, in which he criticised colonial exploitation during the second world war.

Partly because of the agitation by the newspapers, there were serious riots in 1945 and 1949 in Buganda that targeted the colonial administration and Buganda kingdom leadership. The colonial administration reacted by banning newspapers like *Mugobansonga*, *Munyonyozi* and *Uganda Star*. Editors like Luyima of *Gambuze*, and its publisher J. N. Tabula, were imprisoned. Mukubira was also jailed. Other anti-colonial editors like J. W. Kiwanuka of *Matalisi* were given scholarships to study journalism in Britain, although they were still critical of the colonial regime on return (Gariyo, 1992).

With the formation of political parties in the 1950s, newspapers became very prominent as partners to the nationalists in the struggle for independence. Newspapers like *Uganda Empya*, *Uganda Eyogera*, *Uganda Times*, *Emambya Esaze*, *Uganda Express*, *The African Pilot* sprung and identified themselves with the struggle against colonialism.

Again the reaction of the colonial administration was characteristic. A number of newspapers including *Emambya Esaze*, *Uganda Post*, *Uganda Express*, *Gambuze*, were banned and their editors arrested for sedition. The colonial government had already enacted the Press Censorship and Correction Ordinance No. 13 in 1948, and put it to use during this time. The ordinance was in addition to sections 48, 52 and 53 in the Penal Code regarding seditious publications (Gariyo, 1993; p.16)

Gariyo (1993) has also identified internal factional interests within the nationalist movement, and Ugandan society, which were to shape the character of the press during this time. For instance, the catholic church-owned press was heavily inclined to the Democratic Party, while some papers like *Uganda Eyogera* supported the Kabaka and Lukiiko's position of having Buganda kingdom as an autonomous entity within Uganda.

In its relentless effort to curtail press freedom, the colonial government, through the Newspaper and Publications Ordinance No. 3 of 1961, increased licence fees for newspapers. Thus the bond was raised from 5.000 to 10.000 shillings, which many of the small newspapers could not afford (Gariyo, 1992). In spite of these measures, the press persisted and played a role in the attainment of independence.

Unfortunately at independence, a number of newspapers ceased publication. Mwesige (1998) has stated that by 1964, the only newspapers still publishing were the catholic church-owned *Munno*, the foreign-owned *Argus*, *Taifa Empya* as well as the nascent *The People*, the mouthpiece of the UPC.

The anti-press stance of government continued even after independence. One of the bold signs by the first independence government against the press was the re-packaging of Ordinance No. 3 of 1961 that was re-enacted into the Newspaper and Publications Act 1964. Like the colonial legislation before it, this law also provided for the registration of newspapers and the execution of bonds. It also imposed certain duties and penalties on printers and publishers in contravention of the Act (Gariyo, 1993: 26)

The attitude of the government towards the press can also be assessed from the constitutional provisions of the 1967 constitution whose Article 8 (2) (b) provided that:

> every person shall enjoy the fundamental rights of the individual,
> that is to say, freedom of conscience, of expression and of assembly

Article 17 (1) seemed unequivocal about this freedom, as it stipulated that:

> except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinion and to receive and impart ideas and information without interference and freedom from interference with his correspondence.

However, Article 19 (3) of the same constitution almost did away with the foregoing provisions as it permitted expressly for this freedom to be abridged in the interest of the national economy, the running of essential services, defence, public security, public order, public morality, public health, protection of the rights of others, privacy, maintaining the authority and independence of courts, *etcetera.*

Therefore, as Justice Twinomujuni (2000) has aptly observed,

> The…1967 constitution guaranteed and gave rights and freedom to the people with one hand and took most of them away with another hand by enacting numerous exceptions to the provisions guaranteeing a right or freedom.[1]

The most prominent victims of the laws against the press in the 1960s were Abu Mayanja who was at the time an MP and Rajat Neogy, who was then editor of *The Transition*, a high quality magazine that was the platform for the hot political debates of that time. Mayanja had been critical of the powers that were being given to the president in the 1967 constitution, among other things. But the troublesome article related to his complaint about government's delay in appointing Africans to the Ugandan bench on grounds he termed tribal.

Both Mayanja and Neogy were arrested and charged with sedition. The trial magistrate, M. Saied, acquitted them. However Mayanja was kept in prison until the coup of 1971. Neogy was released from jail after one year, stripped of Ugandan citizenship and deported. *The Transition* also ceased publication in Uganda.

Idi Amin's regime was certainly worse for the press. As soon as Amin came to power, he had the Newspaper and Publications Act amended through Decree No. 35 of 1972, which read as follows:

> The minister may, if he is satisfied that it is in the public interest to do so by statutory order, prohibit the publication of any newspaper for a specified or indefinite period.[2]

The Idi Amin regime used a combination of methods to cow the press; imprisonment, banning of newspapers, for instance *Munno*, and the killing of journalists. Thus Fr Clement Kiggundu, the editor of *Munno*; Jolly Joe Kiwanuka, publisher; James Bwogi, a TV journalist; and Jimmy Parma, a press photographer, were all killed because of their journalism work.

Since Amin's regime was obsessed with exterminating its perceived opponents, it had to be hostile to the press, as this was the avenue through which atrocities would be exposed to the outside world. In June 1975 for example, all foreign newspapers (called imperialist newspapers by the regime) were banned, with British and Kenyan newspapers most targeted (Tiisa, 1990: 8). Mutiibwa (1992) has also pointed out the risks faced by journalists in Amin's Uganda:

> During most of 1971, the upcountry areas where the majority of the killings took place, were sealed off from foreign journalists and those daring few such as Nicholas Stroh and his colleague Siddle, representing *The Philadelphia Bulletin*, who attempted to find out the truth from Mbarara Barracks fell victim to Amin's wrath. [3]

The fall of Amin's regime in 1979 rekindled hope for the press. Papers like *The Economy*, *Weekly Topic*, *The Star*, *Ngabo* and a number of others were established. However, this hope was short-lived. In early 1980, the minister of internal affairs, Paulo Muwanga, banned three newspapers*; The Citizen*, *The Economy* and *Ngabo*. The editor of the government-owned *Uganda Times* was also detained for publishing a story that did not please government.

The second Obote regime that commenced in December 1980 was anti-press. Four months into office, on 11 March 1981, government banned four newspapers; *The Citizen*, *The Economy*, *Aga Africa* and *Mulengera*. *Weekly Topic* was banned in May 1981, followed by *Saba Saba* and *The Champion* in September 1981 (Gariyo, 1993). Arrests of

journalists also continued and editors like Drake Sekeba, Sam Katwere and Anthony Sekweyama were often behind the bars than behind their desks.

2.2.2 The press from 1986

The change of government in January 1986 brought renewed hope for all aspects of Ugandan national life, including the press. The new government promised to rehabilitate the country, promote good governance and uphold the observance of human rights and freedoms. Indeed the days of political repression had ended for most Ugandans and this belief led to the sprouting of several newspapers and to a generally more liberalised atmosphere of political expression (Oloka-Onyango, 1996).

Twinomugisha-Shokoro (1998) has also explained that the press in Uganda had received a new surge of life, and that journalists began to think they had at last secured an honest partner with whom to build the nation. According to Mwesige (1998), more than seventy publications were registered in the first ten years of the NRM administration. The most prominent of them being: the government-owned *The New Vision* and the privately owned *The Monitor*.

The NRM government has, however, also during its tenure found the temptation to arrest and detain journalists, because of their work, irresistible. In March 1986, after just two months in power, the new government arrested and detained journalist Ndiwalana Kiwanuka over a story that appeared in *The Focus* newspaper. Government also banned the *Weekend Digest* newspaper whose editors were arrested and charged with publishing a false rumour (Gariyo, 1993: 37). More arrests have since followed and will be the subject of the ensuing analysis.

However, despite some of the harsh measures against the press during the NRM tenure, including additions to the penal code in this regard, the general atmosphere appears comparatively much more favourable to the press than previously. Mwesige(1998) has, for instance, further observed that the press has been allowed or dared to be very critical

of the current leadership, and that even the most ardent critics of the Museveni government admit that it has allowed relative press freedom.

The press in Uganda has also during this period been enhanced by the liberalisation of the airwaves that was effected in the country in 1993.**4** This has propelled a proliferation of private FM radio stations that have emerged as platforms for debates on topical issues, and thus increased media voices.

The numerous elections that have been held since 1986 and the constitution-making exercise that lasted from 1988 to 1995, among other things, increased the significance of the press as a recorder of important happenings and a forum for the debates that have characterised these events.

Endnotes

1. See the dissenting judgement of Justice Amos Twinomujuni, JA, in the Constitutional Petition No. 15 of 1997: Charles Onyango-Obbo and Andrew Mujuni Mwenda v The Attorney General, Constitutional Court of Uganda, Kampala, p.10.

2. See Gariyo, Z. (1993) The Media, Constitutionalism and Democracy in Uganda Working Paper No. 32 CBR Publications: Kampala. p.33.

3. The two foreign journalists were killed when they tried to inquire about killings in a barracks located in the southwestern town of Mbarara. Their bodies have never been seen.

4. See also Mbaine, A. E. (2001). Promoting and Funding Local Broadcasting: The Ugandan Experience. A paper presented at a conference on Broadcasting Policy and Legislation in East Africa and the Great Lakes Region, 7 – 11 October, 2001, Nairobi.

2.3 Theoretical Foundation to the Study

The late 1980s and early 1990s in Africa have been characterised by debates on issues of democracy, after the era of predominant single party states and military dictatorships from the 1960s to mid 1980s. Uganda has not been an exception, in spite of the fact that it is yet to open up to full blown multiparty democracy. Despite this shortcoming, significant steps have been taken towards democratic participation of the people in Uganda, notably after 1986 when the NRM government came to power. There have been various elections for local councils, members of parliament and the presidency between 1986 and 2000. A new constitution was promulgated in 1995. The press has played a role in these processes.

It is therefore pertinent to discuss the role of the press in the democratisation process. It is even much more important to examine this role against the environment the press operates in. One critical consideration here is the legal environment in which the press works, how much freedom it enjoys and how this affects its performance in the democratisation process.

2.3.1 The concept of press freedom

The origins of the press can be traced from Western Europe from the invention of the printing press by Gutenberg. This made easier the dissemination of information and necessitated restriction by the state, through censorship and licensing. The distaste for censorship and licensing started the struggle for press freedom, especially with the introduction of newspapers in the 17th century.

Mnangagwa (1995) has defined press freedom as the right of the press to collect and publish news and information as well as organise freely without undue state control and influences. Press freedom emanates from freedom of expression, which has been rooted in the United Nations Universal Declaration on Human Rights of 1948. Article 19 provides that:

> Everyone has the right to freedom of opinion and expression, the right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

Freedom of expression features in many countries' constitutions and its importance has been well explained by Gubbay CJ in the Zimbabwean Supreme Court, In re: Munhemeso as follows:

> "Freedom of expression, one of the most precious of guaranteed freedoms, has four broad special purposes to serve: (i) it helps an individual to obtain self fulfilment; (ii) it assists in the discovery of truth; (iii) it strengthens the capacity of an individual to participate in decision-making; (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change"

Freedom of speech and freedom of the press have been central issues to any organisation of society. In any community where democratic and egalitarian values prevail, it is obvious that the right to free speech and the right to freedom of the press must be ranked as fundamental values, for without these the possibility of developing and crystallising public opinion, and allowing it to be brought to bear upon the governmental organs of state, is bound to be virtually ineffective (Lloyd, 1987: 151).

While freedom of speech and of the press usually implies the absence of initial censorship, this freedom can hardly be absolutely unrestricted as the law may restrict people from making unwarranted and untrue attacks upon the reputations of others. The law may also draw the line where attempts are made to incite others to take action to overthrow the government or the constitution by violence. The difficulty, normally, is the determination of the ultimate limits of tolerance, which may be required by the established value of the freedom of speech and press (Lloyd, 1987: 152 – 154).

2.3.2 The press and democracy

The press and other media are supposed to provide a forum through which people can access information and exchange ideas, both of which are necessary for a population to be able to participate meaningfully in the democratisation and development processes.

The role of the media in democratisation has been established by scholars like Jurgen Habermas and his theory of the public sphere that emerged in the 1960s. Randall (1998), has defined a public sphere as "an institutional framework and set of practices which encourage wide and inclusive debate about issues of social and political importance".

Habermas (1998) traces the evolution of coffee houses in Britain and salons in France in the 17th century as alternative arenas of "common concern". The church and state had formerly monopolised the interpretation of national life. In his defence of the media as a public sphere, Boyd-Barrett (1995) has articulated the role of the press in the democratisation process: "Newspapers, radio and television…clearly do serve as a forum for discussion of issues of public interest among people who are knowledgeable, interested, able to speak on behalf of broader social interests, and whose discussions have the potential of being of political influence (p.231). Curran (2000) also subscribes to the idea of the media as a public sphere and describes the democratic function of the media as assisting the realisation of common objectives of society through agreement or compromise between conflicting interests. He identifies specific roles the media plays in the enhancement of democracy; the watchdog and informational roles and further states that "freedom to publish ensures that all significant points of view are in play in the public domain, and that a wide range of information is made available from diverse and antagonistic forces".

Keane (1991) holds that "A free press…helps control the `habitual self-preference` of those who govern. It exposes their secretiveness and makes them more inclined to respect and to serve the governed. It increases the probability of prudent decisions by making publicly available comprehensive information about the world…casts a watchful eye over the beauracracy, thus preventing the outbreak of nepotism between legislators and administrators." He argues that freedom and equality of communication needs constitutional and other legal protection in which the principle that freedom should be the rule and limitation the exception should be adhered to. Keane also proposes that "…the onus must be placed on governments everywhere to justify publicly any interference with any part of circulation of opinions".

Tettey (2001) sees a symbiotic relationship between the media and democracy and locates the media among the forces that have shaped, and continue to shape, the establishment of democracy in Africa. He asserts that the media-democracy connection is also manifested in the opportunities that a free press provides for citizens to influence the political process and that a democratic media enables political leaders to be aware of the mood of society so that they can respond appropriately. However, Tettey also notes that a lot of governments on the African continent continue to impose judicial and extra judicial barriers on journalists and media houses, in a manner that defeats the professed goals of democratic governance and the purposes behind constitutional provisions of a free press and freedom of expression.

CHAPTER THREE

PRESS CONTROL AND REGULATION IN UGANDA SINCE 1986

3.0 The Civil Law of Defamation in Uganda

3.0.1 Background

Defamation has been defined as:

> …the publication without justification or lawful excuse of a statement which is calculated or has a tendency to injure the reputation of the person to whom it refers, by tending to lower him in the estimation of right thinking members of society generally, and in particular, cause him to be regarded with feelings of hatred, contempt, ridicule, fear, dislike, disaffection or disesteem (Tusasirwe, 2000:3).

The law of civil libel is premised on the view that whereas there should be freedom of expression, that freedom must be exercised with due regard to the rights of others to a reputation and dignity, otherwise the legal system steps in to redress the damage or prejudice suffered (Tusasirwe, 2000: 13; Burns, 1990: 6).

Indeed the Constitution of the Republic of Uganda, while guaranteeing the freedom of expression, and of the press and other media in Article 29 (1) (a), also provides for a general limitation, in Article 43 (1), on the enjoyment of the rights and freedoms contained in the Bill of Rights. This limitation includes non-prejudice of the rights of others. As Burns (1990) has put it:

> Freedom of expression is recognised and protected provided it is lawfully exercised within the confines of other competing rights within the legal system (p.5).

Therefore, the law of defamation basically exists to sort out differences that may arise from two types of people: the person who has exercised his/her right of expression on the one hand, and the person who also has his/her right to a reputation and dignity, and has been affected by the action of the first party.

During the colonial period in Uganda, the government almost continuously relied on criminal law to punish journalists and publishers that sanctioned unpleasant stories in the press about government and government officials, as the preceding chapters have shown. With the attainment of independence in 1962, the law of civil defamation began to be used as a method of settling disputes between members of the public and the press. However, because the freedom of the press was much more curtailed through nearly all the regimes up to 1986, there are not many cases in the previous period.

One of the earliest cases of civil defamation involved the then minister of education in the Buganda kingdom, Mr Abubaker Mayanja, and the Munno newspaper. Munno, owned by the White fathers, had alleged in 1960 that Mr Mayanja (himself a muslim) had, while addressing a gathering of young Moslem students, urged Moslem lads to marry several of the catholic girls to reduce the large numbers of christians in Uganda. Munno lost the case in the High Court and Mr Mayanja was awarded 10.000/= (Fifty thousand shillings) which at that time in 1960 was a very huge sam (Civil Case No. 643 of 1960: Abubakar Mayanja v. White fathers and others).

Some of the prominent cases of civil defamation in the first Obote government (1962-1971) included Ben Kiwanuka v A.M. Obote in 1964, Adoko Nekyon v The Tanganyika Papers Ltd in 1965 and Odongkara v Astles in 1970.

During Amin's regime, through the second Obote government, up until the Tito Okello junta, there were not many cases of civil defamation as writing negatively about government officials was equated to subversion. In any case most of the government officials were a law unto themselves and did not need the intervention of the courts to "deal" with such disputes.

Thus the floodgate of defamation suits opened with the ascendancy of the NRM to power as the environment for freedom of expression widened; with many papers appearing on the streets – most of them more eager to sell than take care about the content they were selling.

3.0.2 Civil defamation versus the press: 1986 – 2000

The period immediately after 1986 saw a proliferation of newspapers on Kampala's streets. While a number of the proprietors wanted to cash in on the newly expanded frontiers of freedom of expression to make money, others papers were mouthpieces of certain factions like religions; yet other newspapers were mouthpieces of political parties and their reporting was clearly biased against the new regime and its supporters.

The first serious defamation suit after 1986 was brought against *The Citizen* newspaper (a mouthpiece of the Democratic Party (DP) in 1987 by a former minister in Idi Amin's regime, Mr Wanume Kibedi. The High Court in Kampala proceeded to slam damages to the tune of four million shillings (the equivalent of about 20.000 US dollars) against the newspaper. It was the payment of this money to just one single successful litigant against this newspaper that weakened it henceforward, and eventually led to its demise in 1994. (*The New Vision*, October 14, 1994)

Uganda's defamation legal history would perhaps never have changed much, but for entry into the Ugandan press, in December 1990, of a newsletter called *The Uganda Confidential*, edited by Mr Teddy Seezi Cheeye. The papers *raison d'etre*, as then declared on its masthead, was to fight corruption in government.**1**

Mr Cheeye's style was rather unconventional and his paper began making all types of allegations against all manner of people; ministers and other government officials, traders, soldiers, academics, judges, private people. After just two years of *Uganda Confidential's* existence, civil suits in the High Court began to flow. Abubaker Mayanja started off the paper's woes in August 1992 with an award of two million Uganda shillings against the paper (See Abubaker K. Mayanja v Teddy Seezi Cheeye in HCCS No. 261 of 1992).

In 1995 alone, *Uganda Confidential* lost the following suits: to former Minister Richard Kaijuka and was ordered to pay 15 million shillings; to Mr Emmanuel Tumusiime Mutebile, former permanent secretary, now Governor of the Central Bank and was ordered to pay 14.8 million shillings; to Godfrey Amanyire, a Bank Manager thus losing 8 million shillings; to Mudirikat Mukasa, a lawyer, whom he paid 2 million shillings; and finally to Gordon Wavamunno, a prominent businessman, who was awarded 15 million shillings (Mbaine, 2001: 19).

In the case of Gordon Wavamunno who, it was alleged in the paper, had broken into a bank in which he was a shareholder and stolen money, Mr Cheeye failed to pay the damages and the costs of the suit leading to the commencement of proceedings of bankruptcy against him. Indeed in January 1996, the Uganda Confidential had been placed under receivership (Mbaine, 2001:18). He later paid, apologised and was discharged.

However it is not only the *Uganda Confidential* that has suffered the impact of defamation suits. In the same year 1995, for example, *The New Vision* was ordered by the High Court in Kampala to pay to Rhoda Kalema (then an MP) 4.5 million shillings in damages; and to the former Kampala Mayor, Christopher Iga, a sum of 8 million shillings in respect of another defamation case. *The Monitor* newspaper, in the same year, also lost a defamation case brought two senior officials of the Uganda Cooperative Alliance (UCA), Bernard Wolimbwa and Charles Kabuga, in which the plaintiffs were awarded 20 million shillings. All the sums aforementioned excluded costs of the cases. *The Monitor* lost this case because in spite of having the evidence, their witnesses who were mainly employees of UCA could not testify in court for fear of their jobs. (Interview with Susan Wasagali, Corporation Secretary of The Monitor Publications, 13 August, 2002)

Between 1995 and 2000, *The Monitor* had 18 suits filed against it in court for defamation. One case (G.B.K. Diary products v *The Monitor* C.S. No. 704/97) was decided against the newspaper and the plaintiff awarded 2.000.000 Uganda shillings. An appeal is underway. The newspaper settled out-of-court one of the cases that was to be heard in the

northern town of Gulu because of insecurity and transport costs. The rest of the cases were on-going and if they are lost, *The Monitor* stands to lose 90.000.000 Uganda shillings to the litigants, in the estimation of the publication's lawyers. (See NR/001/2001, Legal Audit of Monitor Publications Ltd, dated 7 September, 2001)

In the same period *1995 to 2000*, *The New Vision* had 55 suits brought against it for defamation. *The New Vision* successfully defended two cases. The plaintiffs withdrew three of the cases. Ten cases were settled out-of-court in which the publication spent 30.000.000 Uganda shillings. Four were due to be dismissed for want of prosecution. The rest were pending and losing them means spending not less than 100.000.000 Uganda shillings as the plaintiffs include people like Finance Minister Gerald Sendaula, Lawyer Kenneth Kakuru, MP Major John Kazoora, Colonel Sam Wasswa and others.

While the law of civil defamation is, in our view, the best way to resolve conflicts that may arise between the press and members of the general public, in Uganda this law has been enforced through excessive damages, notably after 1986, to the point of disabling the press. And the awards are on the rise.[2] As Tusasirwe (2000) has again aptly noted, one "good" award of 200 million shillings would probably be enough to close the most successful newspaper in Uganda in which case the society, rather that the proprietor of the newspaper, would be the net loser.

The same worry about excessive awards in damages against newspapers has been well expressed by Twinomugisha-Shokoro (1998) who thinks that the law of civil libel is being used by politicians and senior civil servants to extract large sums of money from the press. He also believes the damages awarded by the courts are disproportionate to the reputation of government officials. But his concern for the survival of the newspapers is utmost:

> The astronomical awards by the courts have had extremely adverse effects on newspapers like *Uganda Confidential* in that they are unable to meet the costs of the suits brought against them. In effect, this situation has been intended to completely destroy such newspapers (Twinomugisha-Shokoro, 1998: 173).

The problem with the awards lies in the fact that in assessing the damages payable, Courts consider the reputation and social status of the plaintiff before the defamation, the material and social injury suffered, the nature of the libel, the extent of publication, aggravation through repetition and awards in similar cases, perhaps among other grounds. In the process, there is lack of appreciation of the ability of a Ugandan defendant to pay. The whole issue of phenomenal damages on a newspaper is also out of consideration.

Thus while courts in jurisdictions like the US and the UK may not hesitate to award millions of dollars, or pounds as the case may be, quite clearly *The Sun*, *New York Times*, *The Washington Post* and *The Daily Mirror* cannot even remotely compare to Uganda's *The New Vision* and *The Monitor* in terms of circulation, income and therefore the capacity to pay (Tusasirwe, 2000:14). *The New Vision* and *The Monitor*, both dailies do not even circulate 70.000 copies between them on any day! (Balikowa, 1998; 18), in a country with no industrial base that can bring any serious advertising revenue to the newspapers.

In Uganda therefore, the tendency for the judiciary has been to enforce the individual's reputation beyond any other considerations. The contrary, and perhaps more progressive, view that the public interest in freedom of speech and inquiry into the conduct of public servants may outweigh the interest of any individual in his own reputation and a good name, as was emphasised in the landmark cases of New York Times Co. v Sullivan**3** and Holomisa v Argus Newspapers Limited**4**, is yet to be appreciated by the Ugandan bench.

Indeed Uganda's Principal Judge, Justice J. H. Ntabgoba (1996), has gone on record to insist that victims of defamation do not go to court for the sake of it but to seek compensation. His firm view is that such compensation must be such as will atone for the damage inflicted, no matter whether the culprit suffers. He says for this compensation to be meaningful and worthwhile, it must be counter balancing. Justice Ntabgoba is opposed to courts being lenient and compassionate to the press in awarding damages in defamation suits:

> I think, as far as the press is concerned, safeguards against payment

> of compensation must lie not in the lenience and compassion of the Courts in awarding damages against them, but the safeguards lie in press honesty, proper and careful reporting through the understanding that people's rights cannot be sacrificed at the alter of press freedom.

3.1 The Use of the Penal Code since 1986

While the press under the NRM appears considerably vigilant and influential, this has come about at a cost to the newspapers as organisations, and the journalists that work on them. It is true, and credit must be given to the Museveni administration on this one, that the post 1986 government has not killed critical journalists like the Amin and Obote regimes before it.

Furthermore, the minister of information has not used his power to prohibit the publication of a newspaper since the banning of the "Weekend Telecast" in September 1986. The closest to undoing a newspaper by government came in 1993 when it slapped an advertising ban on *The Monitor*, in retaliation for the papers critical reporting. The ban was lifted in 1997 but it certainly had affected the paper's financial health. (Twinomugisha-Shokoro, 1998: 176)

However, the one thing in which the Museveni regime is similar to the past regimes to a certain degree is the arrest and arraignment of journalists before the courts for publication offences. This has very serious consequences for freedom of expression and of the press. Interestingly, government thinks it is democratic to behave in this manner, and its attitude matter is well revealed by the Minister of State for Information, Mr Basoga Nsadhu, in this explanation:

> …one needs to realise that this is a democratic government. We follow all principles that go with democracy. That is why we are better than past governments. When government is injured, like any other person, we follow the course of the law…If we take journalists to court, is that bad?
>
> our issues are addressed through an independent arbiter…we have never arrested anybody for no cause (interview with Basoga Nsadhu, Minister of State for information; 06 November, 2001).

Media watchers will also recall that while the press was struggling to re-build itself immediately after 1986, President Museveni was early in sounding warnings. At a

meeting between him and newspaper editors in 1987, he was quoted as having asked them whether they were bona fide critics or enemy agents. He also criticised newspapers for publishing stories that had no foundation in reality, which only scared the people. It is also worth noting that at one point, the president saw a lot of political ignorance among the political elites, especially the ones who wrote in the press.[5]

It is therefore hardly surprising that government has not only relied on the penal code to punish "errant" journalists, but it has also amended the law in a way that makes it more elaborate and handy. All this has implications for freedom of expression and freedom of the press. We now set to examine the penal code provisions that relate to press freedom; as per the revised edition of the Penal Code Act, Cap. 106, Republic of Uganda.

Sections 37 to 40 of the Penal Code Act provide for the prohibition of importation of publications; and section 37 is particularly explicit as to the powers of the minister in this regard:

> Whenever the minister considers it in the public interest so to do, he may, in his absolute discretion, prohibit by statutory order, the importation of all publications, or any of them, periodical or otherwise: and where the prohibition is in respect of any periodical publications, the same or any subsequent order may relate to all or any of the past or future issues thereof: provided that, by writing under his hand, the minister may, at any time and from time to time, exempt any of the publications the importation of which has been prohibited under this section, or permit any person or class of persons to import all or any such publications (Penal Code Act, 1994: 35).

The related sections that follow prescribe sanctions for this misdemeanour. This law has been virtually lying unused during the NRM tenure. However, it was effectively used during Amin's rule (1971-1979), with very awful consequences for people that were caught in breach of it.

Largely because of the war in the north that started very early into the NRM rule, the government found it necessary to institute Section 39A (through Statute No. 9 of 1988) in the Penal Code. This law prohibits the publication of information regarding military

operations, strategies, troop location or movement, location of military supplies or equipment of the armed forces or of the enemy, which publication is likely to: endanger the safety or equipment or supplies or safety of the armed forces of Uganda ; assist the enemy or disrupt public order and security. The offence is a felony and one gets a term in prison not exceeding seven years, on conviction.

Save for the provision that prosecution for the offence can only commence on the written consent of the Director of Public Prosecutions (DPP) (39A (3), this law is open ended and easily lends itself to abuse. Nonetheless, there is nothing objectionable in protecting the armed forces and securing the peace of any country.

The offence of sedition, which forbids the uttering, publication, selling, reproduction, distribution or importation of any seditious materials is set out in sections 41 to 45. Penalties for sedition range from five to seven years depending on whether one is a first or second offender, with provisions for fines for first offenders.

It is also important to note the description of a seditious intention in section 41 (1):

a) to bring into hatred or contempt or to excite disaffection against the person of the president, the government as by law established or the constitution;
b) to excite any person to attempt to procure the alteration, or otherwise than by lawful means, of any matter of state as by law established;
c) to bring into hatred or contempt or to excite disaffection against the administration of justice;
d) to subvert or promote subversion of the government or the administration of a district.

Section 41 (2) generally exempts the pointing out of errors, or statements to the effect that government was mistaken or misled, from seditious intentions.

Whereas government has a duty to protect itself and its institutions like the judiciary, this law also lends itself to much wider interpretation and abuse. As Kakuru (1999) has further argued:

> Sections 41, 42 [and 50] do not provide adequate guidelines as to the offences of "seditious libel" [and "false news"] and are thus unforeseeable and open to arbitrary abuse (p.23).

The NRM government also added Section 42A(again through Statute No. 9 of 1988), also known as the law against sectarianism, which prohibits sectarian statements on account of religion, tribe, or ethnic or regional origin. This law was apparently written to halt open discussion, then raging in the country, about Banyarwanda refugees then serving in the Ugandan army; before they formed the Rwanda Patriotic Army (RPA) that invaded Rwanda in 1990 and took power in 1994. The law against sectarianism lay unused for many years until December 1998 when it was resurrected against the editor of the now defunct *The Crusader* newspaper, George Lugalambi. *The Crusader* had published opinions that criticised the arming of Bahima (the ethnic group the president comes from) herdsmen in the cattle corridor in western Uganda. (See *The New Vision*, December 18, 1998) The case was later withdrawn.

Journalists in Uganda must also remain mindful of Section 50A relating to incitement to violence; and Section 50B that prohibits incitement to refuse or delay payment of tax. These laws are infrequently used against journalists but the experience of George Lugalambi has taught us that there is no idle law.

Apart from the sedition, another very frequently used law against journalists is Section 50 of the Penal Code, which reads as follows:

(1) Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is guilty of a misdemeanour.

(2) It shall be a defence to a charge under subsection (1) if the accused proves that, prior to publication, he took such measures to verify the accuracy of such statement, rumour or report as to lead him reasonably to believe that it was true.

Section 51 on defaming foreign princes and dignitaries also became prominent in 1990 when three journalists got into trouble for asking then Zambian president Kaunda "embarrassing" questions; but the details of that drama will be discussed in the next section on case studies. The Penal Code also prohibits publications likely or calculated to encourage unlawful societies, in Section 56(c).

The whole of chapter XVIII is about criminal defamation, described in Section 174. Section 175 (2) provides that even dead people can be defamed within the meaning of Section 174. The consent of the DPP must be sought for prosecution to commence in the latter case. Defences include privilege (Section 178), and good faith (Section 179).

The law of criminal defamation has indeed been used against Ugandan journalists on some occasions. It should also be noted that criminal defamation is a double-edged sword against the journalist as the subject of the defamatory matter is still free to pursue redress in the civil courts.

3.2 Case studies in criminal sanctions against Ugandan journalists since 1986

3.2.1 The case of Festo Ebongu and others of 1990

In January 1990, the then president of Zambia, Dr Kenneth Kaunda, paid a state visit to Uganda. At the end of the visit, a press conference was arranged for him to address at the State House in Entebbe on 29 January 1990.

The questions that were to bring trouble were fired by a trio of Festo Ebongu, then working with *The New Vision*, Alfred Okware (RIP) then with *Newsdesk* Magazine and Hussein Abdi (RIP) who was a BBC correspondent based in Kampala.

The questions to Dr Kaunda were:

1. Festo Ebongu: Comrade President, in September last year, your youngest son Kambarage murdered a woman in Kamanga Shanti compound near Charleton, Lusaka. You confirmed the murder and you referred the matter to the Director of Public Prosecutions, Mr Francis Mwiga who said, I quote: Kambarage killed the woman in self-defence and the case is closed. Now Mzee Kaunda, why is it that your son got away with the case of murder of that woman? Does this mean that your family is above the Zambian law?

   Secondly comrade President, your oldest son Pangi operates a cargo and passenger airline, Lutenga Air Charter, with a nominal capital of 1,000 Zambian Kwacha (about 25 US dollars according to the Ugandan exchange rates in 1990). At the same time, although initially permitted, Kafue international licence was withdrawn by the authorities without giving reasons. Mr President, won't this calibre of nepotism and creation of family dynasty destroy the socialism of the Party and Government?

2. Alfred Okware: Mr President, your generation of leaders brought Zambia to independence. If you look around the African continent, there are not many people like you who are still in power. Don't you think that continued incumbency of your generation sort of suppresses the capacity of a new breed of leaders to come up and make their contribution?

3. Hussein Abdi: With due respect Mr President, it is a fact that you are at the forefront of calling for economic sanctions against South Africa, but there are persistent accusations that Zambia is in some kind of secret business with the racist regime. For instance, there are Zambian Airways flights from Johannesburg to New York. Would you like to clear the air, Mr President? (All the questions obtained from Gariyo, 1993: 40-41).

Then, all hell broke loose as the government immediately accused the journalists of asking Dr Kaunda "embarrassing" questions. Ebongu and Okware were arrested the following day and taken to court to answer charges relating to defamation of a foreign dignitary under Section 51 of the Penal Code Act. Abdi had immediately after the press conference flown to Sudan on another assignment, and he was to regret this absence on his return.

The then Kampala Chief Magistrate, Mr Hensley Okalebo, dismissed the charges against Ebongu and Okware on the grounds that the statements were not published, the main ingredient in the case. Okware was however, held on further charges of possessing seditious documents. (Gariyo, 1993: 41)

When Abdi returned a few days later, he was also arrested and taken to court on the same charges as Ebongu and Okware. However, the state, in a move that was suspect in its timing, had "imported" another Chief Magistrate, Edward Bamwite, from the Masaka magisterial area (about 130 km west of Kampala) to specifically hear the case against Abdi. And indeed true to his writ, Bamwite refused to grant bail to Abdi on the spurious grounds that he was a Ugandan of Somali origin and had no permanent place of abode. Even his sureties were rejected because "by their appearances and their names, they appeared Ugandan citizens of the same origin as the accused". (Balaba-Tamale, 1991; Gariyo, 1993)

In the meantime, Bamwite was confirmed in Kampala while Okalebo was transferred to Mukono, described by Balaba Tamale (1991) as a non-descript municipality where he would do less damage. The case was later thrown out by the High Court following Abdi's appeal. The state appealed to the Supreme Court, which also upheld the ruling of the High Court (Mwesige, 1998: 49).

This case displayed the boldest signs of intolerance of the press by the NRM government. When presidents travel abroad, they have a choice to grant or decline press conferences. If they do, then they must be prepared to field questions about topical issues in their

homes countries, if any. That was the case with Dr Kaunda at this particular conference. In any case Dr Kaunda had the capacity to answer the questions and the liberty to refuse to do so. It is also a sad commentary on the vision of the Ugandan leadership that the visitor they were shielding from "embarrassment" by the press was the following year "embarrassed" by his own people who threw him out of the presidency in an election.

The case also brought to the surface the temptation by the executive to interfere with the judiciary when they have interests in specific cases. The shuffling of magistrates at the stage of trial, especially where the sitting magistrate had ruled against the state, was clearly intended to defeat the cause of justice. The situation today in Uganda's judiciary looks better than it was ten years ago, but this was a precedent worthy of note.

3.2.2 The Cheeye – Mrs Museveni case of 1993

On 30 August 1993, the *Uganda Confidential*, then a weekly, published an article entitled "State House implicated in the murder of Aron Kagondoki" in which it was alleged that the wife of the president, Mrs Janet Museveni, had had a hand in the death of Aron Kagondoki, then said to have been a university student. The source of the conflict that led to the death of Kagondoki was a land dispute.

Uganda Confidential Editor, Teddy Seezi Cheeye, was subsequently arrested and charged, on 19 January, 1994, with publishing seditious matters and false news about the First Lady, Mrs Janet Museveni. He was granted bail.

On the 23 June 1995, the then Ag. Chief magistrate of Jinja, Henry Adonyo, acquitted Cheeye on the grounds that the article published was based on a letter originating from State House and written by Mrs Janet Museveni. Adonyo also reasoned that the letter had been used in evidence in a Court in Mbarara in respect of a land dispute between Kagondoki's family and John Kazoora (RIP), a brother-in-law of President Museveni – and relative of Mrs Janet Museveni. In the magistrate's opinion, the article was published, "..to draw the attention of government about the matter of Kagondoki…and

was in the interest of government and fell within constructive criticism since it was narrating the unfortunate death of Kagondoki". (*The New Vision*, June 24, 1995) Therefore the charge of publishing false news could not stand.

Magistrate Adonyo also acquitted Cheeye of the charge of sedition on the ground that Mrs Museveni was not a person of the President, even if she was the President's wife. He agreed with Cheeye's defence that Mrs Museveni had nothing to do with the presidency or government.

By the end of the trial, Cheeye had made a total of 12 appearances in court over the same case.

3.2.3 The Kanaabi case of 1995

The case against Haruna Kanaabi arose out of a story published in the *Shariat* of August 18 - 24 1995 which claimed that President Museveni had visited Uganda's 40th District of Rwanda to canvass for votes in the next presidential elections, then slated to take place early 1996.

Kanaabi was immediately arrested and arraigned before the Buganda Road Chief Magistrate's Court on 28 August 1995 on charges of sedition and publication of false news. Kanaabi's bail application was rejected by the then Buganda Road Chief Magistrate, Yorokamu Bamwine, who sent him on remand to Luzira Prison. Justice John Bosco Katutsi of the High Court also dismissed his bail on 11 September 1995 on the grounds that he would escape.

On 19 December 1995, Mrs Flavia Munaaba, who had replaced Bamwine as Chief Magistrate at Buganda Road, found Kanaabi guilty on both charges of sedition and publication of false news. She sentenced him to a five months jail term and a fine of 49.500 Uganda shillings for sedition. Kanaabi was also ordered to either pay 1.249.500 Uganda shillings or suffer a year's imprisonment for publication of false news. He paid the fine. (*The New Vision*, December 20, 1995)

The conviction of Kanaabi raised a lot of furore from the media and human rights activists who accused the magistrate of "proving herself more executive-minded than the executive". The most pointed criticism came from Makerere University Associate Professor of Law Dr Joe Oloka Onyango who argued that in convicting Kanaabi, the judgement of Her worship Flavia Munaaba was fundamentally flawed: "The conviction…was a dark day in the struggle for democratic freedoms, the promise of a new era of constitutionalism in Uganda, and the right to the free and open expression of all views on public affairs without intimidation". Dr Oloka Onyango also noted that the judgement would go down in the history of constitutional and media law as the first conviction on the charge of sedition since independence, and found the magistrate's reasoning that the Rwandese issue had "always" been a "touchy one" untrue and unconvincing. (*The New Vision*, December 27, 1995)

3.2.4 The Cheeye – Chief Justice case of 1995

In its edition of 2 – 9 1995, the *Uganda Confidential* published an article in which it was alleged that the then Chief Justice of Uganda, Samuel Wako Wambuzi, was corrupt, high handed and vengeful on other judges over petty and naïve issues. It was further alleged in the article that Mr Wambuzi had also diverted computers meant for the High Court Library to a school owned by his wife.

Cheeye was arrested and taken to Court on 21 February 1996 to face charges of criminal defamation and publication of false news to which he pleaded not guilty. He was granted a cash bail of 1.000.000 Uganda shillings.

On 13 July 1996, Cheeye was convicted of defaming the Chief Justice and publishing false news, on his own plea of guilt. Court sentenced him to a fine 500.000 Uganda shillings or one-year imprisonment for publishing false news, and 1.000.000 Uganda shillings or a year in prison for defaming the Chief Justice. He paid the fines. (See *The New Vision*, August 1, 1996)

3.2.5 The Obbo - Mwenda case of 1997

On 27 September 1997, the *Sunday Monitor* newspaper (the Sunday edition of *The Monitor*) published a story, authored by Andrew Mujuni Mwenda, in which it was alleged that the former president of the Democratic Republic of Congo (DRC) Laurent Kabila (RIP) had paid Uganda in gold for the services rendered during the struggle to overthrow the Mobutu dictatorship. The then commander of the Anti-smuggling Unit of the Uganda Revenue Authority, Lt Col Andrew Lutaaya, it was reported, had transferred the gold to Uganda.

One important aspect to note about the story is that it had not originated from Uganda or *The Monitor* newspaper. Rather, it had been culled from the *Indian Ocean* newsletter that is not published in Uganda.

On 24 September 1997, Mwenda, and his editor Charles Charles Onyango Obbo, were summoned to the police Criminal Investigation Department (CID) headquarters in Kampala. They were quizzed over the story whereupon they were arrested and taken to court and charged with publication of false news contrary to section 50 (1) of the Penal Code Act.

An attempt by both Obbo and Mwenda to apply to the Constitutional Court to have the constitutionality of Section 50 of the penal Code determined first did not materialise as the judges, in a preliminary ruling, ordered them to have the case in the Chief Magistrate's Court disposed of first.[6]

The state was vigilant in prosecuting the journalists as it assembled a team of witnesses including some directors in the central bank, a senior army officer and a senior presidential advisor – on media and public relations. Meanwhile, Mr James Nangwala, counsel for the accused, had filed submissions of a no case to answer.

On 16 February 1999, a year and a half since the commencement of the hearing of the case, presiding magistrate Ms Margaret Tibulya dismissed the case, reasoning she had found no merit in the charges to put the accused on their defence. In dismissing the case, she cited the famous case of *The Observer* and *The Guardian* Newspaper (Spy Catcher) v United Kingdom (E.H.R.R) in the European Court of Human Rights where Court held, *inter alia,* that after the publication of the Spy Catcher in the US, the material in question was no longer confidential. "…Where a publication has circulated and is within reach of the population which is sought to be protected by legislation, it is not reasonable to punish whoever is responsible for the subsequent publication, especially if no steps are taken to bar further circulation of the same publication among the protected population", Ms Tibulya stated. She also found that the accused had taken trouble to verify the report, there were contradictions in the witnesses' accounts and that there was no sufficient evidence that the publication complained of was likely to cause fear or alarm.[7]

This was another attempt by the state to harass journalists because of a small, harmless story. It takes a lot of imagination for anybody in his or her right mind to fear or get alarmed because a country has been paid in gold.

In the process however, journalists spend time and money in these cases, in addition to the inconvenience of arrest and prosecution. According to Charles Onyango Obbo, such ordeals that the journalists go through, while they can be positive in that greater care is taken in handling future stories, can be shocking. Arrest and prosecution over these kinds of stories also have a tendency to make journalists more cynical about the authorities (Interview with Onyango Obbo; 5 September 2001).

3.2.6 The Oguttu-Obbo-Ouma case of 1999

On 11 May 1999, *The Monitor* published a picture of a nude woman being shaved in her private parts by men in military uniform. In addition to the picture was a caption that indicated that the person who brought the picture to the newspaper claimed it had been

taken in the barracks of Gulu, which is the headquarters of the fourth division of the Uganda People's Defence Forces (UPDF).

Government reacted with outrage and on the 13 May, the top editors of the paper; Wafula Oguttu, Charles Onyango Obbo and David Ouma Balikowa were arrested and taken to court to face charges of sedition and publication of false news. It was even feared that the paper would be closed down. A protracted court battle ensued, with tens of witnesses on each side.

A few days later, a young lady from Gulu called Candida Lakony (RIP) surfaced, claiming she was the woman that had been depicted being shaved by the soldiers. She was taken to meet the president to tell him her story. Apparently the president did not believe her story and handed her over to the police.[8] Ms Lakony was then prosecuted and convicted for giving false information to police. She served a year in jail but died shortly after her release in 2000.

After nearly two years of trial, Mr Joshua Maruk, the fourth magistrate to handle the case, on 5 March 2001 ruled against the state and acquitted the three editors. Mr Maruk held that Uganda was not a military government and that the criminal actions of individual soldiers could not be treated as the actions of the government in any way. He also found that the editors had taken reasonable steps to verify the photograph.[9]

Endnotes for Chapter 3

1. Following the 1996 presidential elections in which the paper very openly supported the bid of President Museveni, it changed its undertaking from fighting corruption to campaigning for modernisation. Modernisation was among the pledges in Mr Museveni's manifesto.

2. For instance, the High Court of Uganda ordered *Uganda Confidential* to pay 22 million shillings in damages to Mr and Mrs Matembe in April 2001 (Mbaine, 2001; p.19).

3. 376 US 254 (1964)

4. 1996 (6) BCLR 836 (W)

5. See The New Vision, October 8, 1987 at page 7.

6. Obbo and Mwenda lost the appeal in the Constitutional Court by a majority of 4-1. They have appealed to the Supreme Court.

7. See the ruling of her Worship Margaret Tibulya in Criminal Case No. 2636-1997 in the Chief Magistrate's Court of Buganda Road, Kampala. Delivered 16 February, 1999.

8. See "Monitor nude picture girl surfaces", in *Sunday Vision*, 16 May 1999.

9. See the ruling of His Worship Joshua Maruk in Criminal Case No. 1024 of 1999 in the Chief Magistrate's Court of Buganda Road, Kampala. Delivered March 5, 2001.

CHAPTER FOUR

THE JOURNALIST VERSUS CRIMINAL LAW

4.1 Why arrest journalists?

Going by newspaper reports, there were 52 arrests against journalists from 1986 to 2000, including criminal summonses. This excludes casual 'invitations' to the police CID headquarters to answer questions about certain stories. Fifty of these cases ended up in court but only about half of them proceeded to a full hearing. It should also be noted that journalists like Teddy Seezi Cheeye, Haruna Kanaabi and Charles Onyango Obbo have been arrested and charged more than once.

According to Ms Susan Wasagali, Corporation Secretary of The Monitor Publications, *The Monitor* receives summonses to CID once every three months on average, except in 1997 when more than three summonses were received in three months. In most cases the journalists made statements and the matter ended there. However there were cases that proceeded to court, with very few of them requiring the journalists to be put on their defence. Almost all the cases involve sedition and publication of false news. (Interview with Susan Wasagali, 13 August 2002)

The existence of the penal code provisions like the anti-sectarian law, publication of false news and criminal libel is intended to limit the scope within which the media can cover issues of public interest freely (Interview with Andrew Mwenda, 4 September 2001). It seems fairly possible that the purpose the government falls back to use of criminal law against journalists is to inconvenience them and force them into self-censorship.

Ouma Balikowa, also no stranger to arrests and prosecution, agrees with Mwenda and contends that the reason government arrests journalists is to instil fear.

> They have the motive of instilling fear in the press
> and be able to tame it and keep it away from dwelling
> on issues that are critical or bring government into
> disrepute (Interview with the News Editor of *The Monitor*,
> Ouma Balikowa, 5 September 2001).

Although Andrew Mwenda holds the view that the state has seldom used criminal law against journalists, he admits that his own employer, *The Monitor* newspaper has sometimes shied away from publishing certain stories out of fear. He put it thus:

> I have written stories that have not been ran in
> *The Monitor* for fear of these laws. But they are
> very few. (Interview with the Chief Investigative Reporter of *The Monitor*,
> Andrew M. Mwenda, 4 September 2001).

Mwenda, however, maintains that one of the serious dangers to newspapers in Uganda lies in the law of civil defamation in which huge damages are awarded to plaintiffs. As a result, certain editors have been threatened with bankruptcy proceedings. He also contends that this situation is made worse by a corrupt judiciary that lends itself to the harassment of journalists through excessive damages.

Mwenda also sees even greater danger for Uganda newspapers in the marketing of their products and surviving in an open market system. He reasons that the current Museveni administration has banned only one newspaper since 1986, and that many newspapers have failed because they could not survive in the market. Said Mwenda:.

> The single most challenge for the media
> in Uganda is not political persecution but
> how to survive in the market (Mwenda, *ibid*, 2001).

Mwenda is supported strongly by another journalist, Joachim Buwembo, in the view that although there are bad laws, they have not always been applied. Buwembo, who has not been arrested and/or prosecuted for his journalism work, reasons that while journalists look over their shoulders lest they fall victim, the criminal laws have not been abundantly used. He roots for the market in regulating quality in the press.

> My belief is that in this country, we do not need these laws. It is the market that will sort out issues. If you keep telling lies, you do not need government to charge you with publishing false news. The market will sort you out (Interview with *The Sunday Vision* Editor, Joachim Buwembo, 3 October 2001).

Both Mwenda and Buwembo seem to agree, to a certain point, with State Minister for Information, Mr. Basoga Nsadhu, who reasoned that journalists are not above the law and that government was likely to bring them before the due process of the law, if it felt they had gone beyond certain limitations.

Mr Basoga contends that the current government has been fully committed to freedom of the press and freedom of expression, which the few arrests of journalists could not erase. (Interview with the Hon. Minister of State for Information, Basoga Nsadhu, 6 November, 2001). Mwenda also specifically asserts that in spite of criminal legal sanctions,

> Press freedom in Uganda is as it can be anywhere in the world. We are free to express ourselves in in this country practically over every matter. The government of Yoweri Museveni has been extremely tolerant of press freedom (Mwenda, 2001).

Mwenda and Buwembo could be right because in spite of criminal legal sanctions available to the state against journalists, the media seems to have grown stronger, especially in the period since 1986. It is the market limitations that appear to be the most serious impediment to further media development. For instance there has only been one conviction relating to sedition and publication of false news.

It is also the view of journalist Tamale Mirundi that the Penal Code is not as dangerous to the press as the Press and Journalist Statute, 1995. Mirundi argues that it is easier for journalists to defend themselves successfully against criminal charges of sedition, criminal libel and publication of false news than against the Statute that forces the journalists to obtain licences that can easily be denied them. He sees arrest and

incarceration as a temporary professional hazard. (Interview with Tamale Mirundi, former Editor of the defunct *The Voice*, 3 May, 2001).

But David Ouma Balikowa, Editor of *The Monitor*, strongly disagrees. He argues that incarcerating journalists and subsequent prosecution undermines press freedom and betrays the tolerance that is talked about.

> If you have a few daring journalists, keeping them in court undermines the pursuance of certain issues with the kind of vigour they would if they wouldn't have to go to court. Keeping them in jail also undermines the ability of other journalists to tackle the issues that landed their colleagues in court. (Interview with Ouma Balikowa, Op cit).

Ouma Balikowa also seems spot on when he says that the government uses criminal law to undermine the press economically as newspapers spend colossal sums of money on the cases. However, it is not possible to recover costs from government in a criminal case when one has won the case. As a result, many media houses are unable to afford representation for their journalists when government strikes.

This scenario creates a specific fear within the journalists and thus clearly serves the purpose of the law: create fear and keep journalists away from criticizing government. A senior journalist also succinctly stated this view:

> A lot of journalists think that you need a good law firm to defend you. This costs money. It is also discouraging because if you are a small newspaper or radio and ask James Nangwala (The Monitor Publications Lawyer) to represent you, their retainer is likely to be discouraging. (Interview with Charles Onyango Obbo, Managing Editor, *The Monitor*, 5 September 2001)

Instilling fear among journalists so they can be checked in investigating certain public affairs by arresting them and charging them in the courts indeed seems to have worked. It emerged from the FGDS conducted among journalists that most of them take journalism to be a risky profession where the fear of arrest hangs on their heads.

Journalists picked from three media houses; *The New Vision*, *The Monitor* and Uganda Media Women's Association (UMWA) which runs a Radio Station (MAMA FM) and publishes a monthly magazine, *The Other Voice*, expressed fear that they are potential victims of arrest and incarceration and this affects the way they go about their work.

Journalists from *The New Vision* (which is government-owned) even expressed extra fear of losing their jobs in addition to arrest and prosecution for their work. Said one of them:

> The media house that you work for matters. In *The New Vision*, you may lose your job and be arrested also. In *The Monitor* (which is privately-owned), you may only be arrested.

However, there were fears from the journalists that participated in the FGDs that even the journalists in the private media may be affected in the long run.

> Even in the private media, the amount of money paid to the lawyers for the defence in court can be prohibitive. Even if the journalist may not lose the job in the private media, the editor will have to think about the financial implications. The legal restrictions affect everybody.

4.2 The impact of jail and the court process

It has already been mentioned that when the Museveni era started in 1986, one of the first freedoms to be exercised without many fetters was press freedom. Although there were some arrests of journalists for their work in the early years of the NRM regime, the parameters of public discourse through the media had certainly been extended. There seemed to be so much that one could say in the press. It is relevant to remember at this point that political party activities were banned, and remain so. Andrew Mwenda expounds this situation, rather graphically:

> Museveni managed to cool down the heat for political parties by allowing freedom of expression (Mwenda, *ibid*, 2001).

Mwenda (2001) also holds the view that political parties have found it tough going in trying to make a big comeback in Uganda because of the freedom of the press that exists

in the country today. It seems fairly possible that it is difficult to argue that one is being gagged when the press looks free to report on most areas of public life in Uganda.

However, the situation in which the press seemed to report with minimum restriction seemed to have ended at the beginning of the 1990s in the Museveni era. Since then, the frequency of arrests appears to have gone up. Oloka Onyango (2001) has intimated that the number of journalists arrested under NRM has been quite big. Indeed, police was even in the habit of arresting offending journalists on Friday afternoon, which ensured that they remained in the cells till the next Monday when a magistrate could hear their case and, possibly, grant bail. The arrests on Fridays were considerably reduced when the president ordered the police to arrest the journalists on working days!

Therefore arrests of journalists in Uganda are a very ordinary matter. This of course impacts on journalism practice in various ways.

While journalists like Andrew Mwenda say they are not personally affected by their own arrests or those of other journalists, they acknowledge that the incarceration and the court process can be very impacting on other colleagues said Mwenda:

> Yes. There are colleagues with families whose arrest
> really affects them. I see it in them (Mwenda, *opcit*, 2001).

Ouma Balikowa agrees that arrests and subsequent trips to court can be an annoying inconvenience to journalists' families. The families are affected and cannot be happy, as they are always worried that their very own member lives on the doorsteps of prison. The family easily looks at such a journalist's work as suicidal.

Ouma Balikowa also underlines the effect the arrest and court process has on the time spent in the ordeal. For instance during one of the cases in which he was involved, he had to cancel trips to Germany and Switzerland to attend important meetings and conferences because he had to be in court in Kampala.

One of Uganda's leading journalists, Charles Onyango Obbo, confesses that arrests and prosecution affect him, personally. Originally he used to see only the institutional consequences. However, Onyango Obbo sees some silver lining on Uganda's journalists' ordeals with the law thus:

> At a purely professional level, it helps your confidence. It (arrest) could shock you, though. But you feel that you have paid your dues; and your standing among your peers rises if you have handled it well.

There is also the feeling that the double standards that government employs in arresting the journalists, especially, from the private media, makes some of them become cynical about government. Senior journalists are also aware of the impact their arrests and prosecution are bound to have on younger, upcoming colleagues.

> Some of the journalists tend to think that if Charles Onyango Obbo or Wafula Ogutu (MD, The Monitor Publications) can be dragged to court, then what about poor me? I may rot in the police cells for a week. (Onyango Obbo, *opcit* 2001).

A group of young female journalists that work for UMWA pointedly expressed this kind of fear that Onyango Obbo has illustrated just above. Two of the journalists sounded overwhelmed in a Focus Group Discussion, thus:

> Journalism is a very a risky job. If you are a radio talk show host, you could be held responsible for what somebody said on the talk show. You will be arrested and taken to court but courts favour the big people.

Her colleague expressed similar sentiments:-

> Sometimes you are not conversant with the media laws. You can say or write something when you are not aware you are breaking the law and end up being arrested. It is risky being a journalist.

The FGDs held with journalists from *The Monitor* and *The New Vision* also revealed that the fear of arrest and jail lingers on the mind of many a Ugandan journalist. Hence they have to act with great caution to avoid trouble with the state.

Jjuuko (1999), in echoing the fears of a number of media workers, has summed up the situation under which Ugandan journalists work, under the Museveni regime thus:

> The regime's record also includes the flight into exile by a number of journalists threatened by the state; prosecutions for treason, sedition, publishing false news, defamation of a foreign prince; and the actual arrest and incarceration of journalists, one of whom died in detention. The state has also tried to compel journalists to give evidence in the prosecution, especially, of politicians for sedition, with regard to public events that the journalists have covered. Such summonses have been vigorously resisted by journalists. This negative record also includes a massive amount of defamation suits by state Officials, resulting in the closure of at least one newspaper and the formal bankruptcy of one proprietor.

This study also inquired into the level of support that journalists in trouble with criminal law get from the journalism fraternity and civil society generally. Most of the journalists that were interviewed either individually or in FGDs acknowledged significant support from their colleagues, civil society and even externally when they are in trouble with the State over their work.

There are, for instance, journalists' bodies like the Uganda Journalists Safety Committee (UJSC) and the National Institute of Journalists of Uganda, (NIJU) which were singled out as particularly vocal against arrests of journalists.

However, some journalists in the FGDs also noted that their colleagues who write outrageous materials against other people rarely got sympathy from colleagues when they ran into trouble. The case of *Uganda Confidential* was particularly cited.

It was also the view of some of the journalists that there were bound to be more voices in support of journalists who worked for bigger media houses and had bigger names, than smaller colleagues working for small media houses upcountry. One journalist in a FGD observed:

> If you are from WBS (a television station based in Kampala-Wavvah Broadcasting Services), you are likely to get much attention. But if some radio journalist in Gulu (in the north of the country) gets arrested, the event may not even receive good coverage in the media.

So, while it is true that the Ugandan journalism fraternity, civil society and the international community often come to the support of Ugandan journalists in these situations, the weaknesses of the Ugandan journalists also get exposed. People who are not high up in the management of the media organisations raise their voices over such matters. As a result, the resources available for them to mount effective campaigns are very minimal, although they at times attract bits of donor funding. This factor is well captured by Charles Onyango Obbo as he calls for corporate funding for journalists' organizations:

> The lessons from all this is that the corporate clout of *The New Vision* and *The Monitor* is bigger than the Journalists' fraternity, whichever form the journalists are organised. So, you have a fairly weak journalistic fraternity campaigning for people who have more political and social resources than them (Onyango Obbo, *opcit*, 2001).

4.3 Implications for press freedom and quality

Human rights lawyer and university don, Oloka Onyango, has instructively summarized the legal regime relating to the press under the NRM regime:

> If one takes the most important perspective of law and policy, there has not been much change... laws... to suppress freedoms are still on the statute books. Even the laws introduced by the NRM government are not positively inclined to press freedom. They are still informed by the same idea; that the press must be suppressed, kept from being too noisy (Interview with Lawyer Oloka Onyango, 17 October, 2001)

Because of the risks that have increasingly been associated with journalism resulting from criminalising publication offences, there is a tendency for mainly journalists to distance themselves from issues that could kick up trouble, as Ouma Balikowa notes:

> Not many journalists can manage arrests and they would rather stay away from issues that may lead to arrest. Many young journalists will not go into investigating issues like human rights, corruption and governance... If they report on human rights, they will concentrate on issues like child abuse because these are less politically land mined (Balikowa, *opcit*, 2001).

As a result, self-censorship seems to have become more pronounced in the work of many Ugandan journalists for fear of the law, as many stories that could attract criminal charges are mostly trimmed or abandoned altogether.

Charles Onyango-Obbo, who like Ouma Balikowa, has been several times in court over his work as a journalist has similar views about self-censorship

> ... I scrutinize the stories today that I used to... To the extent that the editor plays the role of censor, I am more vigilant than previously (Onyango Obbo, *opcit*, 2001).

Onyango-Obbo also believes that the increasing risk of arrest and prosecution for journalism work is likely to bring about newspapers that will avoid hard political news and look for alternative areas of controversy. Indeed papers like *The Red pepper* that publishes sexual scandals that border on pornography are doing just that.

Thus while journalists like Andrew Muwenda think that there is adequate freedom for journalists to report about almost every aspect of national life, most of the journalists interviewed individually or in FGDs insist that there are certain issues in Uganda that have remained off limits to reporting and comment in the newspapers. These include the personal morality of top leaders in government, the army and security services, and election irregularities involving the person of the president and his family, just to mention some.

These limitations work against the democracy that Uganda has been trying to build since 1986 when the NRM government came to power. Yet the constitution guarantees the

freedoms of expression and the press and other media. Some journalists think that by frightening the media from reporting and commenting on certain issues, the establishment

> ... undermines the critical role of the media as a key ingredient in fostering democracy, if one agrees that free speech and media are avenues through which people exercise democracy. (Ouma Balikowa, *opcit*, 2001)

It also gives the impression, according to Oloka Onyango (2001), that the idea of press freedom in Uganda is predicated upon the notion that one is exercising that right at the pleasure of the state.

That the mighty hand of the state is ever present in the determination of what is published in Ugandan newspapers was very clearly raised by one contributor in the FGDs thus:

> Generally, we are free to publish, but only to a very limited extent. I have to exercise certain restraint. As a sub-editor, I have to execise restraint when preparing anything for publication. I think of what the authorities will think about it. I have to think of the repercussions of what I publish. There is self-censorship. So, whereas nobody will say do not run this letter, I have to recognise that the letter I am running today may land me, or my editor, in problems.

However, in spite of the limitations that the criminal laws relating to the press impose, there are some positive aspects that were identified with regard to quality. Various interviewees pointed out that the fear of criminal sanction often prevailed upon journalists and editors to do their work better.

Andrew Mwenda agrees that the fear of prosecution means one has to do one's job better.

> It has forced us to improve our methods of investigation and the capacity of defend ourselves in court. This is very good. We now always ensure that our evidence is in document form. (Mwenda, *opcit*, 2001).

Charles Onyango-Obbo supports Mwenda's view and explains that *The Monitor* newspaper has done stories similar to those for which its editors were arrested but did not get into trouble again. The reason for this is because they have learnt to do their work

without offending the law as a result of *The Monitor's* past court experiences. Apparently, when journalists are in the dock, they begin to see where the loopholes are; where the prosecution will fault them.

However, whereas the fear of the law may have a positive side to it, there still seems to be very little justification for disabling the press through a plethora of criminal sanctions. The press is such an important resource for citizenship in any country. The law should, therefore, be fair enough for the press to be able to execute its role.

4.4 Implications for other freedoms

It has been stated before that political party activities in Uganda have been disallowed from fully functioning since 1986 when the NRM government took power. Although political parties can exist and operate offices, they are proscribed through Article 269 of the constitution from opening branches, holding rallies and conferences. A referendum held in 2000 showed that most Ugandans favoured the continuation of the Movement System that has been the form of governance for the country since 1986.

At the same time press freedom has improved, in comparison to the past, since 1986. This seemed to indicate that press freedom had supplanted the freedom of political parties and presumably, freedom of association, to operate under the NRM government.

To some observers, press freedom in whatever degree cannot exist meaningfully without the freedom of other institutions like political parties. They reason that the lack of freedom to politically organise ultimately leads to suppression of freedoms like expression. That, for instance, press freedom in Uganda would perhaps be greater if political parties were allowed to operate freely.

According to Onyango Obbo (2001), the peculiarity of the Movement System is that journalists have had an unusually high profile, in a situation where press freedom is ahead of political freedom. He further argues that because political parties have been emasculated, the press has nearly all the space and that people who challenge the press

tend to be state, or pro-state elements. This often leads to journalists being identified as the enemy.

Oloka Onyango (2001) also believes that whereas the existence of political parties does not necessarily remove obstacles to press freedom, there is a relationship between the freedom of the press and the freedom of political parties to be. He reasons that press freedom affects organisation; the ability to organise, state one's case and participate.

To Andrew Mwenda (2001), however, there is nothing the press is not covering because of the absence of political parties in Uganda. He realizes, though, that the press cannot sustain its own freedom in a monolithic situation.

Ouma Balikowa (2001) thinks that the freedom the press in Uganda enjoys today creates the burden for the same press as it is seen as the opposition. This perhaps explains why a supposedly enlightened government, like Uganda has had since 1986, has also had to resort to jailing journalists that criticise the actions of those in power. This is precisely because the only space the parties enjoy is in the media. He insists that if the ground was even and politicians were free to do the things they say in the media, then the burden on the media would be less.

The view that the suppression of political party activities is not conducive for sustainable press freedom also sharply came out in the FGDs. Said one participant:

> The restriction of political party activities indicates the lack of tolerance for alternative view points. If government was to tolerate more the people who hold different political views, I believe they would also be more willing to allow a higher level of press freedom.

Another participant echoed Ouma Balikowa's fears, reasoning that the press was a victim of freedom when other institutions had less.

> True, the press and political parties have not enjoyed an equal amount of freedom. Political party activities have been suppressed since 1986. Yet the press has been growing. A lot of the views and opinions that would have come out through political party activities are now being channelled through the media. Papers like *The Monitor* have thus been at the receiving end of government's harsh reaction, particularly since the mid 1990s.

Clearly, the press in Uganda feels outweighed by the absence of serious political party activity. It is the most eloquent voice and is bound to clash with government, especially in charged situations, like election time and war.

In the circumstances, we have a situation where government believes that it should have protection through the law against offending journalists. On the other hand, journalists think they have a role to play in democratisation and in the development process and that their arrest and prosecution for only airing their views limits their effectiveness in playing this role.

The number of media workers is still small because the media industry has always been a small one, even with the various FM stations that have sprung up following liberalisation. This is because most of the FM stations are commercial stations that do not employ many journalists, as they are more interested in music and entertainment than in news.

Therefore, that there have been over 50 arrests of journalists over the period 1986 to 2000 is likely to create fear among journalists, as prone to jail. It is also fair to note that sometimes journalists have gone about their work rather recklessly, thus attracting the wrath of government. However, a more amicable solution the conflicts that arise between government and the press can be sought.

CHAPTER FIVE

TOWARDS MEDIA LAW REFORM

5.1 The Press and Journalist Statute, 1995

Right from the early years of the NRM government, there were attempts to establish control over the press by the state. Although government still had the penal code to fall back on whenever it felt offended by press reports, it seemed to still want another regulatory mechanism through which it could control the press.

In November 1986, the then information Minister Abubaker Mayanja was quoted in the press to have disclosed that the cabinet had already approved a document on the improvement of journalism in the country (*The New Vision*, November 25, 1986). Initial attempts to introduce a Press Bill in 1987 proved futile after a lot of resistance from journalists who quickly labelled it an attempt to muzzle the press. Public furore, including protests from press friendly lawyers, prevailed upon the minister to shelve the proposed bill.

In 1990, the government published another Press Bill "The Press and Publications Statute". The bill attempted to bind together the Newspaper and Publications Act, the Press Censorship and Correction Act, criminal sedition and libel and the civil law of defamation into one statute. It intended to facilitate press control by the state and made the banning of publications by the minister easier "by order in the gazette", as opposed to "by statutory order" then in force (Balaba-Tamale, 1991: 10). Again public condemnation of the proposed law prevailed and it was shelved.

In the course of 1994, government came back with proposals to recognise journalism as a profession and erect regulatory mechanisms that would make the profession meaningful. It was also the view of government that this regulatory infrastructure would easily resolve the dispute between the state and journalists, as their own body would discipline errant journalists, for example.

It was this latter effort that was to bring forth the Press and Journalist Statute, 1995. There was divided opinion over the necessity or even value of this law. However, unlike in the past, there was a significant section of the journalists who supported most of the provisions of the law. This was on the basis that the desire by government to effect some form of regulation for the press was gaining currency in the population and could not be fought back indefinitely. Thus some journalists thought the best approach was to take out the bad provisions in the bill but generally support the idea of regulation for the press in some way.

In its preamble, the statute seeks to "... ensure the freedom of the press, to provide for a Council responsible for the regulation of the 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", (Kemigisha, 1998:15).

The repeal of the Newspaper and publications Act and the Press Censorship and Correction Act was good for the press, as the two laws had been used by both the colonial and post-colonial governments to throttle the press. It should be noted that also repealed is Decree 35 of 1972, section 1, which empowered the minister to ban a newspaper in his absolute discretion (Jjuuko, 1999: 2)

The Statute provides for the creation of the Media Council whose functions (section 10 (1)) include:

a) to regulate the conduct and promote good ethical standards and discipline of journalists;
b) to arbitrate disputes between – (i) the public and the media; and
   (ii) the State and the media;
c) to exercise disciplinary control over journalists, editors and publishers;
d) to promote, generally, the flow of information;
e) to censor films, video tapes, plays and other related apparatuses for public consumption; and
f) to exercise any function that may be authorised or required by any law.

The Media Council is also charged with the duty of the annual issuance of certificates of practice to journalists, upon payment of prescribed fess, under section 28. No person is allowed to practice journalism without a valid practicing certificate (section 28 (3). Failure to comply with this requirement is an offence that makes one liable on conviction to a fine not exceeding 0.3 million shillings or imprisonment not exceeding three months (Sec.28 (4). Section 29 of the Statute stipulates that the Media Council shall grant no person a practising certificate if he is not enrolled or has failed to comply with any order made under this statute.

Under part VI of the Statute, the Council is empowered to discipline journalists. Section 31 provides for the establishment of a disciplinary committee that consists of the Council chairman, as chair of the committee, the secretary as secretary to the committee and four members elected by the Council from among their number. The disciplinary committee hears complaints or allegations of professional misconduct against journalists from any person (Sec.32). Professional misconduct arises out of failure to observe any or several of the articles of the Professional Code of Ethics, which are set out in the First Schedule of the Statute.

The disciplinary committee has a range of penalties at its disposal if it finds the journalist guilty of professional misconduct. These may include admonishing the journalist, requiring him to apologise, suspending the journalist's certificate of practice for a specified period but not exceeding six months or payment of compensation by the media organisation where the offensive material was published (Sec. 34). Under sec. 35 (1), a journalist aggrieved by the decision of the disciplinary committee may appeal to the High Court, but sec. 35 (3) expressly prohibits the suspended journalist from practice while the appeal is pending.

The composition of the Media Council is provided for under section 9 (2) as follows:

(a) the Director of Information or a Senior Officer from the Ministry responsible for information, who shall be the Secretary to the Council;

(b) two distinguished scholars in mass communication appointed by the Minister in consultation with the National Institute of Journalists of Uganda;

(c) a representative nominated by an Association of Proprietors of Newspapers and Editors;

(d) four representatives of whom – (i) two shall represent the electronic media; and

(ii) two shall represent NIJU

(e) four members of the public not being journalists, who shall be persons of proven integrity and good repute whom –

(i) two shall be nominated by the Minister; and

(j) one shall be nominated by the Uganda Newspapers Proprietors, Editors and Publishers;

(k) the journalists; and

(f) a distinguished practising lawyer nominated by the Uganda Law Society.

Section 9 (3) clearly states that the persons referred to in (d), (e) and (f) shall be appointed by the Minister.

The Statute creates a professional body for the journalists, the National Institute of Journalists of Uganda (NIJU), quite similar to the Uganda Law Society for Ugandan lawyers. The objects of the Institute as specified in section 15 (1) include:

(g) to establish and maintain professional standards for journalists;

(h) to foster the spirit of professional fellowship among journalists;

(i) to encourage, train, equip and enable journalists to play their part in society;

(j) to establish and maintain mutual relationship with international journalists organisations and other organisations with a view to enhancing the objectives of the Institute;

(k) to carry on such activities as are incidental or conducive to the attainment of objects specified in (a), (b), (c) and (d).

The Institute was also assigned the following functions under section 2 of the Statute:

(a) to advise on courses of study, conduct of qualifying examinations and generally on matters related to professional education in Uganda;
(b) to ensure the maintenance of professional education for journalists;
(c) to promote the usage of journalism which is not contrary to public morality;
(d) to encourage research in journalism for the advancement of professionalism;
(e) to make bye-laws of the Institute.

Under section 16 (1) of the Statute, membership to the institute was categorised into full, associate and honorary. However the biggest controversy arose under 16 (2), which provides that eligibility to full membership of the Institute is for holders of a university degree in journalism or mass communication; or holders of a university degree plus a qualification in journalism or mass communication and having practised journalism for at least one year. Associate and honorary members are not eligible to vote (sec. 16 (5). Full and associate members of the Institute receive certificates of enrolment (sec. 17 (2).

The Statute therefore defines a journalist in terms of educational qualifications and it can be discerned from this law that full members of NIJU are the recognised journalists in Uganda. In fact sec. 6 (1) (b) enjoins proprietors of mass media organisations to register, with the Media Council, the certified copies of the relevant testimonials of the editor as proof of his qualifications and experience, among other requirements.

Clearly, this was a half-hearted attempt to reform the law and free the press. For instance there is a big problem with the composition and some of the functions of the Media Council. As Kemigisha (1998) has observed, the Council generally consists of government appointees who are largely beholden to the Minister, thus leaving the independence of the Council suspect. The Minister has a direct role in the nomination of

five of the thirteen members of the Council. He also appoints the eight members that are nominated by particular bodies.

Controversy still abounds over the Council's mandate to issue annual certificates of practice to journalists, under section 28. First, the idea of issuing practicing certificates to journalists smacks of undesirable control over the freedom of journalists to do their work and is unacceptable in a free and democratic society. Secondly, the ability to give the certificates means that there is also the ability to refuse to give a certificate, especially in view of the manner in which government has a hand in the composition of the Council. As the Uganda Journalists Safety Committee (UJSC), an NGO that advocates for media freedoms, pointed out, journalists who wrote against government were likely to be de-registered or denied registration. (*The New Vision*, May 18, 1995: 3)

Thirdly, the Statute criminalises the failure to comply with this requirement in S.28 (4) in the form of imprisonment or fines. The new law therefore does not depart from the Penal Code in this respect.

The Media Council is also empowered to discipline journalists for professional misconduct. However, because of the composition of this Council, there is worry government can still intimidate journalists from free dissemination of information and comment on topical issues (Kemigisha, 1998:3).

The creation of NIJU by the Statute and the requirement of a university degree in the relevant disciplines for one to be a full member of the Institute has been a bone of contention ever since the law was passed in May 1995. Most journalists have opposed it on the grounds that there have been very few opportunities for people to train in journalism in Uganda and thus the requirement for journalists to have a degree in journalism did not take into account the available opportunities for journalists to train. They argued that, for instance, a degree in journalism had only been started at the country's leading university, Makerere, only in 1988. For a long time, the programme

only admitted twenty students until 1996 when it was opened to evening students, hence increasing opportunities for people to train in journalism.

It was furthermore, argued that it is not necessary for one to have a degree in journalism to be a journalist, because journalism was a craft that did not necessarily need training. That the practice globally, including in countries like Britain and the US, was that people who wanted to pursue journalism as a career simply joined it with or without formal training in the discipline. There was also worry that senior journalists who did not have that qualification would be excluded unfairly when they had done a lot for the profession. That a diploma, for purposes of full membership to NIJU, would suffice (Kemigisha, 1998: 4). The most spirited criticism against academic qualifications came from a veteran journalist, Paul Waibale Sr, who has worked as journalist for more than forty years without training in journalism. He rubbished the new law thus:

> …the role of formal training and paper qualifications in this category of disciplines is that of a desirable catalyst, and never that of an essential prerequisite…the provision in the Press Bill recently passed by the NRC [Parliament] that one is required to have a university degree in order to be recognised as a fully-fledged journalist is an ill-conceived absurdity. (*The New Vision*, May 31, 1995: 29)

Because of the controversy that has surrounded the law, the Minister of Information has hesitated to give operational effect to some of the provisions of the Statute and so far, no journalist has been required to enrol to get a certificate as a condition for practicing journalism. However, the Media Council and NIJU have been constituted and are operational. Nonetheless, efforts for a better press law continue.

5.2. The Electronic Media Statute, 1996

The Electronic Media Statute 1996 broke new ground in the area of broadcasting regulation in Uganda. Prior to 1993 when the airwaves were liberalised in Uganda, broadcasting was a monopoly of the state through Radio Uganda and Uganda television. It is also significant to observe that though private broadcasters were permitted in 1993, a law to regulate the liberalised industry could only come three years later.

The most prominent section of this Statute is the provision for a Broadcasting Council in section 10. The Council is made up of twelve members. The functions of the Broadcasting Council, under section 11 (1), are:

(a) to co-ordinate and exercise control over and to supervise broadcasting activities;
(b) to be responsible for the standardisation, planning and management of frequency spectrum dedicated to broadcasting and to allocate such spectrum resources in such manner as to ensure the widest possible variety on programming and optimal utilisation of those spectrum resources;
(c) to co-ordinate communication on electronic media with the relevant national and international organisations;
(d) to receive and consider applications made to it under this Statute;
(e) to set ethical broadcasting standards;
(f) to arbitrate, in consultation with the Media Council on disputes between,

(i) operators of broadcasting stations; and

(ii) the public and operators of broadcasting stations

(g) to advise government on all matters relating to broadcasting policy; and
(h) to carry out any other function that is incidental to any of the foregoing functions.

Unlike in the case of the Media Council where members elect the chairman, the Minister appoints the chairman of the Broadcasting Council. There is also an opportunity for government to influence the appointment of most of the members, thus bringing the Council's autonomy into question.

The Broadcasting Council's autonomy is further compromised by the fact that the Minister determines the Councillors' remuneration and has the power, at his/her discretion, to re-appoint them to office at the expiry of their three –year term (Kemigisha, 1998: 6).

However, government can interfere with the work of Broadcasting Council through section 10 (5) which provides as follows:-

> The minister may give directions of a policy nature to the Council regarding the performance of its functions and the Council shall comply with the directions.

The leading function of the Broadcasting Council seems to be the issuance of broadcasting licences under sec. 7. However, an aspiring broadcaster does not only deal with the Broadcasting Council.

He/she has to go to the Media Council to process the appointments of the producers. The aspiring broadcaster has also to register his/her station or apparatus with the Media Council under section 4 (1). When all that is done, the proprietor must also apply to Uganda Communications Commission for a frequency.

As Kemigisha (1998) has again pointed out, it looks interesting, if not laborious, that proprietors of broadcasting in Uganda have to go to the Media Council, established under the Press and Journalist Statute 1995 to register radio or television stations or other broadcasting apparatus. Yet this looks quite within the domain of the Broadcasting Council.

It looks fairly possible to merge the two Councils (Media and Broadcasting Councils) without losing anything. It would also seem to make sense if the Press and Journalist Statute 1995 and the Electronic Media Statute 1996 could be merged into one law.

There is also some arbitrariness that can be exploited by an overzealous Broadcasting Council. For instance, section 22 (2) of the Statute empowers the Council to obtain particulars from a person wishing to operate a video or cinematography, as it may deem fit. What particulars are these that are not specified by the law? Yet Section 21 (4) seems clear about the conditions upon which a licence can be granted, by the Council, for video and cinema operators thus:

(4) the Council shall, before issuing a licence in respect of a cinematography theatre under this section, take into account the following,

(a) whether there is in the place or premises adequate provision for the safety, health or convenience of persons who are to attend any video or cinematography exhibition; and

(b) whether the structure or equipment and lighting conform with the rules made under this Statute.

As Kemigisha (1998) has further observed, such nebulous provisions of the law easily lend themselves to administrative abuse. She reasons that it is, for instance, possible that a prospective operator of video and cinema could be denied a licence for other reasons other than those specified under section 21.

Kemigisha may be right because issues relating to disseminating information can be very politically sensitive and that is why governments in Africa have been reluctant to free the airwaves. For instance at the height of the presidential elections in 1996, the Minister of Information summoned private radio operators and warned them about the possibility of reviewing their licences if they undermined the government.

This perhaps also explains why the responsible minister still has powers under the Statute to influence the constitution of the Broadcasting Council and to generally interfere with the Council's work. This is intended to ensure government has some control over private broadcasters and is able to call them to order when they are thought to be taking their freedoms too seriously.

The Electronic Media Statute does not also differ from other Ugandan legislation that criminalises freedom of speech by providing for fines and prison terms for non-compliance with sections of the law. Thus failure for broadcasters to have producers registered, and obtain all manner of licences, is all categorised under criminal acts with stipulated punishments if not complied with.

It is also important to note that because of public resentment, sections of the Statute like part (IV) that provides for the licensing of television sets have not been operationalised by the Minister of Information.

5.3 Efforts and possibilities for media law reform

There have been various efforts by the journalists and government to reform media law since 1986. The interests of both parties have certainly informed these efforts; on the one hand the journalists want a law that enhances their freedom to do their work, while on the other hand government wants a law that makes journalists more "responsible".

In between the government and the journalists, there have been other actors like courts whose judgements are significant in reforming the law. It must be stated that the Ugandan judiciary has, except on very few occasions, not been progressive in handing out judgements that expand the frontiers of freedom. Indeed, sometimes the judiciary has played a complementary role to government in making the work of journalists more difficult as the case of Uganda v Charles Onyango-Obbo and Andrew Mwenda, illustrated.

When the two were charged with publication of false news under section 50 of the Penal Code Act, they applied for bail from the then Buganda Road Chief Magistrate, Flavia Munaaba. Mrs. Munaaba granted the two journalists bail, but at a nearly prohibitive cost of two million Uganda shillings for each of them. Any publication less than *The Monitor* in financial clout would very easily have failed to raise the four million shillings required to get Obbo and Mwenda out of jail on bail. Later, High court judge Solome Bbosa reduced the bail fee to 0.3 million shillings for each, nearly seven times less than Mrs. Munaaba's charge, on the grounds that the case had been a misdemeanour and bail charges needn't have been so high. (See *The New Vision*, November 25, 1997: 3)

This particular case was also the subject of an appeal in the Court of Appeal, sitting as a Constitutional Court. Obbo and Mwenda went to the Court of Appeal to have the law

against publication of false news declared unconstitutional in as far as it infringed on freedoms of expression. They also applied to have the case before the chief magistrate stayed until their application before the Court of Appeal was disposed of.

The Court of Appeal ordered the proceedings against the two journalists before the Buganda Road Chief Magistrate to continue and get finalised. When the application was finally determined, the journalists lost as four of the judges, out of five, ruled against their application. (See the Judgements of Manyindo DCJ, Kato JA, Berko JA, Engwau JA and Twinomujuni JA (dissenting) in Charles Onyango Obbo and Andrew Mujuni Mwenda v Attorney General, Constitutional Petition No. 15 of 1997). Obbo and Mwenda have appealed against the Court of Appeal's judgement in the Supreme Court. Judgement is still awaited at the time of writing.

Thus one way of attempting to reform press law has been, of recent, through journalists' appeals to courts. Apart from Obbo and Mwenda, the Uganda Journalists Safety Committee (UJSC) and Haruna Kanaabi in Constitutional Petition No. 6/97 sought to have sections 37, 41, 42, and 50 of the Penal Code Act (Cap 106) declared inconsistent with the Constitution of Uganda, in their application to Haruna Kanaabi as earlier cited. Their application failed on the grounds that it was improperly before court, was time barred and lacked an accompanying affidavit.

In another effort at reforming media law through the courts, the UJSC, Mohamed Katende and Peter Bahemuka (as first, second and third petitioners respectively) went to the Constitutional Court in Constitutional Petition No. 7/97 claiming that sections 6, 8, 10, 16 (2) (3), 18 (b) (c), 27, 28, 29, 30, 31, 32, 34, 35, 40, 41, 42, 43, and 45 of The Press and Journalist Statute 1995 were inconsistent with the provisions of Articles 29 (1) (a) (b), 30, 41, and 45 of the Constitution of Uganda and as such were null and void and unenforceable. Again the petitioners lost the case on technicalities in that the procedure was wrong, the petition did not disclose any cause of action and that the affidavits filed by the petitioners were defective.

The failure of the journalists to have laws unfavourable to media practice declared unconstitutional has raised concern among several quarters that the judiciary is still conservative. It also raised the issue of the judicial mood about the press; that the judiciary perhaps does not consider the press as necessarily important in the country's development process. There is also the possibility that the judiciary is not enthusiastic about press freedoms because a number of judicial officers, including the immediate former Chief Justice, have been the subjects of negative press reports.

It should also be pointed out, however, that perhaps the journalists need to put their act together, if they are going to challenge laws before the courts. There is need for better organisation. Petitioners in the foregoing cases do not seem to have passed the test in this respect, as their petitions were easily surmounted by the Attorney General on technicalities that could have been handled in a better way.

There have been some occasions, though, when the judiciary has pronounced itself positively on issues of press freedom. Two cases will suffice. In one of the cases, the National Social Security Fund (NSSF) was locked in dispute with a construction company, Alcon International in 1998. At one of the hearings, both parties to the case applied to have the press locked out because of the adverse publicity the two institutions had been subjected to, arising from press coverage. However, Justice James Ogoola, handling the dispute, could not allow camera proceedings because he reasoned that the public was entitled to know about the proceedings, there was no danger in revealing details of the case and the press was only doing its job as long as the reports were accurate. (See *The Monitor*, July 6, 1998: 24)

However, the only time a judge pointedly underscored the need to create a conducive environment for the press to do its job was when Justice Moses Kalanda (as he then was) awarded the then transport and communications Minister, Dr. Ruhakana Rugunda, nominal damages in a defamation case against the *Uganda Confidential* newsletter and its editor, Mr. Teddy Seezi Cheeye in 1993. Dr. Rugunda had sued Cheeye and the *Uganda Confidential* for alleging that the Minister's conduct prior to the awarding of a

construction deal to a Japanese Company, Marubeni International, was not transparent and signalled a possibility of underhand methods.

It is worthy to note that much as the quantum of damages in that case is important in a situation where judges have been awarding hefty damages to successful defamation litigants, what is more important are the judge's reasons in arriving at the decision and his view of the role of the press in the country's development process, as quoted here below:

> "Before I take leave of this judgement, I would like to point out that of late there has been numerous cases (sic) filed in Court, mostly by officers holding public offices, against the press - about articles written about the officials in Government and the way these officials perform their duties. In the first instance, it should be pointed out that the public have a right to know what their leaders are doing to enable them engage in debate on what is happening regarding the handling of public affairs. In a transparent society, the officials are the ones supposed to inform the public on what they do and how they do it. This does not happen in most cases. Due to the presence of a free press and freedom of speech, there is no doubt that the public would want to know from the officials what goes on in their daily work, because it concerns them; and if they get nothing, the press steps in. Mr. Justice William Brennan, a former U.S. Supreme Court Judge, once wrote:
>
> ' A profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on Government and public officials.'
>
> "If however the above is to be achieved, the officials in public offices are supposed to account to the public – who have a right to know, in order for spirited and informed debate on public issues to take place; especially where officials are not performing to their expectation. If the public does not know what is going on due to the officials in public places hiding or not informing the public about their activities - and there are a few instances, if any, where the public officials volunteer information about their activities to the public in order to enable the public not to speculate and to engage themselves in meaningful debate - someone else would step in to fill the gap. It has now become the role of the press to inform the public about what the public officials are supposed to inform the public. This has made the reporters look for stories, which flash on front pages about the activities of public officials and how they perform such duties. Without the public officials informing the public on what they do and why they do such a duty; the press has developed ways of getting at what takes place in government. At times they do rummages through records that are unquestionably public i.e. official files or minutes of meetings. They develop sources in government

> officials they trust and who trust them and who will "talk off record" about what is really going on. They exploit the leaked information and interview scores of people who may give answers without knowing for what purpose. In this way they tread on some officials' feet.
>
> "In this regard, I would like to point out that once someone holds or occupies a public office, he or she is open to the public eye and ear, and therefore the public who have a right to know how that public officer does his/her work and in what manner, if they are not informed, will look somewhere else to know how such an officer performs his duties. The free press in my humble opinion commendably takes up this role in a way; and this should be expected from those who hold high offices. In order to enhance transparency, the press, without indulging in what I would call matters of defamatory or vulgar language have a duty to inform the public and should be seen to be encouraged to do so; as this is the only way the public can know how their representatives and officers holding public offices perform and behave in their debate. It may equally check on excesses of public officials in their running of public affairs."

This was a typical *New York Times v Sullivan* ruling and would be helpful to the media if the rest of the bench adopted the same attitude, but as Tusasirwe (2000) has aptly stated, Justice Kalanda's views do not reflect the general approach of Uganda's courts.

One of the very elaborate efforts at media law reform is the on-going effort by the Eastern Africa Media Institute (EAMI), Uganda Chapter. The effort has been pursued under the auspices of the Friedrich Ebert Stiftung (FES), Kampala office.

Following the concerns raised by the journalism fraternity in Uganda over the controversies, especially arising from The Press and Journalist Statute 1995, an attempt was made to generate proposals on how best to get a better law in place. The main concerns revolved around the definition of a journalist, certificates of practice for journalists through enrolment and the criminal laws that government often uses to arrest and intimidate journalists.

On 17 August 2000, a committee of 19 members to review all media laws and make recommendations on the way forward was constituted. It consisted of representatives from the Law Reform Commission, Ministry of Justice, Ministry of Information, media organisations, media training institutions and a private advocate.

The Committee's terms of reference were stated as follows:

(a) Review media related legislation
(b) Make proposals as to what should be done with the laws
(c) Identify the best methods to pursue the way forward
(d) Present a report to the plenary after completion of the work.

At its first reporting to the plenary (of journalists) on 7th November 2000, the committee recommended the following measures, among others:

- The law of sedition should be repealed because it is archaic, conflicts with the constitutional provisions of freedom of speech and expression, and has been discriminatively applied.
- Defamation is decriminalized because it is a matter between individuals and the injury is done to an individual who can seek damages.
- The Press and Journalist Statute, 1995 and the Electronic Media Statute, 1996 be merged to make one law that seeks to improve the regulatory framework to effectively handle media related complaints.
- The Media Council and Broadcasting Council are merged to create one, independent Media Council to entertain all media related complaints.
- The Disciplinary Committee of the Media Council be strengthened and given powers of Court of first instance.

However, disagreement remained over critical issues like the definition of a journalist, the role and nature of the Media Council, funds for the Media Council, regulating the Broadcasting industry, to mention a few.

The Committee later on compiled what it called "The Media Bill 2001." The Bill, once enacted into law, was supposed to ensure freedom of the press and media, to provide for the regulation of print and electronic media and to repeal The Press and Journalist statute, 1995 and the Electronic Media Statute, 1996, among other functions.

The bill retained a Media Council but with more powers to regulate the media. The minister's powers to determine the composition of the Media Council were also curtailed as most members were proposed to be nominated by the general assembly of journalists and respective associations. The Media Council would also issue broadcasting licences, and basically take over the role of the Broadcasting Council under the Electronic Media Statute, 1996.

The bill also created the National Association of Journalists of Uganda (NAJU), which in essence replaced NIJU. It also fixed full membership to the association at a diploma in journalism or mass communication; or journalism practice for a number of years (unspecified so far) in lieu of a formal qualification, (section 32). The bill also provided for a national press card for journalists enrolled with the Media Council.

The Media Council, under the proposed bill, was to have a disciplinary committee to hear complaints from the public about journalists and media institutions. It took out jail and fines as punishments. There was also a provision for appeal to the High Court if any of the parties was aggrieved by the decision of the disciplinary committee.

Before the bill was tabled to any authority for consideration, it suffered attack from the press as another step backward in the fight for freedom of the press. Sections of the media were unhappy with fines and possibilities of jail for those who contravened section 21 on regulation of video and cinema operators, for example. There was also still concern as to why there should be minimum qualifications for journalism practice. The issue of having a statutory Media Council and national press cards was also considered anti-press in essence and practice. There was also the interest by broadcasters to have only one regulatory body, and not more, as the bill was suggesting.

However, there was unanimity on repealing the following sections of the penal code: 36-39A (power to prohibit importation of publications, publication of information prejudicial to security), 41-43 (sedition), 50-51 (publication of false news, defamation of foreign prices) and 174-181 (criminal defamation).

As the year 2001 came to an end, there seemed to be a shift towards having a non-statutory Media Council, as is the case in Tanzania. The committee has accordingly drafted the "Constitution of the Media Council of Uganda". The essence of this non-statutory Media Council is the Code of Ethics, with an Ethics Committee to handle complaints relating to breach of professional ethics by journalists (Article 10). The proposed Media Council of Uganda is modelled along the same lines as the Media Council of Tanzania and the Press Complaints Commission of England.

The problem with a non-statutory Media Council though is whether government will respect it. Although the one in Tanzanian has reportedly registered some success, a non-statutory Media Council in Uganda could be problematic since government has many times even ignored a Media Council it set up itself under The Press and Journalist Statute, 1995.

A non-statutory Media Council could also jeopardise the effort at repealing certain sections of the Penal Code, as government still craves for protection against journalists. The first Deputy Prime Minister, Eriya Kategaya, told journalists at the World Press Freedom day on 3 May 2001, that the repeal of laws like sedition, publication of false news and criminal libel cannot be done without putting a mechanism in place to protect the government from the work of irresponsible journalists.

Even senior journalist Charles Onyango Obbo (2001) has suggested, perhaps out of failure to see government compromising on the repeal of these penal code sanctions, that the laws can remain in the books but that the element of arrest and incarceration should be expunged. The Media Institute of Southern Africa (MISA) has also offered moderation in situations where governments may be uncompromising on keeping criminal sanctions on the statute books. In a text drawn by Article 19 (Njonjo Mue, 2001), there is a call for the abolition of criminal defamation and its replacement with, where appropriate, civil defamation laws. However, the text recognises the fact that in many states, criminal defamation laws are the primary means of addressing unwarranted attacks on reputation.

Where this is the case, the text proposes that criminal defamation laws should ensure four conditions, the most relevant of which stipulates the following:

> ...prison sentences, suspended prison sentences, suspension of the right to express oneself through any particular form of media, or to practice journalism or any other profession, excessive fines and other harsh criminal penalties should never be available as a sanction for breach of defamation laws, no matter how egregious or blatant the defamatory statement.

It can thus be easily discerned that the issue of media law reform, especially in countries where the process of democratisation is still in formative stages, can be a slow and painstaking activity indeed. Uganda seems no exception to this.

In fact the committee reviewing media laws in Uganda under EAMI Uganda Chapter, with the assistance of Friedrich Ebert Stiftung (FES) is taking rather too long with no consensus in sight on certain issues. The issues in contention, like the definition of a journalist, appear extremely difficult to resolve.

The other factor that undermines the possibility of media law reform in Uganda is the critical inability by journalists to lobby for such reforms. Ugandan journalists are not well organised as a group and have seldom come together for common causes. Onyango Obbo has again been instructive on lobbying:

> We desperately need to lobby the rest of civil society so they can pay attention to press freedom and get them to realise fully that arrests and prosecution of journalists have implications on other freedoms. We do not have the mechanism to mobilise here. (Interview with Charles Onyango Obbo: 5 September, 2001)

Onyango obbo holds the view that if there was a strong lobby group for press freedoms and senior editors were sufficiently involved in the leadership of journalists' organizations, then it would be easy to construct schemes like the legal defence fund. This could be used to afford journalists representation and also enable litigation against

certain laws and policy. It would also be used to pay for a witness generation programme.

For now efforts at media law reform in Uganda are focussed on the EAMI committee. If it comes out with fairly agreeable proposals, the first step will have been concluded. A long the way there are various stakeholders to convince; journalists, civil servants, cabinet, parliament and the rest of civil society. The organisational and lobbying skills of the journalists will determine whether the proposals will succeed and be the basis for a better law. It seems, though, that the journalists of Uganda hold the key to these reforms, to the extent that they can agree and seek consensus amongst themselves.

CHAPTER SIX

CONCLUSION AND RECOMMENDATIONS

6.1 Conclusion

There is no doubt that the press has had more freedom under the Museveni administration from 1986 to 2000. There have been various newspapers on the Ugandan scene during this time, most of which have gone under due to reasons other than a government clamp down.

The period has also been characterised by the emergence of strong newspapers, by Ugandan standards, like *The New Vision* and *The Monitor* that have had considerable influence on the conduct of public affairs. They have exposed corruption and been a conduit for public education on issues like AIDS prevention, poverty eradication, civic education and others.

The press during this period has also seen the expansion of boundaries of public debate. The newspapers have easily criticised government and public officials, including military officers, in a way that that was unthinkable before.

The press has also played a role in raising the level of consciousness among Ugandans towards their participation in issues of governance during the period under review; local councils and decentralisation, the constitution-making process, the various national and local elections held, to mention a few.

The effectiveness of the press in playing its role requires a conducive atmosphere; a literate population that can consume the product, a good economy that provides the means to access the press by the population and a fair regulatory framework that can enjoin journalists to go about their work responsibly without curtailing their efficiency.

As the preceding chapters have shown, a number of journalists hold the view that the Penal Code provisions that create the offences of sedition, publication of false news and criminal libel do not provide the right environment for journalists to do their work well. Criminal sanctions of this nature tend to create fear and drive the journalists into self-censorship.

It is also notable that unlike previous governments, the NRM leadership has always allowed the due process of the law to take its course whenever journalists are arrested. However, the very idea of journalists being arrested and dragged before the courts makes journalism a feared occupation. This why some journalists have had to leave active journalism. There are also much fewer women in journalism in Uganda, and much less women in the area of serious news/investigative reporting. Although the usual segregation in jobs and assignments has been blamed for causing fewer women to be in the influential ranks in the Ugandan media, the risk attached to the first lane of journalism (news reporting) has also been identified as a substantial factor (UWMA 1998). When members of a certain profession are prone to arrest at every turn, it becomes less surprising if other people hesitate to join that trade, or if they are seen to take more care than is necessary while practising that profession.

It is fairly clear that despite the existence of criminal legislation in the period 1986 to 2000, the Ugandan press, and indeed the media has grown and developed more. There are more media houses and the country has two daily newspapers, *The Monitor* and *The New Vision,* which appeared not possible even ten years ago. The absence of other papers as strong as the two is not out of restriction but economic considerations. It is possible that if Uganda had a better performing economy, there would be more newspapers as big as the current dailies and newspaper circulation in the country would be much better than now.

However, it is important that the legal regime relating to the media is addressed to suit the democratic strides the country has made. The current penal code provisions relating to the press may have the effect of keeping the press in check but they do not promote

press freedom and the freedom of expression that comes with it. The Museveni administration may not even have frequently used these laws at every opportunity but the Ugandan experience has shown that when certain people with less democratic inclination chance on such laws, they will use them optimally to stifle free speech. This may include all people, not only the journalists.

It would therefore be a good idea for the government and all the other people interested in the media development and democracy to pursue law reform with a view to freeing the media from bad law. This should be carefully done to ensure that the media does not remain unregulated as to get out of hand.

6.2 Recommendations

The Penal Code provisions that set out the offences of sedition, publication of false news may not have hindered Ugandan journalists from doing their work in the period 1986 to 2000 but these laws are an annoying inconvenience to the journalists. If journalists are going to be effective purveyors of information and watchdogs over public affairs, the conditions under which they work must be fairly predictable. The legal environment is one of those conditions.

The current efforts at law reform undertaken by EAMI Uganda under the auspices of FES to reform the media laws are a good step in the right direction and should be continued. It is particularly gratifying that the journalists themselves with the support of relevant professionals like lawyers are championing these reforms. The journalists however must seek and obtain consensus so that they move into this rather sensitive issue as a united force. They must also demand for those reforms that are possible.

The journalists' demand for the repeal of the offences of publication of false news and criminal defamation are justified. As Kakuru (1999) has argued, these laws have no place in a free and democratic society that Uganda would like to see evolve. However, the intention by the journalists to have the law of sedition repealed does not appear realistic. The law of sedition is intended to protect the state and although it is many times invoked

unfairly, it is doubtful that any serious government would easily consent to its repeal. What would be advisable in the circumstances would be to tone down the Ugandan version of sedition so that the section about causing disaffection against the person of the president, for example, is removed. This is because anything unfavourable to the president that is written in the press can easily be judged as causing disaffection to the person of the president.

Charles Onyango Obbo (Interview: 6 September, 2001) is right to suggest that journalist should strive to get more organised as a group with a strong lobby. That is the way good policy and law is generated in favour of specific groups, the world over. If this is going to happen under NIJU or NAJU, let it be. His idea of the witness generation programme and legal defence fund are also a good prescription to helping journalists in trouble with the law, before the reforms happen.

The idea of having journalists and media organisations challenge legislation that abridges press freedom as guaranteed by the constitution is a noble commitment that should be pursued relentlessly. However, there should be more preparedness in this endeavour than there has been, especially in the constitutional cases involving Kanaabi and UJSC. If the few big media houses can support these ideas as Onyango Obbo suggests, then they would no doubt work.

The civil law of defamation remains the best avenue for settling disputes between the press and members of the public. The problem of high damages is a problem for the press in many countries because most jurisdictions take the reputations of other persons rather very seriously. As the Principal Judge, Mr Ntabgoba (*opcit*), has counselled, the best safeguard against unaffordable damages, especially for small newspapers like Uganda's, lies in journalists taking enough care in doing their work.

This is the reason why the non-statutory Media Council should be created and get started quickly so that it can enforce the Ethics code. A number of media workers do not have a good knowledge of professional ethics and often commit offences that could have been

avoided, out of carelessness too. If journalists have their own disciplinary body and they are convinced it is outside the ambit of government control, they will respect it. Again if this body is made of serious and respected personalities and is seen to be above board, the public and government will respect it and take their complaints there (Ngaiza, 2001). In the end, government and other people will find that it is cheaper and still effective to take journalists to this body rather than the courts. This may save the journalists the vagaries of arrest and prosecution in courts while at the same time holding them responsible to the professional code of practice.

Ultimately there is also the need for the journalism fraternity in countries like Uganda to work towards the attainment greater freedoms, like freedom of association, for all people. Currently, political parties in Uganda are limited in their activities and this places a burden on the press, as it is the most eloquent voice against the abuse of power through vices like corruption, nepotism and profligate spending. The press can best thrive when there are other voices other than itself, with a vibrant civil society that articulates the various interests in society. The Ugandan press should encourage this development as a sure way of liberating itself.

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APPENDIX I

INTERVIEW GUIDE FOR

(A) Journalists and editors

1 (a) What is the role of the press in a country like Uganda?

(b) To what extent has the press played that role between 1986-2000?

2. Has the Museveni Administration (1986-2000) been a good partner with the press?
3. Do you think the suspension of political party activities in Uganda at present is related to the degree of freedom of the press?
4. (a) Do you think the law relating to the press is conducive?
   (b) Why?
5. Which issues have you found off limits to reporting and fair comment between 1986-2000?
6. Has your arrest and prosecution affected you in your work?
   Explain.
7. In what ways do you think your arrest and prosecution have affected other journalists in the country?
8. Did you feel supported during your arrest and the subsequent court battles? By who?
9. What kind of support would you like to see extended to journalists in Uganda that have fallen victims of criminal law?
10. Do you generally feel encouraged to continue with your work as a journalist?

11. What in your view should be the best way to resolve conflicts between the state and the journalists?

APPENDIX II

(B) Human rights lawyers and politicians

1. What is the situation like today with regard to the law and its application towards the press?
2. Why do you think the Museveni regime has not reformed the law to free the press?
3. Do you think journalists and other people find certain issues off limits to reporting and fair comment in Uganda?
4. Do you think the situation the press in Uganda finds itself in with regard to the law is related to the suspension of political party activities?
5. What should be the role of the press in Uganda and how far has the press played that role since 1986?
6. How does the arrest and prosecution of journalists affect them in their work?
7. Of what assistance have you been to journalists who have been arrested because of their work?
8. What should be the best way to resolve conflicts between the state and the journalists?

APPENDIX III

(B) Government officials

1. Why does government still arrest and prosecute journalists because of their work?
2. Why has government not repealed laws like sedition, criminal libel and publication of false news that are considered anti press?
3. In the view of government, what is the role of the press and how has the press played that role since 1986?
4. Don't you think the frequent arrests and prosecution of journalists is a discouragement to them in their work and a disincentive to other people who want to become journalists?
5. Are criminal legal sanctions the best way for government to resolve their disagreement with the journalists?

APPENDIX IV

***FGDs* Guide**

1. What is the role of the press in a country like Uganda and how has the press played this role since 1986?
2. Do you think you have freedom as journalists and editors to do your work?
3. Are there certain issues that you often find you cannot report about or allow to appear in the columns?
4. Are you aware of provisions in the penal code that affect you as journalists
5. In doing your work, do you feel worried that you could be arrested for it?
6. Do arrests of journalists (and the prosecution) make you feel that journalism is risky and you should abandon it?
7. Do you think that journalists who get arrested for their work are given support by other journalists and the civil society?
8. How adequate is this support? Would you like to see it strengthened?
9. What in your view should be the best way to resolve conflicts between the state and the journalists?

APPENDIX V

Participants in FGDs

The New Vision

1. John Kakande
2. Didas Bakunzi
3. Kezio Musoke
4. Gilbert Awekofua
5. Gilbert Kadilo
6. Angel Lubowa
7. Lydia Mirembe
8. Ben Moses Illakut

The Monitor

1. Henry Bongyereirwe
2. Alex B. Atuhaire
3. James Tumusiime
4. Grace Rwomushana
5. Sylivia Jjuuko

UMWA

1. Christine Nabunya

2. Florence N. Sebutinde
3. Sanyu Namusaazi
4. Diana Nandaula
5. Sarah Nakibuuka