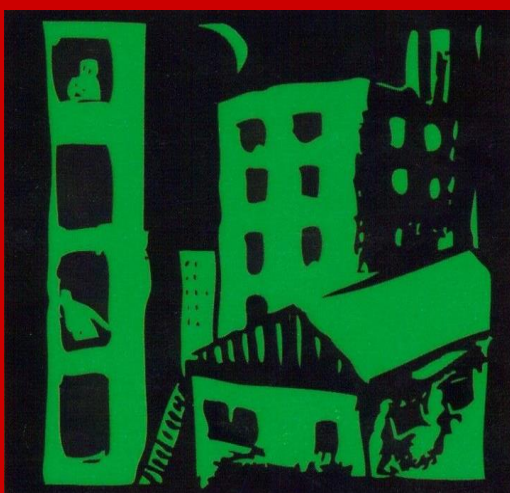


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**Regulator or
controller: a five-
year analysis of the
cat and mouse
games between the
Uganda
Communications
Commission and
broadcasters in
Uganda**

DANIEL MASUMBA WALYEMERA

*Postdoctoral Research Fellow,
Department of Criminal Justice and
Procedure, University of the Western
Cape, South Africa*

<https://orcid.org/0000-0003-4649-9030>

ABSTRACT

This article examines the conduct of the broadcasting regulator in Uganda. It considers whether the law governing the Uganda Communications Commission is in tandem with international human rights standards. This is in specific regard to media freedoms and other associated human rights. The major conclusion is that Uganda's broadcasting regime is ambiguous and is used as a tool to

facilitate partisan political interests. As a consequence, the said regime does not meet international human rights standards. The article recommends reform of the legal regime, including the operationalisation of the Uganda Communications Tribunal to curb the arbitrary directives of the Uganda Communications Commission to radio, television and online broadcasters in Uganda.

Keywords: Freedom of expression; media freedoms; broadcasting regime; broadcasting regulator; human rights violations; Uganda.

1 INTRODUCTION

The Uganda Communications Commission (UCC) is the main regulator of broadcasting services in Uganda.¹ The UCC was amalgamated with the Uganda Broadcasting Council in 2013.² Since then, the UCC has issued several directives that have affected media freedom in Uganda.³ These directives are allegedly based on the licensing conditions that are issued to online, radio and television broadcasters in Uganda. These licensing conditions require broadcasters to transmit content within the “minimum broadcasting standards” stipulated under sections 31 and 32 and schedule 4 of the Uganda Communications Act, 2013, as amended (UCC Act). The minimum standards refer to “satisfactory” content that should be aired to the general public.

The drafting of several provisions, including sections 5, 31, 32, 45 and 93 (1) and schedule 4 of the UCC Act, is overly broad and vague. As a result, the provisions can be subject to different interpretations by the regulator, broadcasters and the general public. This imprecision of the legal provisions may make it difficult for the broadcasters to know exactly what the “minimum broadcasting standards” are. As a consequence of the imprecision of the aforementioned legal provisions, the UCC directives are also issued without following the key tenets of natural justice. This makes the UCC “a complainant, a prosecutor and judge” in the same dispute.⁴ These challenges have further been exacerbated by the failure to establish the Uganda Communications Tribunal to handle communication disputes.⁵ The aforementioned provisions of Ugandan law therefore may not pass the justifiable limitations that are employed world-

¹ The UCC was initially established in 1997 by the Uganda Communications Act, Cap 106. This law split up the Uganda Posts and Telecommunications Company Limited into four entities, with the UCC as the regulator of the communications sector. With the amendment of the Uganda Communications Act in 2013, the UCC merged with the Broadcasting Council.

² See ss 4, 5, 29, 31, 32, 45 & 93 of the Uganda Communications Commission Act 1 of 2013 (UCC Act).

³ The UCC has consistently cited sec 31 of the UCC Act and schedule 4 that provides for minimum broadcasting standards.

⁴ See Principles 63 and 78 of the Bangalore Principles of Judicial Conduct., Also see *R v Bow Street Stipendiary Magistrate, Ex parte Augusto Pinochet Ugarte* (No 2) House of Lords United Kingdom [1991] 1 LRC 1. Also see Walyemera DM “Establish tribunal to curb arbitrary UCC directives” *Daily Monitor* 15 June 2020 available at <https://www.monitor.co.ug/uganda/oped/commentary/establish-tribunal-curb-arbitrary-ucc-directives-> (accessed 29 December 2020).

⁵ See s 60 of the UCC Act that established the Tribunal.

over to legitimately restrict freedom of expression and media freedom.⁶ This is so, because for a limitation to satisfy the principle of legality, it must enable a person of ordinary intelligence to know in advance what she or he must not do and the consequences of disobedience.⁷

This article is restricted to examining the conduct of the UCC from January 2015 to December 2020. Part 1 introduces the main argument of the article. Part 2 reviews the normative framework under which the UCC executes its mandate. Part 3 examines the international, regional and sub-regional legal frameworks governing media freedom and the justifiable limitations on free speech. The legal regime governing media freedom in Uganda is also examined in Part 3. Part 4 examines the conduct of the UCC in enforcing the broad and vague regime in regulating radio, television and online broadcasters in Uganda. Part 4 also explores the implications of the conduct of the UCC on media freedom. The recommendations are set out in Part 5. The detailed discussion follows hereunder.

2 MANDATE OF THE UGANDA COMMUNICATIONS COMMISSION

The UCC was established to enable one regulator to take charge of the communications sector in Uganda. Section 3(a) of the UCC Act indicates that the objectives of the law are to develop a modern communications sector by establishing one regulatory body for communications in accordance with international best practice.⁸

The mandate of the UCC is quite wide. For purposes of this article, the functions that relate to media freedoms are highlighted. They include the following: to implement the objectives of the UCC Act;⁹ to monitor, inspect, license, supervise, control and regulate communications services;¹⁰ to allocate, license, standardise and manage the use of the radio frequency spectrum resources in a manner that ensures the widest variety of programming and optimal utilisation of spectrum resources;¹¹ to set national standards and ensure compliance with national and international standards and obligations laid down by international communication agreements and treaties to which Uganda is a party;¹² to receive, investigate and arbitrate complaints relating to communications services, and take necessary action;¹³ to advise the Government on communications

⁶ See Art 19(3) of the International Covenant on Civil and Political Rights (ICCPR) of 1976. Also see General Comment 34 on Art 19 of the ICCPR. See further the Canadian Supreme Court case of *R v Oakes* (1986) ISCR 103; *Media Council of Tanzania & 2 others v. Attorney General of the United Republic of Tanzania*, Reference No 2/2017 EACJ (*Media Council of Tanzania* : (2017)).

⁷ See *Chimakure v Attorney General of Zimbabwe* 2013 (2) ZLR 466 (S) (*Chimakure* : (2013)).

⁸ Section 3(a) of the UCC Act.

⁹ Section 5(a) of the UCC Act.

¹⁰ Section 5(b) of the UCC Act.

¹¹ Section 5(c) of the UCC Act.

¹² Section 5(i) of the UCC Act.

¹³ Section 5(j) of the UCC Act.

policies and legislative measures in respect of providing and operating communications services;¹⁴ and to set standards, monitor and enforce compliance relating to content,¹⁵ among other functions.

Section 8 provides for the independence of the UCC in executing its mandate. Section 8 is, however, clawed-back by section 7 that provides that the UCC must obey the policy guidelines from the Information Minister in performing its functions. The independence of the UCC is further eroded by section 93(1) of the UCC Act, in terms of which the Minister is able to make regulations governing the broadcasting sector without the approval of Parliament.¹⁶ The Information Minister further has powers to solely appoint all the board members of the UCC. The criteria used to appoint and compose the UCC Board are not in tandem with Principle VIII of the Declaration of Principles on Freedom of Expression in Africa. The Declaration prescribes that a regulatory body exercising power in the broadcast and telecommunications sector, must be independent from political and economic influence of any person or authority. The Declaration further states that the appointment and composition of staff of the regulatory body must involve civil society and shall not be controlled by a political party, and that the body must be accountable to the public. In view of these provisions of the UCC Act, the Information Minister is in firm control of the UCC's affairs, as a political appointment of the President of Uganda.

2.1 Licensing of media houses

Part IV of the UCC Act provides for the licensing of radio and television stations. Perhaps it is important to highlight a few provisions that are relevant to this article. Section 21 of the UCC Act provides for the issuance of a licence by the UCC for radio communications. A person also shall not install or operate a radio or television station without a licence issued by the UCC.¹⁷ Section 26(5) criminalises operation of a radio or television station without a licence.¹⁸ Juuko points out that the broadcasters allege that the conditions upon which the broadcasting licences are granted are overly broad and vague.¹⁹ For example, with regard to licensing fees, there is no difference between the fees paid by commercial, community, urban or rural media stations.²⁰ The licences are granted and paid for annually, which may enable self-censorship of the media freedom of broadcasters.²¹ The licensing conditions are contrary to the provisions of General

¹⁴ Section 5(p) of the UCC Act.

¹⁵ Section 5(x) of the UCC Act.

¹⁶ This was an amendment effected in 2017. Before 2017, s 93(1) required the Minister to seek approval of regulations made before they were published as a statutory instrument.

¹⁷ Section 26 of the UCC Act.

¹⁸ Sections 27 & 28 that criminalise broadcasting without a licence.

¹⁹ Juuko FW *The 4th Estate: media freedoms and rights in Uganda* Kampala: Fountain Publishers (2015) at 59.

²⁰ See Juuko (2015) at 60.

Comment No 34 on Article 19 of the International Covenant on Civil and Political Rights (ICCPR) of the United Nations Human Rights Committee. Paragraph 39 of the General Comment states :

“States parties must avoid imposing onerous licensing conditions and fees on the broadcast media, including on community and commercial stations. The criteria for the application of such conditions and licence fees should be reasonable and objective, clear, transparent, non-discriminatory and otherwise in compliance with the Covenant.”²²

2.2 Minimum broadcasting standards

Section 31 of the UCC Act, which is often cited by the UCC when issuing directives to media houses, provides that “ [a] person shall not broadcast any programme unless the broadcast or programme complies with Schedule 4”. Schedule 4 details the minimum broadcasting standards as follows:

“A broadcaster or video operator shall ensure that—

- (a) any programme which is broadcast—
 - (i) is not contrary to public morality;
 - (ii) does not promote the culture of violence or ethnical prejudice among the public, especially the children and the youth;
 - (iii) in the case of a news broadcast, is free from distortion of facts;
 - (iv) is not likely to create public insecurity or violence;
 - (v) is in compliance with the existing law;
- (b) programmes that are broadcast are balanced to ensure harmony in such programmes;
- (c) adult-oriented programmes are appropriately scheduled;
- (d) where a programme that is broadcast is in respect to a contender for a public office, that each contender is given equal opportunity on such a programme;

²¹ See generally Juuko (2015).

²² See Concluding Observations on Gambia (CCPR/CO/75/GMB; Lebanon (CCPR/79/Add 106) para 23; Ukraine (CCPR/CO/73/UKR).

(e) where a broadcast relates to national security, the contents of the broadcast are verified before broadcasting.”²³

It is my considered view that the stated “minimum broadcasting standards” are couched in overly broad and vague terms. The UCC summons issued to the broadcasters on a regular basis, are also imprecise and drafted in general terms. This makes it difficult for the broadcasters to know what exactly it is that they have breached and what it is that the UCC is investigating about the content that they have broadcast.²⁴

2.3 Conditions and sanctions

The UCC Act contains a number of sanctions against radio and television stations including their staff. Some of the penalties provided for in the law, concerning this article, are the following. The UCC Act provides that a person who broadcasts without a licence issued by the UCC commits an offence and is liable on conviction to a fine not exceeding 25 currency points or imprisonment not exceeding one year or both.²⁵ One currency point under the UCC Act is 20 000 Uganda shillings.²⁶ The law also provides for penalties for unethical broadcasting standards by media houses.²⁷ It prescribes that the ethical broadcasting standards which apply to broadcasters are the professional code of ethics specified in the First Schedule to the Press and Journalists Act.

It is important to note that in *Centre for Public Interest Law, Human Rights Network for Journalists and East Africa Media Institute v Attorney General of Uganda*, a constitutional petition was filed challenging this code of ethics as restrictive and unconstitutional.²⁸ The key prayer in the petition was that the Press and Journalists Act²⁹ violates Article 29 of the Constitution of Uganda (Constitution).³⁰ The petition also made specific reference to the code of ethics that holds journalists liable for disseminating “incorrect or untrue” news or allegations and requires them to disclose their sources if there is “an overriding consideration of public interest”, as restrictive and compromising journalists’ ability to carry out their duties in a professional way. The United Nations Human Rights Committee has noted that “States parties should recognize and respect that element of the right of freedom of expression that embraces the limited journalistic privilege not to disclose information sources”.³¹ The

²³ Also see s 32 of the UCC Act that cross-refers to the Code of Conduct provided for under the first schedule of the Press and Journalists Act, Cap 105.

²⁴ See generally Walyemera (2020).

²⁵ Section 27 (2) of the UCC Act.

²⁶ Section 2 & schedule 1 of the UCC Act.

²⁷ Section 32 of the UCC Act.

²⁸ Constitutional Petition No 9 of 2014. The petition is yet to heard by the Constitutional Court.

²⁹ See Chapter 105.

³⁰ The Constitution of the Republic of Uganda, 1995 (as amended).

³¹ Paragraph 45 of General Comment No 34 on Art 19 of the ICCPR.

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arbitrariness of the said code of ethics is also found in section 32(2) of the UCC Act that empowers the UCC to modify the standards as it wishes.

Under section 41 of the UCC Act, the UCC may suspend or revoke the licence issued under the said law. In *MTN Uganda Ltd v Uganda Telecom Ltd*, the High Court held that “such licence once granted under section 41 of the UCA shall not be used for a purpose other than that for which it was issued”.³² If the licence is used in an improper manner, the UCC has powers to suspend or revoke it.³³ Section 44 of the UCC Act requires radio and television operators to file an annual report. The annual report must indicate to what extent the conditions under which the licence was issued were met for that particular year. The report must also indicate what operations and services were carried out in that year.

Section 60 provides for the establishment of a Uganda Communications Tribunal. It is headed by a judge and two other persons appointed by the President.³⁴ The mandate and powers of the Uganda Communications Tribunal are provided for in sections 64 and 65 of the UCC Act. The Tribunal shall have powers of the High Court and shall adjudicate all communication disputes arising from decisions of the UCC or the Information Minister.³⁵ The Uganda Communications Tribunal is yet to be established.³⁶ The absence of the Tribunal has led to arbitrary UCC directives to broadcasters, which the broadcasters can only challenge at the Uganda Communications Tribunal, which is not in operation. As a result of the absence of the Tribunal, matters filed in court challenging the decisions of the UCC or the Minister have been dismissed on the premise that the dispute should have been filed at the Uganda Communications Tribunal as was held in *Abdu Katuntu v MTN Uganda Ltd & others*.³⁷ The stated legal dilemma has enabled the UCC to act as “a complainant, prosecutor and judge” in the same dispute.³⁸ This violates the broadcaster’s constitutionally guaranteed rights to the presumption of innocence,³⁹ to be heard,⁴⁰ right to equality before and under the law,⁴¹ the rights of

³² *MTN Uganda Ltd v Uganda Telecom Ltd* (HCT-00-CC-CS-297-2008) [2011] UGCOMM 119 (28 April 2011).

³³ See s 41(4) of the UCC Act.

³⁴ Section 60(2) of the UCC Act.

³⁵ Sections 65(1) & 64(1) of the UCC Act.

³⁶ See Walyemera (2020).

³⁷ *Abdu Katuntu v MTN Uganda Ltd & others* (HCCS No 248 of 2012) [2015] UGCOMM 83 (29 May 2015); Anyoli E “Court dismisses application against UCC over social media” *New Vision*, 8 June, 2017 available at <https://www.newvision.co.ug/news/1455064/court-dismisses-application-ucc-social-media> (accessed 29 December 2020).

³⁸ See Principles 63 & 78 of the Bangalore Principles of Judicial Conduct. Also see *R v Bow Street Stipendiary Magistrate, Ex parte Augusto Pinochet Ugarte* (No 2) House of Lords United Kingdom [1991] 1 LRC 1.

³⁹ Article 28 (3) (a) of the Constitution.

⁴⁰ Article 44 (c) of the Constitution.

⁴¹ Article 21 (1) of the Constitution.

journalists to practise their profession, and the right to fair and just administrative decisions.⁴²

Part VIII of the UCC Act provides for circumstances under which the UCC may carry out investigations and inquiries, if there is a complaint against a licensee.⁴³ The Information Minister may make regulations governing the broadcasting sector in Uganda under section 93 of the UCC Act. Section 93(1) of the UCC Act required the Information Minister to consult with the UCC and seek the approval of Parliament before making and gazetting any regulations to govern the broadcasting sector. In 2017, section 93(1) of the UCC Act was amended, which removed the need for the Minister to seek parliamentary approval of any regulations made by the Minister. The Information Minister now can make regulations to govern the broadcasting sector in consultation with the UCC, but without the approval of Parliament. The amendment of section 93(1) has removed the ability of the public to participate through their elected political representatives in the making of regulations that have a significant impact on their freedom of expression.⁴⁴ In accordance with international human rights instruments, this amendment compromises the independence of the regulator and violates other international human rights standards.⁴⁵

3 INTERNATIONAL REGIME GOVERNING FREEDOM OF EXPRESSION

Freedom of expression is a foundational human right upon which a free and democratic society is grounded.⁴⁶ Consequently, this foundational right enables the enjoyment of other human rights.⁴⁷ These include the rights to freedom of association and to peaceful assembly;⁴⁸ to participate in public affairs;⁴⁹ to freedom of opinion and thought;⁵⁰ and of access to information;⁵¹ among other human rights.

The Universal Declaration on Human Rights, 1948 (UDHR)⁵² and the 1976 ICCPR⁵³ provide for this basic human right. The right to freedom of expression is not absolute.⁵⁴

⁴² Articles 40(2) and 42 of the Constitution.

⁴³ Sections 45, 46, 47 & 48 of the UCC Act.

⁴⁴ This is a violation of constitutional guarantees on public participation, as enshrined in Articles 1(4) and 38 of the Constitution. This amendment also violates several provisions of the Bill of Rights enshrined in Chap 4 of the Constitution.

⁴⁵ See Principle VII (1) of the Declaration of Principles on Freedom of Expression in Africa.

⁴⁶ Paragraph 2 of General Comment No 34 on Article 19 of the ICCPR.

⁴⁷ See General Comment No 25, United Nations Human Rights Committee.

⁴⁸ Paragraph 4 of General Comment No 34 on Article 19 of the ICCPR.

⁴⁹ See General Comment No 25, United Nations Human Rights Committee.

⁵⁰ Article 19(1) of the ICCPR.

⁵¹ Article 19 (2) of the ICCPR. Also see Art 41 of the Constitution.

⁵² Article 19 of the UDHR.

⁵³ Articles 19(1) & (2) of the ICCPR.

As is the case with several other human rights, the enjoyment of the right to freedom of expression may be lawfully restricted, provided the restrictions are justifiable and reasonable in a free and democratic society.⁵⁵

It is important at the outset to clarify that freedom of expression includes media freedom. General Comment No 34 categorises journalism as an element of the right to freedom of expression.⁵⁶ Broadcast journalism, which is the focus of this article, would include the airing of content to the public through the internet, radio or television. The discussion on the justifiable limitations of freedom of expression follow hereunder.

3.1 General and specific limitations of freedom of expression

Some human rights instruments are drafted in a manner that provides for general limitation clauses, while others provide for specific limitation clauses. Some of the human rights instruments providing for these limitations are, the UDHR and ICCPR, among others. With regard to the general limitation, the UDHR provides for a general limitation clause that states as follows:

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.”⁵⁷

The specific limitations are subject to conditions that are laid down by the law. These restrictions must be reasonable and justifiable in an open and democratic society. The ICCPR provides for specific limitation clauses to freedom of expression. Consequently, Article 19(3) of the ICCPR states:

“The exercise of the rights provided for in paragraph 2 of this article carries with its special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (order public), or of public health or morals.”

⁵⁴ See Art 19(3) of the ICCPR. Also see Art 9(2) of the ACHPR.

⁵⁵ See Art 43(2) (e) of the Constitution.

⁵⁶ See para 11 of General Comment No 34 on Article 19 of the ICCPR.

⁵⁷ Article 29(2) of the UDHR available at www.humanrights.com/what-are-human-rights/videos/responsibility.html (accessed 17 May 2018).

3.2 African regional framework

The African Charter on Human and Peoples' Rights (ACHPR⁵⁸ or African Charter) provides for the basic human right to freedom of expression.⁵⁹ Other regional human rights instruments also specify the right to freedom of expression.⁶⁰ In addition to the ACHPR, the other key human rights instrument is the Declaration of Principles on Freedom of Expression and Access to Information in Africa. This Declaration fortifies the fundamental position of the basic right to freedom of expression in the exercise of other human rights.⁶¹ The Declaration also emphasises that freedom of expression is a "fundamental and inalienable human right and indispensable component of democracy".⁶²

3.2.1 *General limitations under the African regional framework*

The ACHPR has a general limitation provision similar to that of the international framework. It stipulates that "the rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest".⁶³ Similarly, human rights may only be limited on the basis of the specific conditions prescribed in the applicable treaty. As stated in General Comment No 34, these grounds "may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets, and human rights"⁶⁴, and one can never justify an attack on any person seeking to exercise their right to freedom of expression, including forms of attack, such as, arbitrary arrest, torture, threats to life and killings.⁶⁵ The discussion of specific limitation clauses follows below.

3.2.2 *Specific Limitations to freedom of expression under the African Charter*

The ACHPR also provides for specific limitation clauses on freedom of expression. Article 9(2) of the ACHPR provides a much wider restriction than Article 19(3) of the ICCPR. It requires that freedom of expression is exercised "within the law".⁶⁶ It states: "Every individual shall have the right to express and disseminate his opinions within the

⁵⁸ Article 9(1) of the ACHPR.

⁵⁹ Article 9(1) of the ACHPR.

⁶⁰ See for example, Art 10 of the European Convention on Human Rights.

⁶¹ See Preamble para 1 of the Declaration.

⁶² See para 1 of the Declaration.

⁶³ Article 27(2) of the African Charter.

⁶⁴ General Comment 34 on Article 19 of the ICCPR, para 23.

⁶⁵ General Comment 34 on Article 19 of the ICCPR, para 23. See also *Njaru v Cameroun*, Communication No 1353/2005, where the Human Rights Committee found that the Applicant was entitled to an effective remedy and that the violations – including, of the Applicant's right to freedom of expression – should not occur again in the future.

⁶⁶ Also see Art 27 of the Vienna Convention on the Law of Treaties, which provides that a State Party cannot invoke provisions of its internal law, to avoid performance of its treaty obligations.

law.”⁶⁷ The challenge that remains for interpretation is whether the phrase “within the law” refers to domestic or international law. Fortunately, the African Commission on Human and Peoples’ Rights (African Commission) has resolved this dilemma. The African Commission in *Constitutional Rights Project & others v Nigeria*, has interpreted the phrase “within the law” to mean within international law and not domestic law.⁶⁸

3.3 The Oakes test

To be justified, any limitation of the right to freedom of expression must meet the three-part test.⁶⁹ First, it must be provided for in law. The United Nations Human Rights Committee states :

“The law must be publicly accessible and formulated with sufficient precision to enable the public to regulate their conduct accordingly. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.”⁷⁰

Secondly, it must pursue a legitimate aim. These legitimate aims include the reputation of others,⁷¹ national security⁷², and public health and morality.⁷³ In *Media Rights Agenda v Nigeria*, the African Commission held as follows:

“It is important for the conduct of public affairs that opinions critical of the government be judged according to whether they represent a real danger to national security. If the government thought that this particular article represented merely an insult towards it or the Head of State, a libel action would have been more appropriate than the seizure of the whole edition of the magazine before publication.”⁷⁴

Similarly, in *Free Press of Namibia v The Cabinet for the Interim Government of South Africa*⁷⁵ the Namibian High Court held : “Because people (or a section thereof) may hold their government in contempt does not mean that a situation exists which constitutes a

⁶⁷ Article 9(2) of the African Charter.

⁶⁸ *Constitutional Rights Project & others v. Nigeria* (2000) AHRLR 227 (ACHPR 1999).

⁶⁹ This is also known as the *Oakes Test*, after the famous Canadian case that established the principle.

⁷⁰ Paragraph 25 of General Comment No 34 on Article 19 of the ICCPR; also see General Comment No 27.

⁷¹ See Art 17 of the ICCPR. Also see Principle XII (1) of the Declaration on Principles of Freedom of Expression in Africa.

⁷² See Principles 2, 5, 6, 7, 15 & 16 of the Johannesburg Principles on National Security, Freedom of Expression and Access to Information (Johannesburg Principles). Also see Principle XIII (2) of the Declaration on Principles of Freedom of Expression in Africa.

⁷³ See General Comment No 22 on Article 18 of the ICCPR.

⁷⁴ *Media Rights Agenda v Nigeria* Communications No 105/93, 128/94 & 152/96.

⁷⁵ *Free Press of Namibia v The Cabinet for the Interim Government of South Africa* [1987] 4 All SA 63 (SWA) (*Free Press* : (1987)).

danger to the security of the state or to the maintenance of public order. In fact, to stifle just criticism could as likely lead to those undesirable situations.”⁷⁶

Thirdly, it must be necessary for a legitimate purpose.⁷⁷ To determine whether a limitation meets the standard, the courts have adopted a proportionality test. In *Marques de Morais v Angola*, the United Nations Human Rights Committee noted that the “requirement of necessity implies an element of proportionality, in the sense that the scope of the restriction, imposed on the freedom of expression must be proportional to the value which the restriction serves to protect”.⁷⁸ More recently, the East African Court of Justice (EACJ) in *Burundi Journalists Union v Attorney General of Burundi* held : “A government should not determine what ideas or information should be placed in the market place of information and if it restricts that right, the restriction must be proportionate and reasonable.”⁷⁹

In fact, a South African Court has noted that freedom of expression should shock, offend and disturb. In *Pienaar v Argus Printing and Publishing Company Ltd* ⁸⁰ a South African Judge held :

“Although conscious of the fact that I am venturing on what may be new ground, I think that the courts must not avoid the reality that in South Africa, political matters are usually discussed in forthright terms. Strong epithets are used and accusations come readily to the tongue. I think, too, that the public and readers of newspapers that debate political matters, are aware of this. How soon the audiences of political speakers would dwindle if the speakers were to use the tones, terms and expressions that one could expect from a lecturer at a meeting of the Ladies Agricultural Union on the subject of pruning roses!”⁸¹

Restrictions on the right to freedom of expression may not put the right itself in danger.⁸² Therefore, human rights cannot be limited in a way that would render the right itself irrelevant, as stated by the Zimbabwe Constitutional Court, in *Chimakure v Attorney General of Zimbabwe*.⁸³

⁷⁶ See generally *Free Press* (1987).

⁷⁷ See General Comment No 34 on Article 19 of the ICCPR.

⁷⁸ *Marques de Morais v Angola* Communication No 1128/2002.

⁷⁹ *Burundi Journalists Union v Attorney General of Burundi* Reference No 7/2013 EACJ (*Burundi Journalists Union* : (2013)).

⁸⁰ *Pienaar v Argus Printing and Publishing Company Ltd* 1956 (4) SA 310 (W) 318 (*Pienaar* : (1956)).

⁸¹ See *Pienaar* (1956).

⁸² See Art 5(1) of the ICCPR.

⁸³ *Chimakure* : (2013) at paras 14-13.

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Importantly, all restrictions and limitations shall be interpreted holistically, in the light and context of the particular right concerned.⁸⁴ Furthermore, it must be consistent with other rights recognised under the treaty in question and other international human rights instruments, as well as with the fundamental principles of universality, interdependence, equality and non-discrimination.⁸⁵ The burden of proving this rests on the State.⁸⁶ Wherever doubt exists as to the interpretation or scope of a law imposing limitations or restrictions, the protection of fundamental human rights shall be the prevailing consideration. Restrictions already established must be reviewed and their continued relevance analysed periodically.

The United Nations Human Rights Council highlighted certain categories of speech that ought not to be limited under Article 19(3) of the ICCPR. They include the following:

“(i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups; (ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship; (iii) Access to or use of information and communication technologies, including radio, television and the Internet.”⁸⁷

While, indeed, all speech can arguably be limited in accordance with provisions of the applicable limitation clauses, certain forms of speech, for instance, political speech, or matters relating to corruption or human rights issues, should be carefully guarded in the light of the important public interest role that they serve.⁸⁸

Jurisprudence has developed over time on the public interest role of certain forms of free speech at both international, regional and sub-regional forums. For example, the United Nations Human Rights Committee in *Mika Miha v Equatorial Guinea* held that the arrest and detention of the Applicant solely on the basis of his political activities and

⁸⁴ See Art 5(1) of the ICCPR. See also *R v Oakes* [1987] LRC (Const) 477 at 499-500 ; *Attorney General of Lesotho v Mopa* (C of A (CIV) 3/2002).

⁸⁵ See Arts 1 & 2 of the UDHR.

⁸⁶ See para 8 of General Comment No 34 on Art 19 of the ICCPR.

⁸⁷ United Nations Office of the High Commissioner for Human Rights. Resolution 2005/38 on the Right to Freedom of Opinion and Expression (2005).

⁸⁸ Paragraph 23 of General Comment 34 on Article 19 of the ICCPR. See also *Mukong v Cameroun* Communication No 458/91, where Cameroun argued that the Applicant was arrested and detained as a necessary safeguard for the national unity of the Respondent, as allowed under Art 19 of the ICCPR. The Human Rights Committee held that strengthening the national unity of the Respondent could not be achieved by preventing advocacy for multi-party democracy and human rights.

because of his membership of an opposition political party was a violation of his rights under Articles 19(1) & (2) of the ICCPR.⁸⁹ Similarly, the African Commission in *Amnesty International v Zambia* found that freedom of expression is a fundamental human right essential to an individual's personal development, political consciousness and participation in the public affairs of a country.⁹⁰ Furthermore, in *Kenneth Good v Botswana*⁹¹ the Court noted that "a higher degree of tolerance is expected when it is political speech and even higher threshold is required when it is directed towards the government and government officials".⁹²

3.4 Sub-regional protections of the right to free expression

The Treaty for the Establishment of the East African Community (EAC Treaty) includes amongst its fundamental principles, the principles of good governance.⁹³ These include democracy, the rule of law, accountability, transparency, and the rights contained in the ACHPR.⁹⁴ Uganda is a State Party to the EAC Treaty. Articles 6(d) and 7(2) of the EAC Treaty provide for States Parties to uphold the principles of democracy. One of the key tenets of a democratic society is media freedom. Recently, the EACJ relied on the EAC Treaty in upholding the right to freedom of expression in cases brought before it.⁹⁵

In *Burundi Journalists Union v Attorney General of Burundi*, the EACJ held that when States Parties are enacting laws, they must adhere to the principles enshrined in treaties that they have signed.⁹⁶ The EACJ also further explained as follows:

"Firstly, under Articles 6(d) and 7(2), the principles of democracy must of necessity include press freedom. Secondly, a free press goes hand in hand with principles of accountability and transparency which are also enshrined in articles 6(d) and 7(2). Thirdly, by acceding to the Treaty and based on our finding above that Articles 6(d) and 7(2) are justiciable, Partner States including Burundi, are obligated to abide and adhere by each of the fundamental and operational principles contained in Articles 6 and 7 of the Treaty and their National Laws must be enacted with that fact in mind."⁹⁷

⁸⁹ Communication No 414/1990.

⁹⁰ *Amnesty International v Zambia* (2000) AHRLR 325 (ACHPR 1999). Also see Art 20 of the ICCPR.

⁹¹ *Kenneth Good v Botswana* (2010) AHRLR 313 (ACHPR 2005) (*Kenneth Good* : (2010)).

⁹² See *Kenneth Good* (2010).

⁹³ Article 6(d) of the EAC Treaty.

⁹⁴ Article 6(d) of the EAC Treaty.

⁹⁵ *Burundi Journalists Union* : (2013).

⁹⁶ See *Burundi Journalists Union* (2013). See also Art 27 of the Vienna Convention on the Law of Treaties, 1968.

⁹⁷ See *Burundi Journalists Union* (2013) at page 31, paragraphs 82,83 & 84.

In the *Burundi Journalists Union* case the EACJ was reaffirming the principles of democracy enshrined in the EAC Treaty. Similarly, in *Media Council of Tanzania and 2 Others v Attorney General of the United Republic of Tanzania*, the EACJ cites the *Burundi Journalists Union* case with reference to the principles enshrined in Articles 6(d) and 7(2) of the EAC treaty.⁹⁸ In this *Media Council of Tanzania* case, the EACJ also adopted the three-part test set out in the *Oakes* case, to aid the resolution of the matter before the Court.⁹⁹

In brief, the above discussion captures the international, regional and sub-regional jurisprudence on the right to freedom of expression. Uganda, being a signatory to the ICCPR, the ACHPR and the EAC Treaty, ought to uphold these standards on this fundamental human right. The key question, however, is whether the UCC directives to radio, television and online broadcasters, and the law upon which they are based, meet these aforementioned human rights standards. The discussion on whether Uganda's broadcasting regime is compliant with international standards follows. This is further followed by the examination of other laws governing the broadcast media in Uganda.

3.5 Freedom of expression in Uganda

Uganda is a State Party to many international human rights instruments which provide the guidelines on how this fundamental human right may be restricted.¹⁰⁰ Uganda has ratified the ICCPR of 1995. It has also ratified the ACHPR of 1986. Uganda is a State Party to the EAC Treaty. Article 29 of the Constitution guarantees the right to freedom of expression of every individual.¹⁰¹ It, however, does not adequately provide for three limbs of the right to freedom of expression. These include the seeking, receiving and imparting of information and ideas through any media.¹⁰² Article 29 of the Constitution does not clearly provide for media freedom. It simply provides for "freedom of the press and other media".¹⁰³ The Constitutions of other African countries, such as, Kenya,¹⁰⁴ Ghana,¹⁰⁵ and South Africa¹⁰⁶, elaborately provide for this fundamental human right. The Supreme Court of Zimbabwe has held that the basic right to freedom of expression serves four major purposes in a society, as follows:

⁹⁸ *Media Council of Tanzania* : (2017).

⁹⁹ See *Media Council of Tanzania* : (2017).

¹⁰⁰ For example, Uganda is a State Party to the ICCPR which it ratified in June 1995. Uganda is also a State Party to the ICESCR, ratified in January 1987, among other key instruments.

¹⁰¹ Article 29(1) of the Constitution.

¹⁰² See Art 19(2) of the ICCPR. The 1962 and 1967 Constitutions of Uganda captured this three-limb provision, in the same manner as Art 19(2) of the ICCPR.

¹⁰³ See Art 29(1) (a) of the Constitution.

¹⁰⁴ See Arts 33 & 34 of the Constitution of Kenya, 2010.

¹⁰⁵ See Chap 12 of the Constitution of Ghana, 1992 (as amended).

¹⁰⁶ Section 16 of the Constitution of the Republic of South Africa, 1996.

- i. it helps an individual to obtain self-fulfilment;
- ii. it assists in the discovery of truth and in promoting political and social participation;
- iii. it strengthens the capacity of an individual to participate in decision making; and
- iv. it provides a mechanism by which it is possible to establish a reasonable balance between stability and change.¹⁰⁷

This basic human right, however, has had significant challenges since the promulgation of the 1995 Constitution.¹⁰⁸ Article 43 (2) of the Constitution states: “Public interest under this article shall not permit -... (c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution”. Article 43 (2) (c) is a general limitation clause. This general limitation clause was interpreted by both the Constitutional Court and the Supreme Court of Uganda.¹⁰⁹

3.6 Legal regime governing broadcast media in Uganda

In Uganda, regulation of the broadcast media is mainly through two major laws. The Uganda Broadcasting Corporation Act, 2005 (UBC Act) and the UCC Act.¹¹⁰ The UBC Act is generally concerned with providing a regulatory framework for public broadcasting in Uganda.¹¹¹ On the other hand, the UCC Act stipulates the broadcasting legal regime for any other form of broadcasting, apart from public broadcasting.¹¹² As public broadcasting is not the focus of this article, the examination of the others forms of broadcasting regulated by the UCC Act are considered.

An attempt at self-regulation of the broadcasting sector has been made through the establishment of the National Association of Broadcasters (NAB).¹¹³ Founded in 1999, the NAB has worked with the UCC to reprimand errant broadcast journalists from the sector.¹¹⁴ The NAB has however been accused by civil society of being an association of entrepreneurs who are more concerned about business profit than media freedoms.

¹⁰⁷ The Supreme Court of Zimbabwe, *Mark Giva Chavunduka & another v The Minister of Home Affairs & another* Supreme Court Civil Application No.156 (1999).

¹⁰⁸ See *Charles Onyango Obbo & Another v Attorney General* Constitutional Petition No. 15/1997, for a detailed treatment on the interpretation of the said constitutional provision.

¹⁰⁹ See *Charles Onyango Obbo & another v Attorney General* Constitutional Petition No 15/1997.

¹¹⁰ Provisions of The Press and Journalists Act are also cross-referenced to these two laws. A draft Broadcasting Policy was also drafted in 2005, but is yet to be approved by Government, 15 years later.

¹¹¹ The Uganda Broadcasting Corporation took over the assets of Radio Uganda that had over 10 radio stations and of Uganda Television (UTV) that had 2 television stations.

¹¹² This includes online services, radio stations, television stations and telecommunication services. See ss 4 & 5 of the UCC Act.

¹¹³ See the role of the NAB available at <https://nab.co.ug> (accessed 17 May 2021).

¹¹⁴ See the role of the NAB available at <https://nab.co.ug> (accessed 17 May 2021).

These challenges have further been exacerbated by the failure to establish the Uganda Communications Tribunal to handle communication disputes.¹¹⁵

4 CONDUCT OF THE UGANDA COMMUNICATIONS COMMISSION

For the last five years, the UCC has issued many directives to media houses that have stimulated public resentment and debate like the period under examination. This is partly because 2016 was a general election year. In 2015, candidates were gearing up to present themselves for political office in 2016. The subsequent events surrounding the constitutional amendments to remove the age limit to allow President Yoweri Museveni to rule Uganda without any constitutional limitations, also engaged the year 2017. For 2018 and 2019, the UCC directives concentrated on the political activities of The Honourable Robert Kyagulanyi.¹¹⁶ Due to the COVID-19 pandemic in 2020, fewer UCC directives were issued to broadcasters due to the fact that for about four months Uganda was under a public health lockdown. A sample of UCC directives to online broadcasters and media houses have been retrieved for the period under examination. They are examined below.

In 2015, the UCC issued numerous directives to media houses. We shall sample a few considering the directives seem to be couched in similar language. In March 2015, the UCC ordered radio and television stations to boost the live coverage of President Museveni, who was soon to contest for the presidency of the country, as a candidate in the general elections in 2016.¹¹⁷ The UCC told local broadcasters that they were subject to “licensing conditions issued by the commission, whereby all broadcast stations are expected to provide live coverage of major national events and addresses” by the President. The directive also ordered the compulsory live coverage that included the “pronouncements of natural emergency or disaster, security threats or any event ... that necessitates the entire public to have simultaneous access to information”. The UCC also threatened that any radio or television station that would not observe this directive, would be penalised.¹¹⁸

In February 2016, the UCC issued a warning to media houses indicating that it was watching the situation closely. This was a few days before the polling day for the general elections. The UCC subsequently switched off social media and other social communication platforms. Mobile Telephone Network Uganda (MTN Uganda) confirmed that they had been instructed by the regulator to block access for security

¹¹⁶ The Honorable Robert Kyagulanyi, also known as “Bobi Wine” in musical circles, is a Member of Parliament in the Ugandan National Assembly. He has presented a significant threat to Museveni’s hold on power recently. He is the leading opposition candidate in the 2021 presidential elections in Uganda.

¹¹⁷ Available at www.theeastafrican.co.ke/news (accessed 5 January 2018).

¹¹⁸ Available at www.theeastafrican.co.ke/news (accessed 5 January 2018).

reasons.¹¹⁹ President Museveni declared it a necessary measure to stop people from using the platforms to tell “lies”.¹²⁰ The UCC subsequently apologised on 23 February 2016 for any inconvenience caused to Ugandans in a post on its Facebook page. MTN Uganda, however, stated that their decision was in accordance with the UCC Act.

In March 2017, the UCC directed all television broadcasters to stop using images of dead bodies of the late Assistant Inspector General of Police, Andrew Felix Kaweesi, his late bodyguard and driver. The UCC argued that such broadcasts were sensational and unnecessarily alarmist.

On 26 September 2017, the UCC issued a general directive on live broadcasts.¹²¹ This was a period when the Presidential Age Limit Bill was about to be tabled in the Ugandan Parliament. The UCC claimed that broadcasting operators were “relaying live broadcasts which are inciting the public, discriminating, stirring up hatred, promoting a culture of violence amongst the viewers”.¹²² The UCC stated that the said live broadcasts were likely to create public insecurity or violence. UCC also warned that any broadcaster that would disobey its directive on live broadcasts on what was happening in Parliament would have its licence suspended and revoked.

To crown the year 2017, on 22 December, the UCC ordered all radio and television stations to air President Museveni’s 2018 New Year message.¹²³ They were also required to run advertisements about the New Year message prior to its live coverage. This was to be done for free with no payment whatsoever from government to the media houses. When complaints intensified on why broadcasters were being forced to air the President’s New Year message by the UCC, the “regulator” issued a public warning to all broadcasters, a few days later.¹²⁴ The UCC indicated with “concern that despite the various engagements and warnings, some broadcasters have continued to breach the minimum broadcasting standards”.¹²⁵ The UCC strictly warned broadcasters to adhere to and comply with the minimum broadcasting standards and all the laws of Uganda, failure which, the UCC would invoke regulatory sanctions including criminal proceedings against the broadcasters.¹²⁶ The UCC with that warning and threat of criminal proceedings managed to achieve its objective of having all media stations

¹¹⁹ Available at www.unwantedwitness.or.ug/wp/content/uploads/2016/uganda-internet-freedom-report-2016.pdf (accessed 5 January 2018).

¹²⁰ Available at www.unwantedwitness.or.ug/wp/content/uploads/2016/uganda-internet-freedom-report-2016.pdf (accessed 5 January 2018).

¹²¹ See UCC Notice referenced LA/181.

¹²² UCC Notice referenced LA/181.

¹²³ New Vision “Radios, TVs to air President’s New Year message” *New Vision* 28 December 2017.

¹²⁴ A UCC Public Notice on page 34 of the *New Vision* newspaper dated 29 December 2017.

¹²⁵ A UCC Public Notice on page 34 of the *New Vision* newspaper dated 29 December 2017.

¹²⁶ A UCC Public Notice on page 34 of the *New Vision* newspaper dated 29 December 2017.

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provide free, simultaneous live coverage for President Museveni's 2018 New Year message.

In March 2018, the UCC issued new licensing requirements for online publishers and threatened to block those that did not fulfil the new licensing requirements in time.¹²⁷ In June 2018, the government introduced a daily payment of a social media tax. The Uganda Government justified the introduction of this tax as a way to curb "gossip" online and improve Uganda's tax revenues.

The UCC suspended the website of the *Daily Monitor* newspaper for allegedly publishing fake news in February 2019.¹²⁸ This followed a story on the *Daily Monitor* website that accused the Speaker of the Ugandan Parliament of involvement in witchcraft.¹²⁹ Subsequently, the UCC on several occasions reprimanded or closed any radio stations that hosted key opposition politicians.¹³⁰ The radio stations that were switched off air by the UCC for hosting key opposition politicians include Mubende FM Radio, Hope Radio in Kabale District, Kiira FM in Jinja District, among other media houses.¹³¹ Earlier, the UCC had ordered all media houses not to host any key opposition politician.¹³²

In May 2019, NBS aired live proceedings of the arrest of Kyadondo East Member of Parliament, The Honourable Robert Kyagulanyi. A few days later, the UCC directed NBS Television to suspend all the journalists who were involved in the live coverage of Robert Kyagulanyi.¹³³ The UCC subsequently directed the suspension of 39 journalists from 13 media houses for allegedly airing live proceedings of The Honourable Kyagulanyi's arrest.¹³⁴ As result of the UCC's actions, several civil society organisations petitioned the court which ordered a stay of execution of the journalists' suspensions.¹³⁵

¹²⁷ Available at <https://freedomhouse.org/report/freedom-net/Uganda> (accessed 18 May 2021).

¹²⁸ Kisekka JI "UCC suspends Daily Monitor website over fake news" available at <https://dignited.com> (accessed 27 June 2019).

¹²⁹ Kisekka JI "UCC suspends Daily Monitor website over fake news" available at <https://dignited.com> (accessed 27 June 2019).

¹³⁰ Some of the leading opposition figures whose civic rights have been violated include Dr Kizza Besigye and The Honourable Robert Kyagulanyi .

¹³¹ See URN "Hope Radio switched off after hosting Besigye" *The Observer* 5 April, 2019; Daily Monitor "Lira Radio stations stopped from hosting Besigye" *Daily Monitor* 11 April, 2019. "UCC to close all media houses hosting Bobi Wine" available at <https://www.Pearlposts.com> (accessed 27 June 2019).

¹³² See URN "Hope Radio switched off after hosting Besigye," *The Observer*, 5 April, 2019; Daily Monitor, "Lira Radio stations stopped from hosting Besigye" Sunday April, 2019. "UCC to close all media houses hosting Bobi Wine" available at <https://www.Pearlposts.com> (accessed 27 June 2019).

¹³³ Draku F "Bobi Wine coverage: UCC directs NBS TV to suspend staff" *Daily Monitor*, 1 May 2019.

¹³⁴ The Observer, "Bobi Wine: UCC orders suspension of 39 journalists at 13 media houses," 1 May 2019.

¹³⁵ Justice Lydia Mugambe recently issued an order staying the journalists' suspensions until the matters they had filed in court are heard. The petition is to be heard on 8 October 2019.

In June 2020, the Electoral Commission announced that due to the COVID-19 pandemic, political campaign rallies for the 2021 general elections would only be conducted on radio, television, the Internet and by telephone.¹³⁶ The “scientific” elections were challenged in court on the basis that the penetration of radio, television, Internet and telephone services in the country was insufficient to enable meaningful public participation in the digital political campaigns.¹³⁷ Two months later, in September 2020, the UCC reminded news websites and online broadcasters to register by paying annual licence fees to the UCC.¹³⁸ It was a reminder of an earlier directive issued by the UCC in March 2018.¹³⁹ In the 2018 directive to online content providers, it threatened to direct Internet service providers to block news websites and online broadcasters. The UCC threat was however not enforced. The online broadcasters argued that the intention of the UCC’s directive was to police their online content for any evidence of critical political views of the Ugandan government. As a result of the policing, the UCC would be able to regulate alternative political views, the broadcasters stated.¹⁴⁰

As a result of this UCC directive to news websites and online broadcasters, civil society organisations in defence of media freedom filed a constitutional petition against the UCC and the Government of Uganda, in the Constitutional Court. In *Unwanted Witness v Uganda Communications Commission & another*, the petitioner argued that the UCC directives were in contravention of several constitutional guarantees, including freedom of expression as provided in article 29(1) of the 1995 Constitution.¹⁴¹ The petition is pending before the Constitutional Court.

In December 2020 in a letter to Google Incorporated, the UCC demanded that 14 YouTube channels be removed from their platform for airing content that was in violation of the UCC Act.¹⁴² The violations allegedly included inciting violence and compromising national security.¹⁴³ Google Incorporated through their Africa Head of Communication and Public Affairs, Dorothy Ooko, declined to remove or block the

¹³⁶ Museveni later christened them “scientific” elections at one of his addresses to the country.

¹³⁷ BBC Media Action Uganda *Media Landscape Report* (2019) 2, available at <https://www.communityengagementhub.org/wp-content/uploads/sites/2/2019/09/Uganda-Media-Landscape-report-BBC-Media-Action-February-2019.pdf> (accessed 6 May 2020).

¹³⁸ Mpubani R & Muhindo C “UCC’s latest directive on online content producer registration arrives with a shadow” September 9, 2020 available at <https://acme-ug-org/2020/09/09/op-ed-uccs-latest-directive-on-line-content-producer-registration-arrives-with-a-shadow/> (accessed 2 January 2021).

¹³⁹ See Mpubani & Muhindo (2020).

¹⁴⁰ See Mpubani & Muhindo (2020).

¹⁴¹ *Unwanted Witness v Uganda Communications Commission & another* Constitutional Petition No 5 of 2019.

¹⁴² See ss 2, 4, 6, 8(2), 27 & 45 of the UCC Act, that were cited in the UCC letter to Google Incorporated. The 14 YouTube channels included Uganda Map Mediya TV, Empya, Bobi Wine 2021, Ghetto TV, among others.

¹⁴³ Uganda Communications Commission letter referenced LA/299 and dated 9 December 2020.

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stipulated YouTube channels. Google Incorporated stated that unless the UCC produced a court order to confirm the claims they were making against the online broadcasters, the channels would not be censored.¹⁴⁴ Google went further to verify the YouTube channels. What can clearly be discerned about the 14 YouTube channels, is that they were transmitting political content that was critiquing the deteriorating standards of governance in Uganda.¹⁴⁵ The United Nations Human Rights Committee has noted as follows:

“Any restrictions on the operation of websites, blogs or any internet-based electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3. Permissible restrictions generally should be content specific; generic bans on operation of certain sites and systems are not compatible with paragraph 3. It is inconsistent with paragraph 3 to prohibit a site or an information dissemination platform from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.”¹⁴⁶

In regard to registration of websites and online broadcasters, the United Nations Human Rights Committee has further stated that “[j]ournalism is a shared function by a wide range of actors, including professional full-time reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere, and general systems of registration or licensing of journalists are incompatible with paragraph 3”.¹⁴⁷

The thread that can noticeably be gleaned from the conduct of the UCC for the 5-year period under review, is that the provisions under which the UCC is carrying out its mandate are not precisely drafted. This allows the broadcast regulator a lot of discretionary power, which can be used to muzzle the plurality of social, economic and political views in society. As result of this discretionary power, the UCC directives and summonses are also incomprehensible to the broadcasters who ought to obey them. As a consequence, they are incompatible with international human rights standards.

4.1 Implications of the UCC’s conduct on media freedoms

¹⁴⁴ The Independent “Google tells Uganda to go to Court” *The Independent*, December 16, 2020, available at <https://www.independent.co.ug/google-tells-uganda-to-go-to-court/> (accessed 2 January 2020).

¹⁴⁵ A sample of the channels is available at <https://www.youtube.com/channel/UCJ2183KypuYXMRK17i4glUA>, (accessed 3 January 2020). <https://www.youtube.com/channel/UCr5s4heqGLAcU6RCkdbdIZAw> (accessed 3 January 2020).

¹⁴⁶ See para 43 of General Comment No 34 on Art 19 of the ICCPR. Also see UN Human Rights Committee’s Concluding Observations on the Syrian Arab Republic (CCPR/CC/84/SYR).

¹⁴⁷ Paragraph 44 of General Comment No 34 on Art 19 of the ICCPR.

One of the immediate implications of the UCC's conduct is self-censorship by the media houses themselves. The owners of these media houses have invested their resources and therefore would not want their businesses jeopardised by suspension or revocation of licences for minor altercations with the government of the day. The most likely outcome is that they will ask the journalists working at their media stations not to antagonise any government officials or government to enable their businesses to operate smoothly.

The other implication of the conduct of the government agency is that it can lead to a loss of employment for journalists where the UCC orders the immediate suspension and/or sacking of presenters or producers. More importantly, however, in cases where the broadcaster's licence is revoked a large number of journalists and other citizens working for that particular broadcaster will be out of employment and lose a source of livelihood.¹⁴⁸ The stated scenario can not only lead to unemployment, but also a loss of investment incentives for investors who may avoid investing in such businesses because of the arbitrary conduct of a regulatory body. This may, as a result, lead to a reduction in tax revenue collected by government.

The government as a result of the inadequate collection of tax revenue will be hard-pressed to provide social services to the citizens. Subsequently, this may lead to violence, public insecurity and national insecurity, the purported challenges the UCC is trying to prevent, as citizens demand social services from government.

The suppression of media freedoms is a violation of fundamental human rights. Not only is the right to freedom of expression violated but other human rights associated with this fundamental right are curtailed. These include the right to participate in public affairs, voting rights and the right to equal access to public services.¹⁴⁹ It is also important to note that the violation of media freedoms may also lead to political instability in the long term. This will obviously manifest because citizens are unable to inform government about their grievances due to the reduced civic space for the citizen – State engagement.¹⁵⁰

5 RECOMMENDATIONS

There is need for a capacity building and advocacy strategy to facilitate the building of a critical mass of key stakeholders as media proprietors, journalists, civil society activists, parliamentarians and ordinary citizens to boost the civic efforts against the regulatory framework under which the UCC is administering the broadcasting sector in Uganda.

¹⁴⁸ The most recent case is the closure of the *Red Pepper* newspaper including its related publications and radio station. This was even when the other publications and radio station were not involved in "treason charges" that were read to the *Red Pepper* newspaper editors at Buganda Road Court.

¹⁴⁹ See Arts 1(4) & 38 of the 1995 Constitution. Also see the Bill of Rights enshrined under Chap 4 of the 1995 Constitution.

¹⁵⁰ See *Free Press* : (1987).

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This is urged with a view to amending the overly broad and vague legal provisions within the broadcasting regime. The provisions of the code of conduct for journalists in the Press and Journalists Act need to be amended, to comply with international human rights standards. These processes will enable a precise drafting of the broadcasting law. The precise drafting will definitely lead to precise interpretation by ordinary citizens, broadcasters and the UCC. This will enhance media freedom in Uganda.

The broadcast licences should be granted for a much longer period than one year. This will enable the broadcasters to execute their role in society in a more professional manner without the threat of denial of a licence by the UCC. The suspension and revocation of a licence of a broadcaster under section 41 of the UCC Act, should also only be made after due process before a court of law.

There is an urgent need to establish and operationalise the Uganda Communications Tribunal to handle communication disputes, as envisaged by the law under sections 60, 64 and 65 of the UCC Act. This will drastically reduce the arbitrary manner in which the UCC handles disputes between itself and the broadcasters. As a consequence, the establishment and operationalisation of the Uganda Communications Tribunal will enable the establishment of fair trial procedures, which will significantly reduce the violation of media freedoms in Uganda.

A law reform strategy should be crafted and implemented by all the key stakeholders. This law reform strategy should take place in tandem with international human rights standards and should involve as many legislators as possible to limit detractors from bastardising provisions of a reform Bill when it is tabled before the committee stages of Parliament for scrutiny. The sponsoring of a private member's Bill should also be explored as a viable law reform strategy. The only challenge that a private member's Bill may meet is the procurement of a certificate of financial implication from the Ministry of Finance. Such a certificate is a major challenge to private member Bills that are usually intended to democratise the civic space and to curtail the arbitrary authority of government. This is so because the Government may not allow the amendments to the UCC Act to proceed, considering that the current broadcasting regime may be facilitating its suppression of citizens' alternative political views.

As a last resort, if all the indicated cumulative strategies fail to yield law reform of the broadcasting environment, the stakeholders have to pursue strategic public interest litigation at domestic, sub-regional, regional and international levels. This litigation strategy should also be carried out in an incremental manner, with the strategic litigation commencing at national level.

6 CONCLUSION

It has been shown that the normative framework of the broadcasting regulator is shrouded with overly broad and vague legal provisions. These provisions are arbitrarily enforced against broadcasters and create disputes. These disputes between the UCC and broadcasters cannot be legally resolved due to the absence of the Uganda Communications Tribunal. The operationalisation of the Uganda Communications Tribunal would enable a resolution of disputes between the regulator and the broadcasters in a manner that observes the rules of natural justice and international human rights standards.¹⁵¹ The discussion above shows that the conduct and practices of the UCC, as a broadcasting regulator, are aimed at controlling rather than regulating the sector. The UCC consequently is not enforcing its mandate within the justifiable limitations allowed by the law.

¹⁵¹ See Art 19 of the UDHR; Art 19 of the ICCPR; Art 9 of ACHPR and Art 6(d) of the EAC Treaty. Also see General Comment 34 on Article 19 of the United Nations Human Rights Committee and The Declaration on Principles of Freedom of Expression in Africa. Further see UNESCO's Guidelines for Broadcasting Regulation available at <https://www.unesco.org> (accessed 17 May 2021).

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