

**Uganda's compliance with its legal obligations with regard to freedom of speech and expression: Challenges and prospects**

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## **Abbreviations**

NRM	National Resistance Movement
UDHR	Universal Declaration on Human Rights
ACPHR	The African Charter on Human and Peoples' Rights
ICCPR	International Covenant on Civil and Political Rights
NGOs	Non- Governmental Organizations
UPR	Universal Periodic Review
HRW	Human Rights Watch
HRC	Human Rights Council
UN	United Nations
CBS	Central Broad Casting
EHARD	Africa Human Rights Defenders Network
A4C	Activists for Change
WWII	World War II
OHCHR	The United Nations, Office of the High Commissioner for Human Rights
BC	Broadcasting Council
UCC	Uganda Communications Commission
OSCE	Organization for Security and Co-operation in Europe
OAS	Organization of the American States
MPs	Members of Parliament
AG	Attorney General
ECHR	The European Convention on Human Rights
ACHR	The American Convention on Human Rights
IHL	International Human Rights Law
FDC	Forum for Democratic Change
VoA	Voice of America
DPP	Director of Public Prosecutions

UNESCO	The United Nations Educational, Scientific and Cultural Organization
CRPD	Convention on the Rights of Persons with Disabilities
PWDs	Persons with Disabilities
POSIB	Protection of State Information Bill
RPA	Radio Publique Africaine

# 1 CHAPTER ONE

## 1.1 Introduction

## 1.2 Background of the Study

Freedom of speech can serve a multitude of functions: dissemination of information; expression of the will of the people and general ideas.<sup>1</sup> One of the most disputed areas in contemporary human rights law is that of freedom of expression which begs a question; how far does this right extend particularly when threats to national security exist?<sup>2</sup> When freedom of expression or free speech provisions are contained in bills of rights or charters of rights, it is clear that these are rights are entitled to some protection from government interference.<sup>3</sup> So, what is the scope of freedom of expression or free speech? Written constitutions and bills of rights invariably protect freedom of speech as one of the fundamental liberties guaranteed against state suppression or regulation.<sup>4</sup> Barendt found out that the philosophical and political arguments about the justifications for a free speech principle are on this approach highly relevant to constitutional interpretation.<sup>5</sup> Freedom of expression is necessary for the attainment of truth, individual fulfillment, maintaining balance between stability and change in society and for successful functioning of the society.<sup>6</sup> Freedom of expression and free speech has limitations and restrictions. Subject to paragraph 2, Art. 10 of the European Convention on Human Rights (ECHR),

it is applicable not only to information or ideas that are favorably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any other sector of the population.

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All websites were last accessed on 13 May 2016.

1 Rhona, S (2012) *International Human Rights*, 5th ed. Oxford, University Press, pg 302

2 Claude E (1998)- Hein online (<http://heinonline.org>)

3 Barendt, E. (2007) *Why Protect Free Speech-Freedom of speech*. 2nd ed. Oxford University Press, 201, pp.1-40

4 Barendt, E. (2007), p.1

5 Barendt, E. (2007), p.1

6 Sorabjee, Soli K (1993), *Freedom of expression*; *Commonwealth Law Bulletin*, pg 1712

Therefore, any formality, condition, restriction or penalty imposed must be proportionate to the legitimate aim pursued.<sup>7</sup> In *Handyside v. the United Kingdom* judgement of December 1976 § 49, the court stated that – tolerance and respect for equal dignity of all human beings constitute the foundations of a democratic and pluralistic society. Hence, it may be considered necessary in certain democratic societies to sanction or even prevent all forms of expression which spread, incite, promote or justify hatred based on intolerance..., provided that any formalities, conditions, restrictions or penalties imposed are proportionate to the legitimate aim pursued.<sup>8</sup>In *Surek (no.1) v. Turkey* 1999 (Grand Chamber), the applicant published two readers’ letters vehemently condemning the military actions of the authorities in their struggle for independence and freedom. The applicant was convicted of – disseminating propaganda against the indivisibility of the State and provoking enmity and hatred among the people. The Court held that there had been no violation of Art.10 (freedom of expression). The Court noted that the impugned letters amounted to an appeal to bloody revenge and that one of them had identified persons by name, stirred up hatred for them to the possible risk of physical violence. The above two case show conditions in which the right to free speech and expression can be checked under the international law.

Uganda is a country in the sub-Saharan Africa situated in the Lake Victoria basin. The country borders Rwanda, Tanzania, Kenya, Sudan and the Democratic Republic of Congo. The 2006 election in Uganda was the first in 25 years in which multiple parties were permitted to compete following the referendum in 2005 that changed the one party system. However, the government’s tolerance for political expression and competition was limited.<sup>9</sup> Uganda had a single party under, one leadership since 1986 when the National Resistance Movement (NRM) party came into power under the leadership of Yoweri K. Museveni now president. The country now has a multi party system in place.

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7 Hate speech (2016)European Courts on Human Rights, Pg 1

8 Hate speech (2016)European Courts on Human Rights

9 Democracy Web (2010) available at [democracyweb.org/expression/Uganda](http://democracyweb.org/expression/Uganda)



Uganda's presidents have always been aware of the dangers of a 'hostile' press. In the 1960's, Milton Obote told the nation that: since the constitution purposely provided for press freedom in order that this freedom could serve the interests of the people as a whole, if any newspaper adopted an anti-Ugandan attitude (and) created division all in the name of the press freedom, such publications were unconstitutional.<sup>10</sup>

I will analyze the interaction between the Ugandan authorities and journalists and the media and assess whether and to what extent Uganda is complying with its legal obligations with regard to freedom of speech. There is need to establish what the state of freedom of speech and expression is in Uganda. The investigation on the interaction of all these various elements will help in informing us on whether or not the state of freedom of speech is largely respected according to law in place or not.

East Africa faces the same problem at the regional level. At least 13 journalists were killed in the Eastern Africa in 2013. This high-lights the gravity of the situation by referring to a number of cases of human rights violations against journalists and media outlets across East Africa. The report on the status of freedom of expression in East Africa 2013 added that the killing of journalists is the ultimate form of censorship and a severe blow to democracy as emphasized by Henry Maina, Director of Article 19 East Africa. The East African report compiles data about Tanzania, Kenya, Uganda and Rwanda.<sup>11</sup>

Ifex is a global network that deals with the defending and promoting free expression. Ifex report (2015) showed the review of the prosecution's evidence in a mass trial of 51 alleged supporters of Egypt's Muslim Brotherhood showed that the government presented no evidence of criminal behavior besides the testimony of one police officer. The Ifex report further highlights that on April 11th, 2015, an Egyptian judge convicted and sentenced 37 people to life in prison and confirmed the death penalties of 14 others for their alleged roles

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10 Bernard Tabaire (2007) The press and Political Repression in Uganda: Back to the Future?, Journal of the East African studies. Pg 207

11 Report on the status of Freedom of Expression in East Africa (2013), (<https://ejournalistdefencenetwork.org/News-and-Highlights/report-on-status-of-freedom-of-expression-in-eastern-africa.html>)

in organizing opposition to the military's removal of former president Mohamed Morsy in July 2013.<sup>12</sup> Further more, the Ifex report adds that the charges ranged from publishing false news to conspiring to overthrow the interim government. However, Human Rights Watch (HRW) shows that the state presented little evidence that the defendants did anything but spread news about mass sit in-in opposing the coup or organize and publicize peaceful opposition to Morsy's removal.<sup>13</sup> "The fact that people who covered and publicized the mass killings in 2013 could go to prison for life or be executed while the killers walk free, captures the abject politicization of justice," said Joe Stock, deputy Middle East and North Africa director of HRW.<sup>14</sup>

At a global level, there is evidence which shows that freedom of speech and expression has its own problems as shown by statistics. A report from Freedom of the Press shows the global picture. It shows that out of 197 countries and territories that were assessed during 2013, a total of 63 (32 percent) were rated free and 70 (36 percent) were rated not free. This is compared with edition covering 2011 where 66 were rated as Free, 72, Partly Free, and 59 Not Free.<sup>15</sup> Therefore, using the statistics provided and comparing the state of freedom of expression in the 2011 and 2013, a deterioration in those countries rated free had reduced from 66 in 2011 to 63 in 2013. That showed a decline in the two years differenc. In addition, the same source sites countries like Brazil, Ecuador, Cambodia, Maldives, Thailand, Nepal, Sri Lanka, Russia, Taiwan, Ukraine and Hungary showing varying reductions in points in terms of rating these states in regard to the freedom of expression situation in their countries.<sup>16</sup> The general situation with regard to the right to freedom of expression in Africa has been on the decline especially in the Northern part of Africa which was characterized by a number of so-called Arab spring-where several

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12 ifex: The global network, Defending and promoting free expression (2015)

([https://www.ifex.org/egypt/2015/04/20/life\\_sentences\\_death\\_penalties/](https://www.ifex.org/egypt/2015/04/20/life_sentences_death_penalties/))

13 ifex: The global network, Defending and promoting free expression (2015)

14 ifex: The global network, Defending and promoting free expression (2015)

15 Freedom House-freedom of the Press (2013) available at [freedom house.org](http://freedomhouse.org) p. 3

16 Freedom House-freedom of the Press (2013) available at [freedom house.org](http://freedomhouse.org) p.5-7

authoritarian governments were challenged. These uprisings have included countries like Tunisia, Egypt, Mali, and Guinea-Bissau in the Sub-Saharan Africa.<sup>17</sup> This trend shows that there is a serious violation of the right to freedom of Expression in most countries as outlined above. The Freedom of the Press 2014 report suggests that global press freedom has fallen to its lowest level in over a decade, according to the latest Freedom House's press freedom survey. According to the Freedom of the Press report, this was driven by major regression in several Middle Eastern countries; countries of Eastern Africa and deterioration in the relatively open media environment of the United States.<sup>18</sup>

### **1.3 Legal frame work on freedom of speech and expression**

This thesis will focus on major international human rights instruments and the main domestic legal sources concerning freedom of expression in Uganda. The main international legal instruments include; the 1948 Universal Declaration on Human Rights (Article 19), the 1966 ICCPR (Articles 19 (1&2)) and the 1981 African Charter on Human Peoples' Rights (ACPHR) (Art.9).

The main domestic local sources include; the Constitution of Uganda (Art.29), The Press and Journalist Act 1995, Uganda Chapter 105 and The Electronic Media Act 1996 (Chapter 104). These are core legal texts which need to be taken into account in the scope of freedom of speech and expression in Uganda.

### **1.4 Statement of the problem**

In this thesis, I will analyze the interaction between the Ugandan authorities and journalists and the media and find out how Uganda is complying with its legal obligations with regard to freedom of speech. This thesis aims to establish what the state of freedom of speech and expression is in Uganda. This can be found out by setting an inquiry into the following themes; whether or not the Ugandan domestic legal framework is in conformity with the International legal standards of human rights instruments to which Uganda is a party to;

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17 Freedom House-freedom of the Press (2013) available at [freedom.house.org](http://freedom.house.org) p.9

18 Freedom House-freedom of the Press (2014) available at [freedom.house.org](http://freedom.house.org)

whether or not the government's legal and political processes are in conformity with the domestic and international obligations with regard to respect of freedom of expression and whether or not free speech and expression is suffocated towards presidential election periods. Some of the indicators used to assess the the state of the freedom of expression in Uganda include the following: increasing government threats, intimidation and harassment,<sup>19</sup> government banning a political pressure group calling for peaceful change, harassed and intimidated journalists and civil society activities in 2012,<sup>20</sup> public gatherings accompanied by arrests and detention of organizers and participants.<sup>21</sup> Numerous journalists have been injured or have been beaten by police while covering the opposition demonstrations.<sup>22</sup> This situation analysis shows that there is a problem with the enjoyment of the freedom of expression. The continuing problematic situations illustrated in the literature where early reports from 1999 to 2013 and 2014 show the same issues still exist and are even worsening. This takes me into asking the question: What are the reasons why freedom of speech and expression has not changed? My thesis will aim at uncovering the reasons behind this trend and offer some recommendations on how the situation could be improved.

## **1.5 The research questions**

The main research question for my thesis is:

Is the application of freedom of speech and expression in Uganda in conformity with commonly agreed international standards especially during presidential elections?

In answering the main research question, I will explore the following sub-questions, namely:

1. Whether or not the Ugandan domestic legal framework is in conformity with the International legal standards concerning freedom of expression as laid down in the main international human rights instruments?

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19 Human Rights Watch (2010) The media minefield Report pg 2

20 The Human Right Watch, in its world report p1

21 The Human Right Watch, in its world report (2013) available at Human Right Watch. org, p1

22 Human Rights Watch (1999) Hostile to Democracy; the Movement System and Political Repression in Uganda. New York, Washington

2. Whether or not the government's legal and political processes are in conformity with domestic and international obligations with regard to respect of freedom of expression?
3. Whether or not free speech and expression is suffocated towards presidential election periods?

## **1.6 Research methodology**

In answering the main research question and the three related sub-questions, this thesis will refer to and analyze a variety of international and domestic legal sources which provide the applicable laws and standards concerning freedom of expression in Uganda.

The main international legal instruments applicable to Uganda include; the 1948 Universal Declaration on Human Rights (Article 19), the 1966 ICCPR (Articles 19 (1&2) and the 1981 African Charter on Human Peoples' Rights (ACPHR) (Art.9) as primary sources. Other relevant sources include cases tried in relation to the issue, Human Rights Committee Recommendations and Universal Period Review (UPR) process.

At the domestic level, the legal frame work will constitute; the Constitution of Uganda (Art.29), The Press and Journalist Act 1995, Uganda Chapter 105 and The Electronic Media Act 1996 (Chapter 104) as the primary sources. Other relevant information is taken from secondary sources like reports from credible NGOs, textbooks, articles, journals and news papers. I have interviewed five journalists from different media houses. Names of media houses will be with-held to observe confidentiality. I chose 1 journalist from radio, 2 respondents from news paper media and 2 from television journalists. I will use secondary sources to address the police situation in Uganda relevant to the topic.

A socio-legal perspective was used for assessment. Scanlon's theory of freedom of expression was used to analyze Uganda's compliance. I have used desk research because of the readily internet access to the library and other sources of information. Interviews were also used in data collection from the field using a questionnaire. I chose this tool because it was a convenient method for my respondents.

The interviews were centered on several questions that i formulated as away of inquiring into the research question. A Chatham house rule method has been used in Chapter three of the thesis. The Chatham House Rule or rules is a system for holding debates and discussion panels on controversial issues. This rule states since its refinement in 2002, that when a meeting , or part of, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.<sup>23</sup>

I chose this method because it gives me the authority to quote directly what was said and written during the interviews without affiliation of any sort. This was because the method eliminates chances of making respondents target by any authorities and ensure safety. To support why i chose this method, i would like to provide first- hand information about challenges faced in being a journalist and exercising freedom of expression in Uganda.

Voice of America (VoA) in 2012 showed harassment of journalists in East Africa nation and freedom of speech is under threat. While following the opposition leader, chaos erupted. As he was moving to take a photo, somebody opened a passenger's vehicle, pointed a gun at him.<sup>24</sup> The Ugandan government and ruling party are intimidating and threatening journalists and activists in an effort to limit criticism of the government.<sup>25</sup> Evidence is shown by the existence of broad and vaguely worded laws criminalizing various contents of speech discouraging journalists and civil society from criticism of government, limits access to information for voters, and has a chilling effect on the debate on public issues important during campaigns and elections.<sup>26</sup> Hence, using the Chatham house rule method is the most appropriate because it is a safe method.

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23 The free Encyclopedia- Chatham House Rule ([https://en.wikipedia.org/wiki/Chatham\\_House\\_Rule](https://en.wikipedia.org/wiki/Chatham_House_Rule))

24 Voice of America , Uganda Journalists face violence and intimidation (2012) (<http://www.voanews.com/content/uganda-journalists-face-violence-and-intimidation/1204129.html>)

25 ifex (2016) Ugandan journalists, activists face increased threats as elections loom [https://www.ifex.org/uganda/2016/01/12/increased\\_threats/](https://www.ifex.org/uganda/2016/01/12/increased_threats/)

26 Challenges to press freedom in Uganda (2013) (<https://echwaluphotography.wordpress.com/2013/05/30/challenges-to-press-freedom-in-uganda/>)

I chose five journalists because it was difficult to get a big number. This was because the respondents were not willing to give away the information. Some I approached personally needed to be paid for their time. This may be due to ethical considerations and fear that this may lead to their arrests by police. That is why I chosen a manageable number. I chose 1 journalist from radio, 2 from news paper media and 2 from television journalists. With regard to police respondents, I am using secondary data because interviews were not possible due to bureaucratic nature of police hierarchy. I personally approached the police headquators but my request was eventually declined.

### **1.7 Literature review on freedom of expression**

This section will put in perspective the situation regarding freedom of speech and expression in Africa more braodly and in Uganda more specifically. The analysis takes into account different perspectives and different places or countries. Different materials have been assessed including textbooks, journals, reports, NGOs, and the legal instruments to help contextualize the problem of my investigation in this thesis.

While vigorously advocating for democratic reform and respect for civil and political rights elsewhere in Africa, the international community has remained remarkably quiet on abuses of political rights in Uganda.<sup>27</sup> The HRW report shows how the United States has on occasion called for a more plurastic democratic system in Uganda and justified the need to respect fundamental rights like the rights to freedom of expression, association and assembly.<sup>28</sup> Why has the International community largely remained quiet about the abuse of civil and political rights in Uganda? The HRW report continues to appeal that, the acquiescence of the International community to human rights abuses in Uganda serves to undermine respect for human rights both there and elsewhere on the African continent, and indeed worldwide.

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27 Human Rights Watch (1999)( <http://www.hrw.org/reports/1999/uganda/Uganweb-02.htm>) pg 1

28 Human Rights Watch (1999) pg 1

ifex (2015) has reported that Burundian authorities shut down media outlets as protests intensify. Journalists are being harassed and radio stations prevented from broadcasting as the authorities clamp down on the media in an attempt to contain protests in wake of President Pierre Nkurunziza who was to run for a third term. According to the latest reports, Radio Publique Africaine (RPA), Burundi's most popular private-owned radio station was closed down today (27 April 2015), forced to suspend live coverage of protests, accused of inciting an uprising by providing live coverage of the protests. Five radio stations were raided in the process, radio transmitters disconnected with the intention to silence all the critics.<sup>29</sup> This highlights the fact that the practice of freedom of speech and expression is big a problem across the East African Community.

As cited in the original source, Viljoen (2012) has argued that the Special Rapporteur on Freedom of Expression in Africa, who represents the established to monitor state compliance with the Declaration of Principles on Freedom of Expression in Africa.<sup>30</sup> Viljoen found out that when reports of massive violations of the right to freedom of expression are received, the Special Rapporteur may under take investigative missions to a particular country. He or she may make 'public interventions' in form and 'urgent appeals.'<sup>31</sup> The Commission grants observer status to NGOs entitling them to address the Commission during its public sessions. The author continues to show that the participation of NGOs has increased significantly over the years, making them by far the most visible presence at these sessions with more than 100 NGOs represented.<sup>32</sup> It was on this basis that the government invited the Commission to come in and assess the situation in 2010 and "seek an invitation from the Uganda government to visit the country and assess media laws and freedom of expression, both in Kampala and at radio stations outside Kampala, in advance of the 2011 elections."<sup>33</sup>

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29 ifex- Reporters Without borders (2015) ([https://www.ifex.org/burundi/2015/04/27/news\\_media/](https://www.ifex.org/burundi/2015/04/27/news_media/))

30 Viljoen (2012), International Human Rights Law in Africa, 2nd Ed. Oxford, University Press pg 377

31 Viljoen (2012), pg 377

32 Viljoen (2012), pg 383

33 Human Rights Watch (2010) The media minefield Report pg 4



As Uganda planned for general elections in 2011, freedom of expression across the country was in significant jeopardy. This Human Rights report shows that since 2005, attempts by Uganda journalists to conduct independent political reporting and analysis in print and on radio have been met by increasing government threats, intimidation and harassment.<sup>34</sup> This report adds that more than 90 interviews over the course of nine months in 2009 and early 2010 that document the aggressive and arbitrary nature of state responses to criticism of the government and the ruling NRM party. That in some cases, these threats are overt, such as public statements by resident district commissioner that a journalist should be “eliminated” or a police summons on charges of sedition, incitement to violence, or promoting sectarianism.<sup>35</sup> Also the government uses its national laws to bring charges against journalists, restrict the number of people who can lawfully be journalists, revoke broadcasting licenses without due process of law and practice other forms of repression.<sup>36</sup> These kinds of restrictions on both media outlets and individual journalists were fully on view in September 2009, when Uganda experienced two days of rioting.<sup>37</sup>

The HRW world report of 2013 has pointed out that after 26 years of President Museveni’s rule, increasing threats of freedom of expression, assembly and association raise serious concerns. This report has highlighted that the government banned a political pressure group calling for peaceful change, harassed and intimidated journalists and civil society activities in 2012.<sup>38</sup> The HRW report outlines police interference in, and unlawful obstruction of, public gatherings accompanied by arrests and detention of organizers and participants. The Mayor of Kampala and opposition leader were charged with organizing unlawful assembly with the purpose of inciting the members of the public against police.<sup>39</sup> The HRW report

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34 Human Rights Watch (2010) The media minefield Report pg 2

35 Human Rights Watch (2010) The media minefield Report pg 2

36 Human Rights Watch (2010) The media minefield Report pg 2

37 Human Rights Watch (2010) The media minefield Report pg 2

38 The Human Right Watch, in its world report (2013) (<http://www.hrw.org/world-report/2013/country-chapters/uganda>) p1

39 The Human Right Watch, in its world report (2013) available at Human Right Watch. org, p1

also shows that police restricted public debate and expression of concerns over governance thought out, journalists continue to be physically attacked in the course of their work.

Several reports and scholarly writing over many years highlight an obstructive conduct on the part of the Ugandan authorities which inhibit the thriving of the right to freedom of expression and also the general human rights situation where the government is employing hostile rhetoric and an array of tactics to intimidate and obstruct the work of Non-Governmental Organizations (NGOs) on sensitive issues like good governance, human rights, land, oil etc. The 2013 HRW report adds that the tactics used include; closing meetings, forcing NGO representatives to issue apologies, occasional physical violence, threats, harassment and heavy handed bureaucratic interference in NGO registration and operations.<sup>40</sup>

A recent HRW report -Keeping the people uninformed (2016) highlights a number of issues that deliberately affect the right to free speech and expression. At the start of this report is a photo from 2013 which shows the employees of the Daily Monitor newspaper with their mouths taped shut, singing slogans during a protest against closure of their premises by the government of Uganda, outside their offices in the capital Kampala on May 20, 2013. The HRW report adds; the police raided Uganda's leading independent newspaper and disabled its printing press after it published a letter about a purported plot to stifle allegations that Uganda president Yoweri Museveni is grooming his son for power.<sup>41</sup> HRW report, Keeping the people uninformed (2016) added highlighting a number of issues that were prevalent prior to the February 2016 presidential elections in Uganda. Intimidation of the media and civil groups was pronounced. In the words of this report-

I think the government intends to keep the people uninformed. You see, uninformed people are easy to manipulate...As journalists, we are forced to cover

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40 The Human Right Watch, in its world report (2013) available at Human Right Watch. org, p2

41 Human Right Watch report, Keeping the people uninformed (2016),

<https://www.hrw.org/report/2016/01/11/keep-people-uninformed/pre-election-threats-free-expression-and-association-uganda>

up. In reporting, you don't hit the nail on top. you have to communicate carefully-  
Radion journalist, Jinja September 2015.<sup>42</sup>

This 2016 HRW report, considers and analyses a number of key issues. It noted that as Ugandans headed to parliamentary and presidential elections in February 2016, freedom of expression and association were under serious threat. Political tensions were running high and the government faced public discontent on a range of issues such as government allocation for health and education services, corruption, widespread unemployment combined with massive youth unemployment and the rising cost of living.<sup>43</sup> This HRW report continues to add that in response, during the past year, numerous state agencies and officials like police, internal security officials and resident district commissioners (presidentially appointed senior civil servants who monitor government programs and security in each district) had engaged in a range of tactics to intimidate and obstruct speech critical of the government, particularly in rural areas and during non- English radio broadcasts outside Kampala, where government action is subject to less international and domestic scrutiny.<sup>44</sup> The 2016 HRW report also pointed out the existence of broad and vaguely worded laws criminalizing various contents of speech discourage journalists and civil society from criticism of government, limits access to information for voters and has a chilling effect on the debate on public issues important during campaigns and elections.

The Press release of the Article 19 Organization (2012) shows that the Government of Uganda had rejected Human Rights Council (HRC) recommendations on free expression.<sup>45</sup> The press release declares that freedom of expression is under attack and the government should have used the opportunity of the Universal Periodic Review to commit to addressing violations of free expression. This press release adds that Canada and Latvia recommended

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42 Human Right Watch report, Keeping the people uninformed (2016), <https://www.hrw.org/report/2016/01/11/keep-people-uninformed>

43 Human Right Watch report, Keeping the people uninformed (2016)

44 Human Right Watch report, Keeping the people uninformed (2016)

45 Article 19, The Press release (2012)( <http://www.article19.org/resources.php/resource/2981/en/uganda:-government-rejects-human-rights-council-recommendations-on-free-expression>)

the government invite the United Nation (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, verify and assess alleged violations of the right to freedom of expression.<sup>46</sup> It further adds that at least four journalists had been killed since 1995. The Press Index Report 2011 indicates that violence meted out against journalists had doubled from 58 to 107 cases in 2011.<sup>47</sup> This press release points out several aspects which are key indicators of the violations of the right to freedom of expression in the country.<sup>48</sup>

Human Right Watch report (2016) in Uganda shows what was happening in January prior to the elections in February. The report identified pre-election threats to freedom of expression and free speech. This report documents how some journalists and activists were facing increased threats as the elections in Uganda came close. The Human Right Watch report goes on to add that while print journalists working in English had some relative freedom, radio journalists particularly those working in local languages whose listeners are based in rural areas faced harassment and threats from some government and party officials. These include the police, resident district commissioners who represent the president, internal security officials and the Uganda Communications Commission, the government regulator.<sup>49</sup>

Human Right House Network (2009) points out that the government's refusal to allow the king of Buganda Kingdom to visit his subjects in Kayunga district was followed with wide spread protests. In response to these protests, the Broad Casting Council, a body responsible for regulating electronic media in Uganda closed down four FM radio stations i.e. Radio Sapencia, Akabozi FM, Central Broad Casting (CBS) and Suubi FM. The

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46. Article 19, The Press release (2012) available at Article 19

47 Article 19, The Press release (2012)

48 The Press release (2012)

(<http://www.article19.org/resources.php/resource/2981/en/uganda:-government-rejects-human-rights-council-recommendations-on-free-expression>)

49 Human Right Watch report (2016) "Keep the people informed" <https://www.hrw.org/publications>

Human Right House Network (2009) continues to show that the Broadcasting Council blamed the radios for mobilizing masses for demonstrations and promoting hatred in their programs. Another ban was placed on the popular talk shows known as bimeza (local name for platforms for debates on public issues) on grounds that they were illegal.<sup>50</sup>

While carrying out its research, Human Rights Watch, press release (1999) in its efforts discovered that several NGOs had apparently overstepped the boundaries established by the government and had been subject to government harassment.<sup>51</sup> This statement continues to show that one of the long-running cases of government interference with the activities of a civil society group had been the refusal of the government to register the Uganda National NGO. The NGO Forum had stated that its aim was to provide a common forum for all domestic, foreign, and international NGO active in Uganda in order to enhance dialogue between NGO community and the government and to promote networking and information exchange between NGOs. This position touches the general human rights situations at large.<sup>52</sup>

The African Commission on Human and Peoples Rights report (2014), oral intervention on the report of Special Rapporteur and access to information, the East and Horn of Africa Human Rights Defenders Network (EHARD) is deeply concerned about the range of challenges faced by media groups and media works on the continent. In Uganda for example, numerous journalists have been injured or beaten by police while covering the opposition demonstrations. The report adds that in the context of peaceful protests, effective and proportionate policing is essential to balance the freedoms of assembly, association, expression and access to information, with the need to maintain public order and the safety of the demonstrators, state officials, observers and the general public.<sup>53</sup> This report goes on to add that in cases of targeted attacks on journalists, there is need for

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50 Human Right House Network (2009) (<http://humanrightshouse.org/Articles/11857.html>)

51 Human Rights Watch (1999) available at HRW

52 Human Rights Watch (1999) available at Human Rights Watch. org

53 Human Rights Watch (1999) Hostile to Democracy; the Movement System and Political Repression in Uganda. New York, Washington

independent, impartial and timely investigations and prosecutions at the national level.<sup>54</sup> Free speech is the basis for legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process, and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be.<sup>55</sup>

Freedom House report (2013) highlights a number of vital issues which include the following; it states that in April and May 2011, Besigye (opposition leader at the time) and his Activists for Change (A4C) pressure group led a “walk to work” campaign of marches against corruption and the rising cost of living where the police violence resulted into 10 deaths and hundreds were arrested. Attempts to renew the protests in October led to 40 arrests and treason charges for three of the organizers. This report adds that in 2012, a police officer was killed while trying to disperse an A4C rally.<sup>56</sup> This all attests to the fact that there is high tension in Uganda to which the right to freedom of expression is restricted for various reasons by the government. The 2013 report further suggests that freedom of assembly is officially recognized but often restricted in practice.

Statistics from the Transparency International (2013) rank Uganda at number 140 out of 177 countries as shown by the corruption perception index.<sup>57</sup> This further measures the violations of freedom in the world. It reflects the degree of freedom that journalists and news organizations enjoy in each country and the efforts made by the authorities to ensure respect for this freedom.<sup>58</sup>

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54 Human Rights Watch (1999) Hostile to Democracy available at Human Right Watch. org, p2

55 Anine and Helge (eds) (2009) Freedom of Speech Abridged: Cultural, Legal and Philosophical Challenges, Goteborg: NORDICOM pg. 18

56 Freedom House (2013) available at freedomhouse.org

57 Transparency International (2013) (<http://www.transparency.org/country#UGA>)

58 Transparency International (2013) (<http://www.transparency.org/country#UGA>)

## **1.8 Structure of the Thesis**

This section will comprise of four sub-sections. Explaining the structure of the thesis will make it easy for the reader to understand and follow the line of arguments.

### **1.8.1 Chapter Two: The legal framework and legal obligation relating to the freedom of expression and speech in Uganda.**

This chapter has been sub-divided into three sub-sections. These will comprise of: Legal framework on; International legal obligation, domestic legal obligation that relates to freedom of expression and case law. The categorization of the three elements should basically help me in my thesis to analyze the legal framework applicable in Uganda and determine whether the laws and practices comply with international standards which Uganda has accepted. The main international legal instruments include; the 1948 Universal Declaration on Human Rights (Article 19), the 1966 ICCPR (Articles 19 (1&2) and the 1981 African Charter on Human Peoples' Rights (ACPHR) (Art.9)

The main domestic local sources include; the Constitution of Uganda (Art.29), The Press and Journalist Act 1995, Uganda Chapter 105 and The Electronic Media Act 1996 (Chapter 104). These are core legal texts which need to be taken into account in the scope of freedom of speech and expression in Uganda.

### **1.8.2 Chapter Three: The conduct of the Uganda authorities**

This chapter focuses on how the laws are applied in practice by Ugandan authorities. This section will assess the actions of the authorities especially the police. Is it the way things are done or is it because they are just following orders?. This chapter will seek help the reader understand the relationship between social sciences and its perspective on freedom of expression, law enforcement in Uganda by looking at the role of domestic courts in dealing with issues related to free speech. In this chapter, that will be attained by bringing into perspective the opinions of the respondents from the questionnaire as gathered during the field work carried out in Kampala, Uganda.

### 1.8.3 Chapter Four: Recommendations

Based on the analysis carried out in the previous chapters, here I will outline a road map to follow to improve the situation. This involves suggesting what ought to be done in Uganda as a way of bettering the conditions or situations that form hurdles which in turn exercise a chilling effect or even suffocate the right to free speech and expression. These may arise from the problems analysed earlier throughout the study. Also from other general solutions that I will deem fit to help improve the situations in my country Uganda.

### 1.8.4 Chapter Five: Conclusions

In my conclusions, I will highlight a few challenges in ensuring the right to free speech and expression. This right has certain limitations and does not grant citizens the right to just say anything in the name of free speech. This will bring out a few dilemmas that make it quite difficult to achieve the right of free speech and expression, especially in young democracies where the establishment of democratic institutions and the rule of law has a long way to go. I will focus mainly on three major issues and give my opinions about them. These will be: - Whether Ugandan domestic legal instruments are in conformity with the international legal standards laid down in human rights instruments;- whether or not the government legal and political processes are in conformity with domestic and international obligations with regard to respect of freedom of expression?, and finally I'll also express my personal opinion on whether free speech and expression is suffocated towards presidential election periods.

## **1.9 Conclusion**

This chapter has introduced the issue that will be dealt with in this thesis through the problem statement, literature that relates to freedom of expression –both the domestic and international perspectives that relates to the subject matter of my investigation, and the legal framework. In short, this chapter has provided the skeleton upon which all the following chapters will be built upon. The major points of this chapter have included; the introduction of the situation of freedom of speech in Uganda, the problem statement, the methodology, brief legal framework, literature review and the structure of the thesis.



## **2 CHAPTER TWO**

### **2.1 The legal framework and legal obligation relating to the freedom of expression and speech in Uganda.**

This chapter has been sub-divided into three sub-themes. These will comprise of: Legal framework, legal obligation and case law that relates to freedom of expression in Uganda. Uganda has an obligation to observe and respect international norms. This has been achieved through the ratification of major human rights instruments to which Uganda is a party. The Human Rights Council and its Committee are responsible for the follows up through reports to ensure that Uganda is fully committed to respect and protection of human rights in Uganda relate to freedom of speech and expression.

### **2.2 The legal framework of Uganda that relates to freedom of expression**

It should be understood that the domestic law of Uganda does not apply in isolation of the international law. Therefore, as such under this section I have assessed the legal framework from the international level so as to be able to establish the interaction between both domestic and international legal instruments and how they relate to freedom of expression in general and Uganda in particular as seen below.

### **2.3 The international legal framework that relates to freedom of expression in Uganda**

At the international level, it can be observed that the right to freedom of expression is guaranteed in both Art.19 of the UDHR and Art.19 (1&2) of the ICCPR. At the regional level, this right is provided for in Art.9 of the African Charter, Art.10 of the European Convention and Art.13 of the American Convention. The ICCPR and the African Charter constitute binding obligations for Uganda. The other legal sources, namely the UDHR and the Inter-American and European Convention will mainly be used from a comparative legal perspective.

It can be noted that the concept of human rights had long been there before the adoption of these international human rights instruments, the expression “human rights” came into everyday jargon only since the World War II (WWII) with the founding of the United

Nations and the adoption of the Universal Declaration.<sup>59</sup> Freedom of expression was included in these instruments not only because of its significance to democracy but also because the media had played a big role in aiding the warfare as it was used to spread the war propaganda.

The United Nations Treaty Collections shows that Uganda ratified and became a party to the ICCPR on 21 June 1995.<sup>60</sup> The obligations and duties of states under international law are construed as having to respect, protect and fulfill human rights. States must not only refrain from interfering with the enjoyment of human rights, but also must take the necessary positive steps to ensure the enjoyment of a wide range of human rights.<sup>61</sup>

The right to freedom of expression is included in Art. 19 of both the ICCPR and the Universal Declaration of Human Rights (UDHR).

According to Article 19 of the ICCPR:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in form of art, or through any media of his choice.<sup>62</sup>
3. The exercise of the rights provided for in paragraph 2 of this article carries with it 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 protection of national security or of public order, or of public health or morals.<sup>63</sup>

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59 Encyclopaedia Britannica ([www.britannica.com](http://www.britannica.com))

60 United Nations Treaty Collections (2014) (<https://treaties.un.org/Pages/>)

61 United Nations Human Rights (2012) available at [ohchr.org](http://ohchr.org)

62 Art. 19 ICCPR and UDHR and Universal Declaration of Human Rights (UDHR)

63 Art. 19 ICCPR

The UDHR is similar to the ICCPR in as far as the first two paragraphs are concerned. However, the ICCPR is more detailed as compared to the UDHR. It shows the duties and responsibilities. It also outlines that this freedom of expression can be restricted under the law.

The African Charter on Human Peoples' Rights (ACPHR) (1981), Article 9 (2) states clearly that, every individual shall have the right to express and disseminate his opinions within the law.<sup>64</sup> Uganda ratified this Charter in 1986.<sup>65</sup> Chapter I-VI of the preamble of the Declaration of the Principles of Freedom of expression in Africa (2002) was adopted by the African Commission on Human and People's Rights, 32nd session, 2002, in Banjul Gambia. It comprehensively outlines what needs to be done in the process of achieving the freedom of expression to its fullness in both the private and public spheres.<sup>66</sup> This should be adopted by state parties to the ACPHR. In the implementation Declaration of the Principles of Freedom of expression in Africa, states parties to the ACPHR should make every effort to give practical effect to these principles. This legal instrument is not legally binding but depends on the states' act of good faith.

#### **2.4 The Ugandan domestic legal framework that relates to freedom of expression**

Under this section, I will assess the domestic legal framework of Uganda and how it relates to freedom of speech and expression. Understanding the Ugandan law context makes the comparison between the international and domestic legal frameworks achievable. The result of this then it that an assessment of whether or not Uganda is complying with its legal obligations can be realised. On this note therefore, I will analyze different instruments of law in Uganda that explain and relates to freedom of expression. Namely:-

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64 Brownlie and Goodwin (2010), Brownlie's Documents on Human Rights 6th Ed. Oxford, University press.

65 Art 9 (2) ACPHR

66The Declaration of the Principles of Freedom Of expression in Africa (2002), University of Minnesota: Human rights Library (<http://www1.umn.edu/humanrts/achpr/expressionfreedomdec.html>).

#### 2.4.1 The constitution

History suggests that before the British and Germans contented for the territory, Uganda had three different indigenous political systems: the Hima caste system, the Bunyoro royal clan system and the Buganda kingship system.<sup>67</sup> In 1955, a constitutional monarchy with ministerial government based on British model was formed. Uganda became an independent Commonwealth nation on October 9, 1962 under a constitution much influenced by the British. The formation of the Ugandan Constitution is largely associated with the Ugandan history which I will not explain in detail. But, it should be observed that colonialism and its politics eventually gave birth to the Ugandan constitution.<sup>68</sup>

Chapter Four of the Ugandan Constitution addresses the protection and promotion of fundamental and other human rights and freedoms. This is clearly international human rights law embedded in the domestic law of Uganda. Simmons stated that usually treaties and their ratification exogenously introduce a new issue into domestic politics as a case is in Uganda shown in our Constitution.<sup>69</sup> Article 29 of the Ugandan constitution adheres to the protection of freedom of conscience, expression, movement, religion, assembly and association.<sup>70</sup>

The constitution of Uganda upholds the freedom of speech. Art.29 (1)(a) states that freedom of speech and expression shall include freedom of the press and other media.<sup>71</sup> (b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning.<sup>72</sup> The Constitution is the supreme law of Uganda and, subject to the provisions of sections 5 and 6, if any other law is inconsistent with this Constitution, this Constitution shall prevail and other law shall, to the extent of inconsistency, be void.<sup>73</sup>

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67 Constitutional net, supporting constitutional builders globally-(<http://www.constitutionnet.org/country/constitutional-history-uganda>)

68 Uganda, history (<http://thecommonwealth.org/our-member-countries/uganda/history>)

69 Simmons (2009), *Mobilizing for Human Rights. International law in Domestic politics*. Cambridge University Press, pg 356

70 Constitution of Uganda

71 Art 29(1a) Constitution of Uganda

72 Constitution of Uganda (1995) pg 45

73 Constitution of Uganda

It is evident that Uganda has ratified and signed the major human rights instruments. There is not a convention that is clear-cut on freedom of speech and expression specifically. However, ICCPR to which Uganda is a party was ratified in 1995.<sup>74</sup> Art 19 (1&2) of the ICCPR address the right to free speech and expression. This is evidence that the Ugandan Constitution art. 29 specifically domesticates international law.

#### 2.4.2 The Press and Journalist Act 1995 (Chapter 105)

This is an Act to ensure the freedoms of the press, to provide for a council responsible for the regulation of the mass media and to establish an institute of Journalists in Uganda. Section 2 of this Act indicates that;

No person or authority shall, on grounds of the content of a publication, take any action under this Act or any other law to prevent the-printing, publication, or circulation among the public, of a newspaper.<sup>75</sup>

The Press and Media Act Section 3, compliance with the other laws; Nothing contained in section 2 absolves any person from compliance with any law-prohibiting the publication of pornographic matters and obscene publications insofar as they tend to offend or corrupt public morals.<sup>76</sup> This Act has explains the law for the people in the media. This is intended to comply with the domestic law that relates to freedom of expression.

#### 2.4.3 The Electronic Media Act 1996 (Chapter 104)

This is an Act for the setting up of a broadcasting council to license and regulate radio and television stations, to provide for the licensing of television sets, to amend and consolidate the law relating to electronic media and to provide for other related matters.<sup>77</sup>

The Uganda Communications Bill 2012 passed into law, merged the Broadcasting Council (BC) and the Uganda Communications Commission (UCC) into one body. The bill, which

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74 UNHR ([http://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN](http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=182&Lang=EN))

75 The Press and Journalists Act , Chapter 105 (1995) (section 2)( <http://www.ulii.org/ug/legislation/consolidated-act/105>)

76 The Press and Journalists Act , Chapter 105 (1995) (section 3)

77 Uganda Legal Information Institute- The media Act (1996) (<http://www.ulii.org/ug>)

first came to parliament in March as the Uganda Communications Regulatory Authority Bill 2012, is now known as the Uganda Communications Regulatory Authority Bill 2012. Therefore, the Act now consolidates and harmonizes the Uganda Communications (UCC) Act 1997 and Electronic Media Act 2000.<sup>78</sup>

Under the new law, a person who installs and operates a television station, radio or any other related broadcasting apparatus without a license issued, commits an offence and is liable for a fine not exceeding 1.9 Million shillings or imprisonment not exceeding four years or both.

Francis Kagolo states; freedom of expression under Art. 19 of the ICCPR is recognised as a right in the ICCPR which states;<sup>79</sup>

Every citizen has a right of access to information in the possession of the State or any other organ or agency of the state except where the release of the information is likely to prejudice the security of sovereignty of the State or interfere with the right of any other person.

In Uganda, Kagoro noted that freedom of expression is guaranteed in Art. 29 (1) (a) of the constitution which states; “Everyone shall have a right to freedom of speech and expression which shall include freedom of the press and other media” Freedom of expression is a cornerstone of democratic rights and freedoms and thus lies at the foundation of a democratic society.<sup>80</sup>

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

Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to privacy of any other person

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78 URN (2012) (<http://ugandaradionetwork.com>)

79 The impact of legal restriction to the freedom of expression in Uganda

80 The impact of legal restriction to the freedom of expression in Uganda

This provision of the law makes journalism and freedom of expression very difficult as numerous questions are left unanswered. Whose privacy is protected, and who decides when privacy invasion has occurred? Such lack of clarity directly impedes the fact finding and reporting capabilities of journalists, thus hampering their right to exercise freedom of expression.<sup>81</sup> Freedom of expression is further restricted under Art.43 of the constitution which provides general restrictions on the enjoyment of the rights for the good of others' rights, public interest and security of the state. Indeed, "the rights of others" has become broad and unspecific justification for limiting freedom of expression in Uganda. Yet, the country still has a number of other legal limitations, both criminal and civil, that restrict enjoyment of freedom of expression.<sup>82</sup>

## **2.5 International legal obligation that relates to freedom of expression**

The International Covenant on Civil and Political Rights (ICCPR) is the treaty agreement central to anchoring freedom of expression in the international human rights law. The vast majority of the world's nations have both signed and ratified the treaty.<sup>83</sup> Once state has signed and ratified the ICCPR, then is legally bound by under international law to observe and respect human right obligations under this treaty. The freedom of expression is included in Art.19 of the ICCPR. So what does "legally binding mean in this this context? Among others, party to the ICCPR has the obligation to ensure that its domestic system protects the rights specified in the treaty, including measures outside the formal law.<sup>84</sup> General Comment No. 31 (80) outlines a number of obligations for states which are parties to the covenant. That every party has a legal interest in the performance by every other State

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81 The impact of legal restriction to the freedom of expression in Uganda (<https://franciskagolo.files.wordpress.com/2012/06/final-work-pdf.pdf>)

82 <https://franciskagolo.files.wordpress.com/2012/06/final-work-pdf.pdf>

83 Article 19: Freedom of expression anchored in international law (2012)(<http://freespeechdebate.com/en/discuss/article-19-freedom-of-expression-anchored-in-international-law/>)

84 Article 19: Freedom of expression anchored in international law (2012)(<http://freespeechdebate.com/en/discuss/article-19-freedom-of-expression-anchored-in-international-law/>)

Party of its obligations. This follows from the fact that the “rules concerning the basic rights of the human person” are erga omnes obligations.<sup>85</sup>

According to the General Comment (GC) No. 31 (80), Article 2 defines the scope of the legal obligations undertaken by State Parties to the covenant. A general obligation is imposed on States Parties to respect the covenant rights and to ensure them all to individuals in their territory and subject to their jurisdiction. Art 2 (1) also highlights the need by State parties to refrain from violation of the rights recognized by the covenant, and any restrictions on any of those rights must be permissible under the relevant provisions of the covenant.<sup>86</sup>

The European court of Human Rights has repeatedly held that that freedom of expression applies not only to inoffensive ideas, “but also to those that offend, shock or disturb the state or any sector of the population”, international human rights law allows for restrictions on the exercise of freedom of expression if necessary and proportionate for certain specific purposes including respect of the rights or reputations of others or to protect national security or public order.<sup>87</sup>

The office of the high commissioner for Human Rights (2011) report has highlighted a number of key issues that should be addressed in dealing with freedom of speech and expression. The UN Special Rapporteur on freedom of opinion and expression, the Organization for Security and Co-operation in Europe (OSCE) representative on freedom of the media, the, -the Organization of the American States (OAS) Special Rapporteur on freedom of expression and the ACHPR Special Rapporteur on freedom of expression and access to information argued stressing the fact that crimes against freedom of expression, if committed by state authorities, represent a particularly serious breach of the right to

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85 International covenant on civil and political rights, General Comment No. 31,(2004) pg 1

86 International covenant on civil and political rights, General Comment No. 31,(2004) pg 3

87 Amnesty International, censorship and free press (2012) (<https://www.amnesty.org/en/latest/news/2012/01/france-bill-genocide-denial-threatens-freedom-expression/>) pg 1



freedom of expression and the right to information, but that also states have an obligation to take both preventive and reactive measures in situations where non-state actors commit crimes against freedom of expression.<sup>88</sup>

The UN human rights-office of the high commissioner report goes on to argue that state officials should unequivocally condemn attacks committed in reprisal for the exercise of freedom of expression and should refrain from statements that are likely to increase the vulnerability of those who are targeted for exercising their right to freedom of expression.<sup>89</sup> This report further argues that states should reflect in their legal systems the fact that crimes against freedom of expression are particularly serious. Need to ensure that crimes against freedom of expression are subject to independent, speedy and effective investigations and prosecutions and also ensure that victims of crimes against freedom of expression have access to appropriate remedies.<sup>90</sup>

According to ifex (2013), in its press release- Reporters without Borders shows a situation in which reporters could face up to 25 years in jail under new South African Bill. This report shows disappointment by the South African (SA) national assembly's adoption of the new version of the Protection of State Information Bill (POSIB) with 190 votes, 73 against and one absentee.<sup>91</sup> "The government has insisted on pushing this bill through parliament , turning a deaf ear to the many objections that have been raised since it was first submitted five years ago," Reporters without Borders said. This report carried on to argue that "journalists would have less leeway to work if this bill became law and we therefore have no hesitation in adding our voice to the national and international protests, and the reservations expressed by the UN Human Rights Committee."<sup>92</sup> This report concludes by pointing out that in view of the SA media, opposition and many anti-POSIB campaigners, the bill would undermine freedom of information by exposing journalists to

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88United Nations Human Rights-Office of the High Commissioner (2011) <http://www.osce.org/fom/91595?download=true> Pg 1 and 2

89 United Nations Human Rights-Office of the High Commissioner (2011) pg 3

90 United Nations Human Rights-Office of the High Commissioner (2011) pg 3 and 4

91 ifex - Reporters Without borders (2013) ([https://www.ifex.org/south\\_africa/2013/04/26/south\\_africa\\_national/](https://www.ifex.org/south_africa/2013/04/26/south_africa_national/)) pg 1

92ifex - Reporters Without borders (2013) ([https://www.ifex.org/south\\_africa](https://www.ifex.org/south_africa))

draconian penalties and forcing them to censor themselves. Sentences of up to 25 years in prison for revealing classified state information would pose a major threat to journalists, who often base their stories on leaks. The reports has further argued that it was designed to prevent or dissuade journalists from investigating allegations of corruption within the government or ruling African National Congress or President Zuma's circle of associates.

## **2.6 Domestic legal obligation that relates to freedom of expression**

Freedom of opinion and expression are indispensable conditions for the full development of the person. They are essential for any society. They constitute the foundation stone for every free and democratic society.<sup>93</sup> The obligation to respect freedoms of opinion and expression is binding on every state party as a whole. All branches of the state (executive, legislative and judicial) and other public or governmental authorities, at whatever level;- national, regional or local are in the position to engage the responsibility of the state party.<sup>94</sup> A number of domestic legal obligations that relate to freedom of expression include the following as shown below;

### **2.6.1 Derogation**

According to the General Comment (GC) No. 5, Article 4 (1981) paragraph 1 states that, when a public emergency which threatens the life of a nation arises and it is officially proclaimed, a State party may derogate from a number a number of rights to the extent strictly required by the situation. The State party, however may not derogate from certain specific rights and may not take discriminatory measures on a number of grounds. The State party is also under an obligation to inform the other States parties immediately, through the the General-Secretary , of the derogations it has made including the reasons therfor and the date on which the derogations are terminated.

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93 International Covenant on Civil and Political Rights- General Comment No. 34 (2011) Geneva (<http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>)

94 International Covenant on Civil and Political Rights- General Comment No. 34 (2011) Geneva (<http://www2.ohchr.org/english/bodies/hrc/docs/GC34.pdf>)

Under article 4 of the ICCPR, countries may take measures derogating from certain of their obligations under the covenant, including the right to freedom of opinion and expression ‘in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed’. However, such measures must be consistent with their obligations under international law and must not involve discrimination based on the basis of race, color, sex, language, religion or social origin. Article 4 also confirms that any state party to the present covenant availing itself of the right of derogation shall immediately inform the other states parties to the present covenant, through the intermediary of the Secretary General of the UN, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.<sup>95</sup>

As noted in the The observer news paper (2015) Uganda, like any other democratic society, is committed to uphold, protect and promote the right to freedom of speech and expression. The observer adds that it is for this reason that the right is entrenched in the most authoritative legal instrument on the land, the Ugandan Constitution.<sup>96</sup> The Constitution guarantees to every Ugandan the right of freedom to hold opinions, receive and impart ideas and inform without interference. As I have already shown, this report highlights the importance of Art 29 (1) (a) of the Constitution, Art 41 (1) and Art 20 (2) which enjoins all organs and agencies of government and all persons to respect, uphold and promote the rights and freedoms of the individuals and groups enshrined in the constitution.<sup>97</sup>

Hence in my view, in accordance with the law of Uganda as outlined in the ICCPR and Ugandan Constitution, this Right to Freedom of expression is guaranteed in the legal instruments. Because of its importance in democracy, it is imperative to note that it should be respected at all times unless the situation dictates otherwise.

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95 ICCPR, 4 (3)

96 The Observer(2015), Uganda: Judiciary Will Jealously Guard Freedom of Speech

97 The Observer(2015), Uganda: Judiciary Will Jealously Guard Freedom of Speech

The Constitution of Uganda paragraph 44 states;

Prohibition of derogation from particular human rights and freedoms. Notwithstanding anything in this Constitution, there shall be no derogation from the enjoyment of the following freedoms<sup>98</sup>;

- a. Freedom from torture and cruel, inhuman or degrading treatment or punishment;
- b. Freedom from slavery or servitude;
- c. the right to fair hearing and;
- d. the right to an order of habeas corpus

What is also necessary should be within the boundaries of law as outlined in the section below.

#### 2.6.2 Criteria for imposing limitations on the freedom of expression

Under article 19 (3) of ICCPR, the freedom of expression may be limited as *provided for by law and when necessary to protect* the rights or reputations of others, national security, public order, or morals. Limitations must be *prescribed by legislation* necessary to achieve the desired purpose and *proportionate to the need on which limitation is predicated*. Basically, the necessary criteria to be fulfilled for imposing lawful limitations to the freedom of expression are that:

- a. such limitations need to be provided in law
- b. be necessary in a democratic society, and
- c. be proportionate to fulfilling those needs

Paragraph 3 GC No.10: Article 19 (Freedom of opinion) states that in order to know the precise regime of expression in law and practice, the committee needs in addition pertinent information about the rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right. This GC No.10 shows that it is the interplay between the principle

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<sup>98</sup> The Constitution of Uganda

of freedom of expression and such limitations and restrictions which determines the actual scope of the individual's right.<sup>99</sup>

In addition, GC paragraph 3 stresses that the exercise of the right to freedom of expression carries with it special duties and responsibilities and for this reason, certain restrictions on the the right are permitted which may relate either to the interests of other persons or to those of the community as a whole. However, when a State party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself.<sup>100</sup>

The Observer (2015) shows limitation of the Law in the Constitution in relation to the Freedom of expression. Katureebe of the Observer news paper 2015 explained Art. 43 of the Constitution and pointed out its limation nature. This Art. 43 shows that freedom of expression is not actually absolute and it may be restricted. Katureebe stated that Art. 43 of the Constitution provides general limitations on fundamental and other human rights and freedoms, which includes freedom of expression.

This Article states;-

“(1) In the enjoyment of the rights and freedoms prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others of the public interest.

(2) Public interest under

(a) Political persecution

(b) Detention without trial

(c) Any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society.<sup>101</sup>

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99 General Comment No. 10: Article 19 ( Freedom of opinion), Nineteenth session (1983)

100 General Comment No. 10: Article 19 ( Freedom of opinion), Nineteenth session (1983)

101 The Observer(2015), Uganda: Judiciary Will Jealously Guard Freedom of Speech

This actually produces two sides of the same coin. That is, the same constitution provides guarantees and at the same time sets restrictions. *Katureebe* of the Observer added that on the other hand, there is interest to keep the enjoyment of the individual's rights in check, on social considerations, which are also set out in the Constitution. Where there is a conflict between the two interests, the courts have and will continue to come up to resolve it, having regard to the different objectives of the Constitution.<sup>102</sup>

In *Charles Onyango- Obbo and Another verses the Attorney General* (Constitutional Appeal No. 2 of 2002), the Ugandan Constitutional Court declared section 50 of the Penal Code Act, which criminalized publication of a false statement, rumour or report, which is likely to cause fear and alarm to the public or to disturb the public peace as being inconsistent with article 29 (1) (a) of the Constitution.<sup>103</sup>

In practice therefore, in the lead judgment of *Joseph Mulenga*, with which all the other justices of the Supreme court concurred, *Mayingo Deputy Chief Justice* went to great length to explain the above constitutional provision in five critical areas: freedom of expression in a democracy, falsity and freedom of expression, limitation and freedom of expression, the standard of limitation and prejudice to the public interest.<sup>104</sup>

### 2.6.3 Rights of reputation of others

In a case, *Medžlis Islamske Zajednice Brčko and Others v. Bosnia Herzegovina* (Application no.17224/11) (2015)- A case on defamation proceeding brought against four NGOs following the publication of a letter written to highest authorities of the district complaining about the entertainment editor of a public radio station. The applicant NGOs complained that the local domestic courts' decisions against them had breached their right to freedom of expression. They maintained that their intention had been to publicise the letter, which had occurred without their knowledge, but to inform those in authority about

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102 Bart Katureebe, The Observer (2015) (<http://www.observer.ug/viewpoint/37279-judiciary-will-jealously-guard-freedom-of-speech>)

103 Bart Katureebe, The Observer (2015) (<http://www.observer.ug/viewpoint/37279-judiciary-will-jealously-guard-freedom-of-speech>)

104 The Observer(2015), Uganda: Judiciary Will Jealously Guard Freedom of Speech

certain irregularities in a manner of considerable public interest...<sup>105</sup> The Court held that there had been no violation of Art. 10 (freedom of expression) of the Convention. It had found in particular that the national courts, which had heard witnesses in the defamation proceedings, had collectively held that the applicant NGOs had acted negligently in simply reporting the entertainment editor's alleged misconduct... The national courts had therefore struck a fair balance between the radio entertainment editor's right to reputation and the applicant NGOs' right to report irregularities about the conduct of a public servant to the body competent to deal with such complaints.<sup>106</sup> In practice therefore, cases dealing with the rights of reputation of others on freedom of expression shows how difficult but also necessary in handling issues addressing the right to freedom of speech and expression.

Comparing derogation and limitation, the Observer (2015) noted that these two situations are usually grave circumstances presenting actual mischief or danger to "the rights of others" or "public interest". In those exceptional circumstances, the Constitution of Uganda allows for derogation or limitation in order to avert or remove real mischief or danger.<sup>107</sup> The observer proceeds to add that the court must play a balancing act- the need to promote freedom of expression, while at the same time protecting the rights of others. This is what the constitutions demands- that the enjoyment of one's rights must not prejudice the rights of others.

#### 2.6.4 National security

The national security limitation would justify prohibitions on transmission of information, including 'official secrets', which would adversely affect the security of the nation, provided the prohibition is reasonable, is effective to protect national security, and restricts freedoms of expression no more than is necessary to protect national security.

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105 Medžlis Islamske Zajednice Brčko and Others v. Bosnia Herzegovina (2015)- (Final Judgment) European Court on Human Rights

106 Medžlis Islamske Zajednice Brčko and Others v. Bosnia Herzegovina (2015)- (Final Judgment) European Court on Human Rights

107 The Observer(2015), Uganda: Judiciary Will Jealously Guard Freedom of Speech

Every government restricts speech to some degree. Common limitations on speech relate to: hate speech and classified information.<sup>108</sup> The exercise of these rights carries “special duties and responsibilities and will “therefore be subject to certain restrictions” when necessary “for respect of the rights or reputation of others” or “for the protection of national security or of public order”.<sup>109</sup> That said, personally I too concur with this argument. What is challenging is that governments usually take advantage of such law and interpret it in a way that best protects its own interests. This is so common in young democracies where the rule of law is young and fragile. As above, in Uganda, most public rallies of the opposition are usually denied congregations on grounds of security issues especially of people’s properties.

#### 2.6.5 Public order and morality

The Uganda public order bill was initially proposed in 2009 and passed 2013.<sup>110</sup> The Public Order Management Act 2013 states:

- a. the proposed site of the public meeting, the estimated number of persons expected, the purpose of the public meeting; and
- b. any other relevant information.

The Public Order Management adds that;

1. In the absence of Form A referred to in subsection (2), the organizer shall give notice in writing containing the information required under Form A.<sup>111</sup>
2. The notice to give under this section shall be in triplicate and copies shall be given to the applicant and the proprietor of the venue where public meeting shall be held
3. Where a public meeting is held, each of the person organizing it commits an offence if; or
  - A. the requirements of this section as to notice have nit been satisfied; or

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108 Challenges of freedom of speech, assembly and association in Africa- Case of Uganda

109 Challenges of freedom of speech, assembly and association in Africa- Case of Uganda

110BBC News (2013) Uganda Public order bill is ‘blow to political debate’

111 Uganda Public Order Management Act, 2013



B. the date when it is held, the time when it starts, or its route, differs from the date, time or route specified in the notice.<sup>112</sup>

In The Public Order Management Act, included is the –principle of managing public order. It states;

(1) The underlying principle of managing public order is to regulate the exercise of the freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition in accordance with Articles 29 (1)d and 43 of the Ugandan Constitution.<sup>113</sup>

‘Public order’ is understood to mean the rules which ensure the peaceful and effective functioning of society. The limitation in article 19 (3) of the ICCPR would justify prohibitions on speech that may incite crime, violence or mass panic, provided the prohibition is reasonable, is effective to protect public order and restricts freedom of expression no more than is necessary to protect public order.

The Public Order Bill was passed despite fierce criticism from religious leaders, oppositions Members of Parliament (MPs) as well as the public and rights groups. The Public Order Management Act makes it clear that ‘police approval’ would be required if three or more people want to gather publically to discuss political issues.<sup>114</sup>

The bill gives discretionary powers to police to veto gatherings of as few as three people in a public place to discuss political issues. Police must receive a written note of public meetings seven days in advance and they may take place between 6:00 and 18:00.<sup>115</sup> These are some of the sections of the Public Order Bill. This law seems to place more powers in the hands of the public authorities, mainly the police.

This of course makes the freedom of expression problematic hidden in the idea of ensuring public order. I do believe that gatherings can happen spontaneously and it is just the duty of the police to guide the group without interference, until for some reason that group runs riot while destroying people’s property. The act of arresting people in any place who are more

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112 Uganda Public Order Management Act, 2013

113 Same as above

114 BBC News (2013) Uganda Public order bill is ‘blow to political debate’

115 BBC News (2013) Uganda Public order bill is ‘blow to political debate’

than three is unconstitutional, Art. 29 Constitution of Uganda and does not respect the international obligations as shown in the Art. 19 of the ICCPR in regard to freedom of speech and expression.

## **2.7 Freedom of expression and the media**

In Liberal societies, broadcasting freedom is now considered to be important<sup>116</sup>. African governments have been more reluctant to liberalize the airwaves to some extent because of the potential public outreach it has.<sup>117</sup> In the 2006 elections, both the newspaper-The Monitor and KFM radio were stopped from publishing results as they came in.<sup>118</sup> The covenant embraces a right whereby the media may receive information on the basis of which it can carry out its function. The communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint to inform public opinion. The public also has a corresponding right to receive media output.<sup>119</sup>

The Human Rights Committee, in General Comment No. 25 on the participation in public affairs and the right to vote, elaborated on the importance of freedom of expression for the conduct of public affairs and effective exercise of the right to vote. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential.<sup>120</sup> There have been legal consequences to certain re known individuals in the country.

In *Charles Onyango Obbo and Anor V Attorney General* (constitutional appeal No.2 of 2002), *Onyango Obbo* and *Andrew Mujuni Mwenda*, the appellants were practicing journalists. respectively Editor and senior reporter of the monitor newspaper. On 24 October 1997, the two were jointly charged in the magistrates' court on two counts of the

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116 Barendt (1995), *Broadcasting law – A comparative study*, Oxford university press. Pg 32

117 Hyden, Leslie & Folu (eds) (2002) *Media and Democracy in Africa*, New Jersey, New Brukswick

118 Peterson (2006, *Uganda presidential, parliamentary and local council elections*), NCHR, University of Oslo, pg 16.

119 General Comment No 34 (2011) pg4

120 General Comment No 34 (2011) pg 5

criminal offence of “Publication of False News” contrary to section 50”, which makes publication of false news a criminal offence, contravenes that protection. The particulars of offence in one count recited the following excerpt from the story as the alleged false news.<sup>121</sup>

“President *Laurent Kabila* of the newly named Democratic Republic of the Congo (formerly Zaire)has given a large consignment of gold to the Government of Uganda as payment ”for services ” by the latter during the struggle against the former military dictator, the late Mobutu Sese Seko”.<sup>122</sup>

The alleged false information that Lt. Col. *Andrew Lutaya*, played a key role in the transfer of the gold consignment from the Democratic Republic of Congo to Uganda ”

ON 24<sup>th</sup> November 1997, the appellants who believed that their prosecution was a violation of their several rights guaranteed by the Constitution, decided to seek legal relief through a joint petition to the Constitutional Court, under Art. 137 of the Constitution, seeking, inter alia, declarations: that the action of the Director of Public Prosecutions (DPP) in processing them under section 50, was inconsistent with the provisions of Art 29(1) (a) ... of the constitution.<sup>123</sup>

Subsequently, the Constitutional Court considered the petition and decided-

- (a) Unanimously, that the Director of Public Prosecutions- DPP’s action in prosecuting the appellants was not consistent with the Constitution; and
- (b) by majority of four to one, that section 50 is not consistent with Article 29 (1)(a) of the Constitution.<sup>124</sup>

## 2.8 Conclusion

In this Chapter, the analysis was focused on the understanding the scope of protection for freedom of expression under both the domestic and international legal framework. The

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121 Charles Onyango Obbo, Andrew Mujuni Mwenda and Anor V attorney general (constitutional appeal No.2 of 2002) (<http://www.ulii.org/ug/judgment/supreme-court/2004/1>) pg 1-7

122 Charles Onyango Obbo, Andrew Mujuni Mwenda and Anor V attorney general 2002 pg 1-7

123 Charles Onyango Obbo, Andrew Mujuni Mwenda and Anor V attorney general 2002 pg 1-7

124 Charles Onyango Obbo, Andrew Mujuni Mwenda and Anor V attorney general 2002 pg 1-7

limits that can lawfully be imposed on this right by State authorities were explored by using different sources. This helped in the grounding of the subject of discussion from a legal perspective. Chapter two has clearly stated the law as it is. This will be useful in chapter three to understand the law in practice. As this chapter has well documented, Uganda has a number of domestic legal instruments besides the Constitution which stipulate the norms and procedures concerning implementation of the freedom of expression. This chapter has formed the backbone of my thesis. Clear definition of the law makes interpretation easier and hence its reference in practice which is the main approach for Chapter three.

### **3 CHAPTER THREE**

#### **3.1 The conduct of the Uganda authorities**

This chapter provides a close analysis of the application by Ugandan authorities of laws concerning the freedom of expression. By using a socio-legal perspective, this chapter addresses among other issues, the enforcement of the relevant laws and established practices, other specific situations in Uganda related to Ugandan authorities and how such authorities act while performing their duties which generates implications on the right to freedom of expression. There is need to understand why the public authorities especially the police behave the way they do when it comes to public exercise of freedom of expression on political matters. This raises questions like; Do the public authorities act the way they do simply because that is how political matters are handled or; are the police just following their orders hence complying with the orders of chain of command of the police force?

In this chapter, I'll be using the Chatham House rules as stated in the methodology section above. The Chatham House Rule or rules is a system for holding debates and discussion panels on controversial issues. This rule states since its refinement in 2002, that when a meeting , or part of, is held under the Chatham House Rule, participants are free to use the

information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed.<sup>125</sup>

I chose this method because it gives me the authority to quote directly what was said by respondents and written during the interviews without affiliation of any sort. This was because the methods eliminates chances of making respondents target by any government machinery. Non-disclosure of the identity of the informers-journalists helps to protect them from potential negative repercussions hence ensure their safety.

To support why I chose this method, I have provided first- hand information about challenges faced in being a journalist and exercising freedom of expression in Uganda. I refer the reader back to the methodology to see the reasons that I have stated.

### **3.2 Social sciences perspective on freedom of expression**

Jeeshan explains Thomas Scanlon's theory of freedom of expression, identifying its foundations in the liberal theories of Locke and Mill in order to provide an introduction to what should be understood by the term 'freedom of expression' in a liberal society, and to offer an explanation as to why acts of expression are deemed to be acts protected from legal prosecution or censorship.<sup>126</sup> As Scanlon (1972) has noted:

'persecution for the expression of opinions seems to me perfectly logical. If you have no doubt of your premises of your power and want a certain result with all your heart you naturally express your wishes in law and sweep away all the opposition. To allow opposition by speech seems to indicate that you think the speech impotent, as when a man says he has squared the circle, or that you do not care wholeheartedly for the result....'<sup>127</sup>

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125 Wikipedia, the free Encyclopedia- Chatham House Rule ([https://en.wikipedia.org/wiki/Chatham\\_House\\_Rule](https://en.wikipedia.org/wiki/Chatham_House_Rule))

126 Jeeshan (2002), An introduction to freedom of expression ([http://www.richmond-philosophy.net/rjp/rjp20\\_gazi.php](http://www.richmond-philosophy.net/rjp/rjp20_gazi.php))

127 Scanlon (1972), a theory of freedom of expression , Philosophy and Public affairs, Vol. 1, No. 2 (Winter, 1972), pp 204-205

A further question that ‘an adequate account of freedom of expression should answer is this: To what extent does the doctrine rest on natural moral principles and to what extent is it an artificial creation of particular political institutions?’<sup>128</sup>

Looking at the above social science position, it is imperative to note that free speech is one of the major factors necessary in the liberal and democratic society. Hence we can agree that this right forms part of the core basis for the thriving of a free democratic society. As Scanlon points out, we need to be on guard so that those that have power, are not allowed to use institutions of law and put their interests into law hence sweeping away the opposition.

Literature widely acknowledges that the police force has the duty to protect the public. However, often times, the police has been largely blamed for implementing the interests of the current government something that has resulted into fights between the people, police authorities and journalists. Dispersion is usually with force through tear gas, beating, arrests of people and journalists have fallen victims often times. Social science has a deep understanding using theories to express and explain law and how it protects the interests of the powerful at the expense of the weak. It is this position that usually results in the suppression of this right to freedom of expression.

In her theory, Scanlon’s – a theory of freedom of expression, two distinctive features of Scanlon’s account on free speech are identified

1. Scanlon argues that the key distinction isn’t between speech or expression (which is protected) and other forms of action ( which aren’t), but rather between expression which moves others to act...which gives rise to actions by others, in other ways like providing them with the means to do what they want.<sup>129</sup>

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128 Scanlon (1972), pg 205

129 Scanlon’s “ A theory of Freedom of Expression (<http://ocw.mit.edu/courses/linguistics-and-philosophy>) Pg.2

2. The basic principle of expression is not concerned with acts which are not protected, but justifications for restricting speech.<sup>130</sup>

In her theory, I can observe that often, the focus is put on restricting freedom of expression rather than its protection. The ruling parties often take advantage to restrict rather than protect to avoid over criticism which may make such governments weak and become unpopular.

There has to be reasons behind the arguments to allow speech; we cannot simply say that the first Amendment says so, therefore it must be so. The task is not to come up with a principle that always favors expression, but rather, to decide what is good speech and what is bad speech. A good policy “will not assume that only relevant sphere of action is the head and larynx of the individual speaker”. It is more in keeping with the values of a democratic society, in which every person is deemed equal, to allow or prohibit speech that singles out specific individuals and groups as less than equal.<sup>131</sup>

### **3.3 Law enforcement and freedom of expression**

In Uganda, the interpretation and enforcement of the law is the duty which courts perform at all times just like any other court in the world. The difference comes from the efficacy of these courts. It is such a duty that these courts are either trusted or mis-trusted, efficient or not. This section of the thesis will assess the role of courts using the information I gathered from my fieldwork in Uganda, Kampala as seen in the section below;

#### **3.3.1 Role of domestic courts in ensuring freedom of expression**

As part of field-work, in my interaction with my interviewees, I asked about how the courts of law have generally dealt with cases brought before them that relate to freedom of expression as a way of understanding enforcement. Their responses were as follows:-

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130 Scanlon’s “ A theory of Freedom of Expression, pg.3

131 Stanford encyclopedia of philosophy (2002), Freedom of speech (<http://plato.stanford.edu/entries/freedom-speech/#DemFreSpe>)

The first respondent said that courts of law at a general level have tried to pass judgment to give Ugandans freedom of speech like in *Muwanga Kivumbi Vs AG*. However, the state had again passed the Public Order Management bill into law that curtails freedom of speech and assembly. According to the respondent, as the law stands now, one must seek police permission first to hold a political gathering of more than three people, demonstration or political meeting. Yes, this is true in reference to the Public Order Management Act 2013. This Act, lays it clearly stating that permission must be sought before holding any public or political gatherings of more than three people.<sup>132</sup> For this respondent, everywhere in the world, courts are meant to be for everyone. However, this respondent thinks the low levels of education and poverty meant that most Ugandans cannot really use courts to enforce their freedom of expression. To the respondent, the Ugandan courts seem to be only for the elites and a ground for the educated class who know about their rights and therefore freedom of speech and expression mainly is for the educated.<sup>133</sup> This serves in two ways; The first, the educated are knowledgeable about their rights and can pursue justice easily. Secondly, the educated may have some income and hence can hire a lawyer when taken to courts of law or when the state has violated their right to free speech and expression.

The third respondent felt like courts of law have managed to pronounce themselves on matters relating to freedom of press such as in the popular *Charles Onyango Obbo and Kivumbi cases*. On prominent cases like the above, this respondent felt that courts in Uganda work harder than normal because of the nature of the case and popularity of the applicants. The other respondent said that the courts are not independent while administering justice due to economic and political factors which tend to influence some decision making in regard to particular cases. This respondent added that free speech is limited especially on politically related matters. Finally, the last respondent giving his opinion on the same issue as the rest above noted that courts of law have not fully internalized and fully appreciated this freedom. Many times they have made decisions

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132 According to field work I carried out using questionnaires in August 2014

133 According to field work I carried out using questionnaires in August 2014



without fully according the suspect due attention simply because he prefers the language whose interpreter they can not avail.<sup>134</sup>

All the above responses gives an insight at a general level about opinion of some journalists concerning the work of courts of law in their effort to promote and enforce the law in dealing with cases related to freedom of expression. It be should recognized that enforcement through courts at this point exposes a few loop holes as expressed in the opinions of respondents from different media houses in Uganda. It is such weaknesses of the courts of law that makes Ugandans seeking justice on matters relating to their rights on free speech and expression mis-trust the justice system of Uganda.

Courts play such a vital role in the interpretation of the law, a duty they have been entrusted with by the society. However, sometimes people feel that these courts have been largely influenced by the politics of the time to make decisions sometimes that are unfair to those searching for justice. While on the whole courts are seen as useful. When it comes to upholding the freedom of speech, the picture emerges from my respondents as a mixed one.

Further more, regarding the role of domestic courts in ensuring freedom of expression in Uganda, when I asked about how the courts of law in Uganda deal with the cases brought before them involving journalists on matters of freedom of expression, several opinions were shared during the interviews with these respondents. One respondent said that the cases have been handled in a free and fair manner though they are delayed in most cases; another believes that the courts are partly independent because they are largely controlled. This respondent believes that to a big extent, courts have done well. That for example, the court threw out a law about false news which had been made against journalists, however, he adds that the courts have refused to order government to release information regarding oil agreements; that some cases brought against the public authorities have been satisfactorily dealt with while the another respondent felt like the courts have poorly

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<sup>134</sup> Same as above

handled the cases brought before them about journalists. Also, that in most cases, journalists are not given chance to defend themselves, until first jailed.<sup>135</sup>

The opinions on the efficacy of the courts ranges from slow, quick, minimal as ways to telling how cases related to journalists and freedom of expression have been handled. Looking at the case of *Muwanga Kivumbi vs. AG* (constitutional petition No.9 of 2005), as an example of a case on freedom of expression but not necessarily about journalists, the court ruled that Section 32 of the Police Act on refusing public rallies was directly in contradiction with enjoyment of the fundamental rights and freedoms as stated in Article 20 (1) (2) and Article 29 of the constitution of Uganda.<sup>136</sup> In my assessment, I have had the opportunity to read through a draft of the judgment of Byamugisha JA. I fully agree with her reasoning and conclusion that the powers given to the Inspector General of Police, under section 32 (2) of the Police Act (Cap 303 Laws of Uganda), to prohibit the covering of an assembly or any formation of a procession in any public place is an unjustified limitation on the enjoyment of a fundamental right.<sup>137</sup>

Asking the respondents on whether international human rights law (IHRL) has actually helped in addressing the conflicts between the journalists and authorities, the answer was synonymously the same: No, why? Most believe that IHRL is in place but there is clear lack of its implementation.

The above analysis provides a better understanding of the perception on the part of members of a community of professionals in the field of freedom of expression about the effectiveness of the Ugandan courts and by large, it is notable that they do actually deal with issues at hand. However, politics of the day seem to always find a way of influencing the decisions sometimes. Looking at this case '*Andrew Mujuni Mwenda & Anor V Attorney General* (2006)', Andrew a renown journalists had made remarks about the public holidays the president had put in place to mourn the death of Late Jonh Garang, the former president

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135 According to field work I carried out using questionnaires in August 2014

136 *Muwanga Kivumbi Vs Attorney General* (Constitutional Petition No.9 of 2005)( <http://www.ulii.org/ug/judgment/constitutional-court/2008/4>)

137 *Muwanga Kivumbi Vs Attorney General* (Constitutional Petition No.9 of 2005)

of South Sudan and he had criticized the president. Sometimes the courts, resolve such journalist's related cases impartially, even when there is clear influence from the politics of the moment. However, as some of the respondents put it in their own opinions, courts have partially managed to some extent in addressing these situations for which they are criticized for.

### 3.3.2 Compliance of the public authorities with domestic and international obligations with regard to freedom of expression.

This part of my thesis seeks to establish the commitment of the public authorities in Uganda such as the Judges, establishing their obligation on compliance towards domestic and international obligations with regard to Freedom of expression in Uganda as seen in my thesis below.

Discussing the level of autonomy of courts of law and judges in dealing with freedom of expression, the respondents gave me the following opinions;

One respondent said that the courts are independent in dealing with such related cases, another one says autonomy is minimal, another one believes that autonomy only exists in those cases to which the executive has no interest. When asked about the risks faced when the judges are directly appointed by the government, several responses were given. One responded that judges have been forced to make judgments in favour of government especially in politically related cases, that the appointing power has the authority to dictate the outcome. The third respondent said that if the person is appointed by the president, then he uses him to violate the rights of others. On this question, even the other respondents have almost the same response.

When asked about public authorities compliance with the obligations under IHRL concerning freedom of speech and expression in Uganda, the first respondent simply said that there is still quite a lot that needs to be done, that this right in particular has been ignored greatly. The second respondent said that the law is in place. However, it is not followed. The third respondent said that the IHRL keeps Ugandan laws in check. He added that the IHRL helps seekers of the right to freedom of expression to have uniform access to

them and the fourth respondent mentions that IHRL must protect Ugandans because if it does not, the resultant effects can be felt anywhere else in the world. The spill-over effects as suggested by the last respondent prove that IHRL is such an important tool and must be adhered to domestically as a way to keeping the domestic legal instruments in check. As seen earlier on in the discussions above, domestic legal instruments can easily be manipulated in many ways. For example, the president always appoints judges and that alone has a lot of implications for any cases brought for the government against anyone else.

Another question asked was, what the respondents thought about Uganda's compliance with both constitutional and international law with regard to freedom of expression. The first respondent said that yes, actually Uganda does comply because on many occasions, one hears reference with both constitutional and international law. The second respondent he also noted that to a big extent, the courts conform because in most cases, when they are reading judgments, they cite international treaties and conventions.<sup>138</sup> The third respondent was in support, but noted however that courts will comply for a few Ugandans who are aware of the laws or those who can afford the expensive legal services in the country. The fourth and fifth respondents provided different opinions as compared to the rest. The former said courts do not usually comply. He cited the *Karungi case* in which he says that a decision was reached without reference to international law. The latter also said there was no compliance. He said that Ugandan courts sometimes disrespect international regulations and constitutional provisions on freedom of speech just to please their bosses.<sup>139</sup>

### 3.3.3 The impact of presidential elections period on free speech and expression

In this section, I'll report about the respondents' views concerning the the impact of presidential elections period on free speech and expression. I raised a several questions concerning this questions with the respondents. The first question asked was; if there were

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<sup>138</sup> According to field work I carried out in Uganda using questionnaires in August 2014

<sup>139</sup> According to field work I carried out in Uganda using questionnaires in August 2014

situations where freedom of expression and speech was especially at risk. To answer Yes or No; however, if yes, the respondents were asked to list some situations when that was the case. The first respondent said yes. This respondent explained that at times as a journalist, one labors to inform the general public but the state operatives are in disagreement. I agree with this respondent. For example using literature that i provided in the first chapters of my thesis about a case when journalists were beaten, some radio stations closed such as Central Broadcasting Service (CBS) Fm and Kaboozi Fm when they got closed. The respondent added that personally had been beaten up and the case to date was still at police.<sup>140</sup> These situations can be likened to Plato's suggestion that those effective at winning elections will dominate politics in democracy.<sup>141</sup>

The second respondent also said yes, freedom of expression is at risk. For example this respondent pointed out cases when police tries to disperse opposition supporters and also further after elections when oppositions are not allowed to hold rallies in big towns and cities. The third respondent also said yes. This respondent explained that the parliament of Uganda has gone further to pass laws like public management order act which directly affects the right of free speech and expression.<sup>142</sup> The contributions of the public management order act sets restrictions to the enjoyment of the right of free speech and expression. In my assessment, the above mentioned act is contrary to what Art. 19 of the UDHR and ICCPR , Art. 9 (2) of the ACPHR and Art. 29 (1) (a) of the Ugandan Constitution state.

The fourth respondents said yes, it is at risk. This is so when people are not freely allowed to demonstrate, when the constitution is not respected, when court orders are violated and persecution of journalists.

The fifth respondent also said yes. This respondent noted that especially when government through police oppresses the opposition politians not to freely address the citizens as

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140 According to field work I carried out in Uganda using questionnaires in August 2014

141 Mckinnon (2012), Issues in political theory, 2nd Ed, Oxford, University Press pg 83

142 same as above

democratic society requires. The respondent added some instances where the government does not want journalists to write about security matters and yet the public is entitled to information.<sup>143</sup>

The second question asked respondents whether they thought that freedom of expression and speech will be affected by and during the next presidential election in 2016. If Yes or No, to explain the meaning behind their answers and then explain what they expect to happen. The first respondent answered yes. This respondent added that the government was likely to use the public management bill to stop people from holding public meetings which would rightly violate their right to free speech and expression.<sup>144</sup> The second respondent also said yes. The respondent further explained that the right to free speech had already been affected as police keep on blocking opposition rallies calling for reforms in the Electoral Commission (EC). This respondent narrated that all public areas in the city where the public rallies used to be held have been gazetted and police had taken over them. So to him, there will be no chance for the voters to hear from their candidates.<sup>145</sup> While watching one of the media outlets, *Amama Mbabazi* one of the opposition leaders was blocked by police and taken to police custody in a bid to stop him from meeting his supporters. This police officer made it clear that he would again and again make sure that the former Prime Minister *Amama Mbabazi* was stopped. This helps in supporting the view of the second respondent above.<sup>146</sup> The third respondent also concurs with the first two. The respondent believes that, the right to free speech and expression in the 2016 would be affected because; people are not allowed to assemble, interference of the police and army in most cases and finally believes that this right will be affected because the media houses are usually intimidated. The last respondent, answered that yes. It would be so because the respondent thinks that state machinery will be used in case of a protest against rigged elections.

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143 According to field work I carried out in Uganda using questionnaires in August 2014

144 According to field work I carried out in Uganda using questionnaires in August 2014

145 Same as above

146 Same as above

When asked about the challenges faced by opposition parties while holding public rallies, the respondents gave the following comments. The first one made it clear that dispersing rallies is usually done violently. That also certain time, charges are filed against the seemingly powerful opposition. In the previous presidential campaigns, in one of them, Dr. *Kizza Besigye* had been accused of rape case and treason, which fortunately the court dismissed due to lack of evidence.<sup>147</sup> The second respondent added that usually, the opposition are not allowed to hold rallies like the first respondent, that the opposition have to seek permission from the police despite the fact that courts outlawed this section of the Police Act, there would be supporters are usually bought off by the government and impounding of public address systems of the opposition. The third respondent answered that yes. The respondent said that usually police break up public rallies using tear gas, the state sometimes uses hooligans like the Kiboko squad to break rallies and also the opposition usually lack funds to hold these rallies. The last two respondents agreed that indeed there are challenges faced by the opposition and given their views were similar to those of other respondents will not be repeated.<sup>148</sup>

Respondents were asked what they thought about the role of the government in media regulation. The first respondent pointed out that actually this is one of the means the government has used to silence Ugandans thereby taking away their right of free speech and expression.<sup>149</sup> This respondent added that the government has also used this platform to mistreat journalists and media houses when in its opinion, it publishes material which is not in their favor. The second respondent stated that government should have a minimal role in media regulation. This respondent added that the government should not use laws to gauge media but should rather facilitate free speech and expression.<sup>150</sup> The third respondent believes stated that the government should only ensure better working conditions for journalists and impart the quality skills in them so that the media can self regulate

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147 According to field work I carried out in Uganda using questionnaires in August 2014

148 Same as above

149 Same as above

150 Same as above

themselves without government coming up with threats and sanctions to keep them in line. The last respondent noted that just as the constitution states, it is only in such serious security matters that could jeopardize the security of the country that the state should curtail journalists from writing such. Otherwise, he believes that the state needs to provide a conducive atmosphere for journalist to work.<sup>151</sup>

Lastly, when asked whether politics has influence on decisions from cases involving the journalists with regard to freedom of speech and expression. If yes or no, the following explanations were provided. The first respondent answered yes and added that those interested in some of the cases usually hold big (influential) offices. This gives them an upper-hand in influencing decisions through promises like promotions. The second one also said yes. The given explanation was that; you find a lower court adjudicating in favor of state neglecting earlier pronouncements by higher courts. This respondent added that sometimes journalists have been blocked to cover some cases and there are occasions when police act on behalf of the state to deny journalists access to some places and sources of information.<sup>152</sup>

The third respondent replied no. He does not think politics has an influence because the constitution provides for media expression and freedom. So politics has no role since such freedoms are governed by the constitution. The fourth respondent said yes. He explained that in most cases, radio stations have been closed because they hosted opposition supporters who criticize the government. This respondent added that in most cases, stories about opposition or independent minded journalists are not allowed or have been sacked from state-owned media. Some media houses have been forced to see the agenda of the government thus blocking opposition views and promoting only government opinions.<sup>153</sup> The fifth respondent said yes and explained that for example, the scrapping of

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151 Same as above

152 According to field work I carried out in Uganda using questionnaires in August 2014

153 According to field work I carried out in Uganda using questionnaires in August 2014



the false news by the court, the same has not been changed in the penal code and litigants can still go ahead and charge someone with a scrapped law. The press release supports this.<sup>154</sup>

### **3.4 Conclusion**

Under this chapter, I have analyzed three sections. They include; the role of domestic courts in ensuring freedom of expression, to what extent public authorities in Uganda comply with international and domestic legal obligations concerning freedom of speech and the impact of presidential elections period on free speech and expression. In the analysis, I have used findings from the field which I gathered using a questionnaire from the five journalists working with different media outlets. I have followed the Chatham House of rules when using this information, to ensure not identifying my respondents so as to avoid any potential negative repercussions for them.

Under the domestic courts, the law under the public management order act, it is not allowed to hold public gathering to discuss political issues without seeking permission first from the police, courts lack independence and politics has influenced decisions from courts to a greater extent especially cases in which the State has interest.

While assessing this section under compliance of public authorities with domestic and international legal obligations, issues like minimal autonomy, judges being appointed directly by the president, that the law is in place but not fully adhered to, IHRL keeps Ugandan law in check and some respondents believed that courts use the law for a few Ugandans who actually know the law.

In discussion of the impact of presidential elections period on free speech and expression, factors like media regulation are stated, silencing of the media outlets like news papers and radio stations to stop programs that criticize the government, creation of illegal squads like the Kiboko group and emphasis of the public management order act.

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<sup>154</sup> XIX article 19 (2004), Global campaign for free expression (<http://www.docs.mak.ac.ug/sites/default/files/uganda-supreme-court.pdf>)

All the above are some of the highlights i have summarized in this chapter three regarding the fieldwork that I carried out.

## **4 CHAPTER FOUR**

### **4.1 CONCLUSIONS**

#### **4.2 Role of domestic courts in ensuring freedom of expression.**

Courts of Law in Uganda play a major role in the enforcement and interpretation of both the domestic and international legal instruments that relate to the freedom of speech and expression in Uganda. The main international legal instruments applicable to Uganda include; the 1948 Universal Declaration on Human Rights (Article 19), the 1966 ICCPR (Articles 19 (1&2) and the 1981 African Charter on Human Peoples' Rights (ACPHR) (Art.9). Other relevant sources include cases tried in relation to the issue, Human Rights Committe Recommendations and Universal Period Review (UPR) process. At the domestic level, the legal frame work constitutes; the Constitution of Uganda (Art.29) as the primary source, The Press and Journalist Act 1995, Uganda Chapter 105 and The Electronic Media Act 1996 (Chapter 104). These form some of the core sources of law used by the courts in the pursuit of justice related to free speech and expression as a right. According to my findings, courts have been blamed for failure to enforce outcomes without political interference especially in cases that involve the political opponents. In my assessment, this was shown as the biggest challenge the courts of law are facing in Uganda. It is sad to note that this occurrence has generated mis-trust of the public towards the role courts and police. Hence, there is need for total independence of courts in Uganda if the right to free speech and expression is to achieve its goal in a supposedly democratic country like Uganda.

#### **4.3 Compliance of the public authorities with domestic and international obligations with regard to Freedom of expression.**

This thesis pays close attention to Uganda's compliance with both domestic and international law. Uganda has ratified many of these international legal innstruments like the ACPHRs and ICCPR. Uganda has engaged with international bodies entrusted with the international enforcement of human rights as the Human Rights Committe and the Human

Rights Council. Also importantly, Uganda has the its Constitution which it follows, as its the supreme law of the land. While Ugandan domestic courts that have been put in place to interpret the law, the question is whether these courts do conform with the international legal standards in regards to human rights. During my field work, one respondent stated that actually courts work, but the problem is political interference in some cases where the government has interest. The famous case was when the main opposition leader of Forum for Democratic Change Dr. Kiiza Besigye had been once arrested on accusations of rape but this case fortunately, was thrown out as not being credible by the Supreme Court. I can therefore say that indeed Uganda's domestic legal instruments are in conformity with the international legal standards of human rights instruments, but political influence remains the biggest challenge.

#### **4.4 The impact of presidential elections period on free speech and expression**

In my view, the most difficult period faced by the prominent opposition leaders in Uganda has been that before and during the concluded presidential elections in Uganda February 18, 2016. Before, the elections, there were evidences of the arrest of FDC leader Col. Dr. Kizza Besigye and the ousted Mayor Lord Major Erias Lukwago. Kampala South chief, Siraje Bakaleke said the two were organizing a rally to call for 2016 general poll boycott.<sup>155</sup> Again Kizza was arrested during the polling days on allegations of planning chaos. There was media restriction on airing some programmes that criticise the goverment. Several HRW reports used show how restrictions are put on some radio stations airing some programmes in local languages. Radios are discouraged to stop political sensitization and awareness programs. In addition, it is alledged that social media like facebook, twitter and whatsapp were temporarily interfered with during voting. Such acts do not show fairness. They only support the view that free speech and expression is suffocated towards and during presidential election periods. This makes it difficult for the right to free speech and expression to grow. This implies that Uganda's elections have adverse effects mainly negative towards promotion of free speech and expression.

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155 New vision (2015) [http://www.newvision.co.ug/new\\_vision/news/1326144/besigye-lukwago-arrested](http://www.newvision.co.ug/new_vision/news/1326144/besigye-lukwago-arrested)

## 5 CHAPTER FIVE

### 5.1 RECOMMENDATIONS

#### 5.2 Recommendations on what should be done to improve freedom of expression in Uganda

Under this section, I will focus on suggesting and analyzing in detail the different ways in which I think freedom of speech and expression can be improved in Uganda. The purpose of this is to show the way forward. Having looked at the literature, the law, and several other issues as seen in the chapters above, it is necessary that lessons or suggestions on what should be done can be drawn. A number of key issues which are important to improve the situation concerning freedom of expression will be addressed below.

*Political will and commitment.* Political will in my view can be understood as the willingness of the government in power putting in place strategies and plans that are all inclusive without discrimination on the basis of any political affiliations. “Political will” refers to that collective amount of political benefits and costs that would result from passage of any give law.<sup>156</sup> On the other hand, I can define political commitment as the will by the authorities or leaders to uphold and implement all the decisions and laws by remaining faithful in fulfilling them through the holding of the constitution of that country. Political will is very important if freedom of expression and speech is to be upheld and fully realized in Uganda. This is so because it helps to create a favorable environment in which all can compete favorably without fear of persecution. Political will is a very big factor in creating a positive environment. Once there is political will, then an equal ground is be laid down for equal opportunities guaranteed to all through free participation. For example journalists would be allowed to freely publish information from either the opposition or government without fear of being thrown to jail; public rallies would be allowed freely. This is what Ugandan leadership is required of to realize the bigger objective of free participation of all citizens of

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156 Quora (2012) <http://www.quora.com/What-is-the-definition-of-political-will>

the country. One of the major challenges faced by the courts of law as stated by the respondents is politics. Negative politics has implications that are not conducive for the flourishing of the right to free speech and expression. Politics tends to bring mistrust and competition. Hence, willingness of government to initiate a conducive atmosphere exhibits a positive political will. Political commitment would address the desire by the government to keep its promise of upholding the rule of law. In my assessment, political will and political commitment would result in efficacy in the promotion of free speech and expression as a human right.

*Better use of the African system of human rights protection.* There is a strong need for the African Union (AU) to fully involve itself in solving African problems that are related with the right to free speech and expression. The African Court on Human and People's Rights is operational now since early 2009. The Courts mandate is to judge the compliance by a State Party with rights included in the ACHPR and other instruments on the protection of human rights ratified by a State of which freedom of speech and expression is part.<sup>157</sup> With the presence of An African Court then in my assessment, I think that its presence should force some African governments to observe and respect the right to free speech and expression. As shown earlier, the abuse of this right has on several occasions resulted into chaos like demonstrations and property destruction in Uganda. The Commission may submit a case to the Court if a situation has come to its attention that, in its view, constitutes one of serious and massive violations of human rights (Art. 119.4 of the Interim Rules of Procedure of the African Commission). This is possible if the State party has ratified the Court's Protocol.<sup>158</sup> This shows that if fully implemented in Africa, then the role of the Commission and the Court in dealing with issues related to the right of free speech and expression would be easily accepted and respected. This is because, the court and Commission would be seen as tailor made for solutions related to African problems. On a number of occasions, the AU has been accused of lack of intervention into African problems related to freedom

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157 Practical guide - African Court on Human and People's Rights towards the African Court of Justice and Human Rights pg 3,

158 Practical guide - African Court on Human and People's Rights towards the African Court of Justice and Human Rights pg 70

of expression and this has always resulted in deaths, imprisonment and exiles. The current situation in Burundi master-minded by President Pierre Nkurunziza has resulted in the suffering of millions of people and many have lost their lives. The Rwanda genocide of 1994 left nearly a million people dead when a few people misused the media to the destruction of the Tsutsi tribe and in Darfur, several still dying; Clashes in Uganda between police and politicians or civilians can also be highlighted. It is high time AU became fully operational and functional to deliver solutions to African challenges associated with free speech and expression. This would become a deterrence method to leaders and ultimately result in respecting the right to free speech and expression in Africa generally and Uganda in particular.

*Embracing of an all encompassing practice of democracy;* Free speech and expression are some of the requirements for a just and democratic society. This aspect can be attained through allowing full participation of the citizens of a country. Most cases, it's the disadvantaged who are usually the victims like the poor or disabled. Uganda ratified the Convention on the Rights of Persons with Disabilities (CRPD) and its Optional Protocol in 2008. Uganda has made commendable strides in the promotion and protection of the Rights of Persons with Disabilities (PWDs). This includes enactment of Persons with Disabilities Act 2006 and ratification of the CRPD and its Protocol without any reservations.<sup>159</sup> An all inclusive approach would greatly promote the voice of everyone which in turn makes service delivery better. The best way in which their local needs from the community level can be addressed, is through the human rights approach of bottom-up representation. By this, I imply a situation where the needs of the local people in communities are channeled up for intervention. This can be attained democratically through participation. Participation can be understood as a process through which individuals make contributions regarding issues at hand through leadership of their choice. Participation in a democratic society has a direct relationship with human rights both directly and indirect. Therefore, Uganda should on this

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159 Submission for Uganda Human Rights Commission to - The Committee on the Convention on the Rights of People With Disabilities, 2016, pg 1

note allow free and equal participation of all without any discrimination and interference within bounds of law.

*More transparency in the Electoral Commission (EC) of Uganda.* On different occasions, the EC has been accused of mishandling of the election procedures, delays and vote rigging. Voting is a way people choose the leaders of their choice and interests. In the 18<sup>th</sup> February 2016 concluded presidential elections, there was a feeling of lack of trust in the EC as the oppositions on several occasions called for some changes but all fell on deaf ears. Therefore, I would recommend the need for a more independent EC in dealing with the votes independent of any government in power. Independence of the EC means that we would have a representative democracy in which the right to free speech and expression would grow and actually help to create a positive change in respective communities.

*Better enforcement of the law concerning freedom of expression.* The instruments of law in Uganda both international like the ICCPR, ACPHRs, ECHR, ACHR and the constitution of Uganda are clear on what should be done to achieve the right to free speech and expression. Art 29 (1), (a-e) is about Freedom of Assembly, Association and Expression.<sup>160</sup> The term freedom of expression is sometimes used synonymously, but includes the act of seeking, receiving and imparting information ideas, regardless of medium used.<sup>161</sup> Sarah also noted that the right to assembly peacefully rests at the core of the functioning democratic systems and is closely related to other cornerstone of democracy and pluralism. Sarah's argument actually shows that the law in Uganda is available. She suggests that there is need to enable the law if the right to free speech is to be realized. The law is formulated to guide the acts of the people and its nation.

*Self regulation of the media.* The United Nations Educational, Scientific and Cultural Organization (UNESCO) defines and highlights the importance of self regulation of the media in upholding the right to freedom of speech and expression. According to Andrew of

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160 Sarah (2014) Challenges of Freedom of Speech, Assembly and Association in Africa –Case of Uganda (<https://www.linkedin.com/pulse/20141209082148-104592361-challenges-of-freedom-of-speech-assembly-and-association-in-africa-case-of-uganda>)

161 Sarah (2014) Challenges of Freedom of Speech, Assembly and Association in Africa –Case of Uganda

UNESCO (2011), self regulation is a combination of standards setting out the appropriate codes of behavior for the media that are necessary to support freedom of expression, and process how those behaviors will be monitored or held to account.<sup>162</sup> The media in Uganda plays a number of roles. The media provides a platform on which several issues ranging from health, education, corruption, agriculture and cultural related issues. This makes it possible to generate knowledge to those who require it in different sectors. On the contrary, the media can also undermine democracy in a country like Uganda. For example, the media can choose to consolidate one person because he or she has money or support of the people. That situation will lead to popularization of an individual at the expense of those that actually would perform better and can promote conflict and social division in a society.<sup>163</sup> According to Andrew in the UNESCO report (2011), self regulation preserves independence of the media which protects it from partisan interference which makes them a better efficient as a system of regulation as the media understand their own environment better.<sup>164</sup> Ugandan media ought to manage their own working environment and ensure that it is within the law as stated in The Press and Journalist Act 1995 (Chapter 105) and The Electronic Media Act 1996 (Chapter 104).

### **5.3 Conclusion**

In this chapter, I have made suggestions on what needs to be done in order to improve the right to free speech and expression in Uganda. This forms a road map on what should be done by the Ugandan public authorities, the political actors, the civil society and media professionals if this right of free speech and expression is to be a success. This therefore forms my own opinions on what I think is needed to better the situation. Uganda has come a long way since its independence, hence need for strengthening its institutions and consolidate a democratic society. Creation of systems that uphold and follow the rule of law is very important in the prosperity of any state. The history of Uganda has always rotated around

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162 Andrew- UNESCO (2011), The importance of self regulation of the media in upholding freedom of expression, <http://unesdoc.unesco.org>, pg 12.

163 Andrew- UNESCO (2011), The importance of self regulation of the media in upholding freedom of expression

164 Same as above



blood-shed. In his, own remarks in past decades, the president of Uganda had stated that the problem of leadership in Africa is the desire to over stay in power. Therefore, the right to free speech will always be affected as governments seek to extend stay in power thus cracking down on any individual or media outlets like news papers, radio stations, television stations and face book that may start criticizing the policies, programs and actions of the government. The high rates of unemployment, poor health services and poor universal primary education have made the public or media to openly criticize the government.

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