

## **A SHADOW REPORT SUBMITTED TO THE**

Office of the High Commissioner for Human Rights  
On the occasion of Uganda's 2nd Cycle Universal Peer  
Review Due October 2016

Emerging Concerns on Freedom of Expression and Media  
Rights in Uganda (2011-2015)

### **PREPARED AND SUBMITTED BY:**

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## **A Note about Freedom of Expression and Media Rights Actors Cluster-Uganda**

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1.1 This report has been generated as a result of consultation with various actors both individuals and organizations working on media rights and freedom of expression in Uganda. The media freedom and freedom of expression cluster, convened by Human Rights Network for Journalists –Uganda, is one of the clusters working under the National Stakeholders’ Forum on UPR to submit information for Uganda’s 2<sup>nd</sup> peer review cycle. The media freedom and freedom of expression cluster advocates for a conducive operating environment for all media practitioners including journalists in their various capacities. Members in this cluster also advocate for the expansion of the frontiers of freedom of expression without discrimination.

## **A Note on the Methodology of the Present Submission**

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1.2 Development of this report was coordinated by HRNJ, which brought together various actors working on media rights and freedom of expression. A list of participating organizations and individuals is attached hereto attached as appendix ‘A’. This cluster is under the auspices of the civil society organizations National Stakeholders’ Forum on the UPR. The cluster report landscapes the status of media freedoms and freedom of expression in Uganda, notes the best practices, successes and challenges in the past 4½ years on media freedoms and freedom of expression.

## **II. REPRESSIVE LEGAL AND POLICY FRAMEWORK CURTAILING MEDIA FREEDOMS AND FREEDOM OF EXPRESSION**

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2.0 Since the 2011 peer review, marginal efforts have been undertaken by the Government to promote and protect the freedom of expression and media rights in Uganda. Very little progress has been made on implementing the 6 recommendations made during the 2011 review.

2.1 The last 4½ years have evidenced shrinking space on the enjoyment of freedom of expression and media freedoms especially exacerbated by enactment of repressive legislation. This section will highlight some of the repressive legislations enacted since the 2011 UPR.

2.2 The Public Order Management Act 2013 contravenes Articles 29 (1) (a) (b) (c) (d) and (e) of the Constitution of Uganda which provides for the freedom of speech and expression; freedom of thought, conscience and belief; freedom to assemble and to demonstrate together with others peacefully and unarmed; and the freedom of association. The Public Order Management seeks to regulate and control conduct of public meetings. This Act is being used by the police to curtail free speech, which is a key tenet for democracy to thrive. This law was used as a tool to halt assemblies by the members of the opposition in 2014 and 2015 towards the general elections of 2016.

2.3 The Press and Journalist Act (2000) contains restrictive, burden-oriented provisions with a diverse range of restrictions on the identity of a journalist. The law provides for mandatory possession of a practicing certificate for one to be dubbed a journalist. This mandatory certificate is obtained upon successful registration with the media council established under the Act. The certificate can be suspended for 6 months if the holder is found guilty of professional misconduct. The law is open to abuse by the State subjecting journalists to accreditation for them to operate.

Section 9 of the Act mandates the media council to regulate the conduct and promote good ethical standards and discipline of journalists; exercise disciplinary control over journalists, editors and publishers; censor films, videotapes, plays and other related apparatuses for public consumption among others. The section contains overly broad terms, which grant the Council powers to control the practice of journalism and stop dissemination of information. Terms like ‘exercise disciplinary control over journalists’, censor and exercise any function

that may be required are too broad and the Council on various occasions has hidden under this vagueness and ambiguity of the law to “discipline” journalists and to block plays which they allege are ‘politically and morally wrong’ from being staged.

2.4 The Penal Code Act (1950 amended in 2007) still holds provisions that continue to be employed by state agents in clamping down on freedom of expression and media rights. Some of the provisions have been used against journalists that tread and write about issues such as governance, transparency and accountability. Section 41, of the Penal Code Act provides for the offence of promoting sectarianism and prescribes a punishment of imprisonment for a period of no more than 5 years. Additionally, the sections 179 and 180 on libel and defamation respectively have been used to corner the press into diverting from matters critical to governance and democratization. In October 2014, a magistrate sentenced Central Broadcasting Services (CBS) Radio journalist Ronald Ssemuusi to a fine of \$350 or a one-year jail term for criminal defamation. The verdict came after a 2-year trial over a report suggesting that the former chairman of Kalangala District had stolen solar panels meant for the community. An appeal was pending at the end of last year. . By March 2016, more than 8 journalists were facing charges of criminal defamation in various courts of law across the country.

2.5 The Access to Information Act (2005) is aimed at government through creating avenues for information access. The implementation of the Access to information Act is geared towards enhancing transparency and accountability and sharpening citizenry space for participation in governance and democracy. Journalists however still find problems accessing information from government agencies. The relevance of the Access to information Act is undermined by the continued existence of the Official Secrets Act, which emphasizes secrecy amongst public officials and prohibits the release of what is widely termed ‘official information.’ This takes journalists back to the position of investigating information that may not necessarily be in the interest of the state to release and hence suffering repercussions of media gagging.

2.6 The Anti-Terrorism Act enacted in 2002 undermines some fundamental rights vital for freedom of expression and media freedoms. Section 9 (1) criminalizes the publication and dissemination of news materials “that promotes terrorism”. The Act does not define the

expression ‘promote terrorism’, which leaves room for indiscriminate abuse and allegations against the media covering certain stories. The Act also enlists journalistic material as part of any other documents that can be subjected to investigations in the nature of terrorism and cannot benefit from exemption.

2.7 The Regulation of Interception of Communications Act of 2010 provides for surveillance, tracking, intercepting and monitoring communications (telecommunications and any other related mode of communication) of persons injurious to national security. The Act puts the work of journalists in harm’s way in as far as it subjects their communications to interception, a mechanism that can potentially reveal the sources of the journalists hence endangering their safety. It adds to the already burdensome legal framework restricting the media rights and freedom of expression.

2.8 In February 2014 the Minister for Information issued two new regulations under the Press and Journalist Act. Statutory Instrument No. 4 of 2014 specified the types of fees that must be paid in order to practice journalism. Journalists and media freedom advocates protested, saying the fees would lock some people out of the profession. Statutory Instrument No. 5 of 2014 tightened the code of ethics contained in the law. Critics argued that elements of the code, particularly one barring persistent questions by reporters, would seriously harm investigative journalism.

### **III. CURTAILING MEDIA RIGHTS AND FREEDOM OF EXPRESSION THROUGH THREATS AND INTIMIDATION**

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3.1 We recognize that some initiatives have been undertaken to promote media rights and freedom of expression such as the establishment of the Parliamentary Forum on media in 2013 has brought together Members of Parliament interested in defending and promoting media freedoms. The Forum is used to discuss policy issues related to the legal framework on media freedoms and freedom of expression. During the reporting period, there has been evidence of judicial activism in promoting media freedoms and freedom of expression. In

October 2014, journalists secure a victory when the High Court reversed an order issued earlier by a Chief Magistrate excluding journalists and the public from a trial involving the theft of audio recordings from the head of the Uganda Police Force. The Magistrate had ruled that the trial would expose confidential and sensitive security information.

3.2 Organizations working on media rights and freedom of expression have built solidarity that has been vital for strategic advocacy. In February 2013, the Human Rights Network for Journalists (HRNJ) petitioned the Human Rights Committee of Parliament demanding that Parliament inter alia ensures that government takes action on the recommendations of the Universal Periodic Review regarding media freedoms. It also sought Parliament's active involvement in the protection, upholding and promotion of the freedom of expression and information in Uganda. The cluster members also noted that the guidelines requiring journalists accredited to the house of Parliament to hold a Bachelor's degree in Journalism and at least three years of professional practice. While this is a valid proposal, many media houses scoffed at it as a direct intention to restrict media freedoms and freedom of expression.

3.3 However a lot more need to be done to create an environment that promote media rights and freedom of expression. The last 4½ years have evidenced a shrinking of space for media rights and freedom of expression. This has been evidenced through acts, mostly by state agencies, such as threats and intimidation, arbitrary arrest, and detention and in some cases cruel and degrading treatment contrary to Uganda's commitments under the UDHR, the ICCPR and the 1995 Constitution (as amended).

3.4 Journalists noted that there was an increase in abuse and torture of journalists while doing their job. Journalists are roughed up, beaten and in some cases seriously wounded during the course of their work. Human Rights Network for Journalists (HRNJ) stated that between October 2015 and February 2016, 17 journalists had been assaulted by contestants, their supporters, the police and the Uganda Peoples Defence Forces Special forces command. On 22<sup>nd</sup> February 2016, four days after the general elections, Isaac Kamani, a photojournalist with Associated Free Press, was pepper sprayed by the police while taking pictures of the police arresting the Forum for Democratic Change (FDC) presidential candidate Dr. Kizza Besigye. On 16<sup>th</sup> November 2015, Isaac Kugonza of Delta TV was shot on the head by police as they

stopped and arrested the Lord mayor Elias Lukwago from going to the Electoral Commission seeking for clarification on mayoral nominations.

3.5 Journalists also suffered deprivation of their property such as cameras, which were in some cases destroyed. On 10<sup>th</sup> January, 2016, Ronald Galiwango of Nation Media Television (NTV) Uganda had his camera confiscated by the Moroto District Police Constable while he was covering the campaign rally of opposition leader Kizza Besigye. The cameras of Ernest Kyazze of Bukedde Television, Julius Ariongo of the Daily Monitor correspondent in Moroto District were savagely destroyed. Unfortunately, none of these cases have been investigated to their logical conclusion.

3.6 In some cases the right to life of media actors guaranteed under Article 3 of the UDHR was threatened. In 2013, two journalists were found dead under mysterious circumstances. Thomas Pere of the New Vision was in June 2013 found dead in a ditch, having left for his home from work. His personal effects were not taken indicating that robbery was not the motive. The body of Alex Kule, a Kasese based freelance journalist was discovered in December 2013 in transmitter house. He was an out spoken crusader against corruption. The police investigations remain inconclusive and as a result have a causal effect on journalists who believe foul play was involve. These unexplained deaths are in breach of article 22 (1) of the 1995 Constitution (as amended) and other international conventions that guarantee the right to life.

3.7 The indiscriminate arrest and detention of journalists was done in contravention of article 9 of the UDHR and to article 23 (1) of the 1995 Constitution (as amended). HRNJ stated that it has recorded 10 cases of journalists arrested and detained over electoral related reporting. On 13<sup>th</sup> February 2016, the police in Lira district arrested and detained the editor of Lira Radio North together with 6 politicians who were discussing the presidential elections debate. The police alleged that the accused had destroyed candidate Museveni's posters. They were charged with malicious damage to property and later granted bail after 4 days in detention. On 6<sup>th</sup> February 2016, the police in Abim district, arrested 3 journalists including BBC's Catherine Byruhanga, Kelvin Brown based in Kenya and NTV's Sam Lawino while filming FDC's candidate Kizza Besigye's visit to Abim hospital. They were told to delete their footage

before releasing them but they declined. They were released after 4 hours without preferring any charge against them.

3.8 We continue to note that the civic space for the enjoyment of media freedoms and freedom of expression has been shrinking in the last five years. In May 2013 the police cordoned off and searched the premises of the Monitor Publications in Namwongo, Kampala and the Red Pepper Newspaper in Namanve. Two radio stations, 93.3 KFM and Dembe FM, under the Nation Media group where subsequently switched off the airwaves. These events where the state's response to a controversial letter allegedly authored by the coordinator of intelligence services, General David Sejusa published on 7<sup>th</sup> May, 2013 by the Daily Monitor. The media houses remained closed for 10 days. These actions were meant to cause intimidation and contributed immensely to denial of the right to freedom of press and expression guaranteed under Article 29(1) of the 1995 Constitution as amended. On May 28 and 29, 2013, police assaulted and tear-gassed more than 30 journalists in two days in an effort to deter them from accessing and covering the continued closure and occupying of the Daily Monitor newspaper, KFM and Dembe radio stations premises by security agencies searching for an alleged malicious document published by the Monitor newspaper. Mulindwa Mukasa of Associated Press and Ntege Williams a freelancer, sustained wounds on their arms and legs from police beatings. The restriction of media freedoms and freedom of expression also infringes on their freedom of movement. In 2012, journalists were denied access to oil agreements and related information. Denial of this information lent credibility to the lack of transparency by the state with regards to the oil agreements.

3.9 We also note that the ad-hoc policies introduced by the Minister of information negatively impacted on their work and created a repressive operational environment. The Uganda Communications Commission informed all radio stations that they are required to reserve one hour of prime time air to promote government programs. In August 2014 the Executive Director of the Uganda Communications Commission wrote to a radio manger in Fort Portal warning him of running programs that “cause disharmony” in the community and requested recordings of all programs.

## 4.0 RECOMMENDATIONS

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1. Amend sections 33-36, 41, 49, 51-52, 53 and 179 of the Penal Code Act; the Press and Journalists Act, and the Public Order Management Act of 2013 and the Anti-Terrorism Act of 2014 to bring them in line with the 1995 Constitution and international and regional principles on media freedoms and freedom of expression.
2. Undertake a comprehensive review process of all relevant national legislation with particular attention to the Public Order Management Act, the Anti-Terrorism Act; the Interception of Communication Act; The Penal Code Act (1950 amended in 2007); the Press and Journalist Act (2000); the Uganda Communications Act 2013 with a view of amending them to comply with the provisions of the Constitution of Uganda and international human rights standards on freedom of expression and media rights.
3. Repeal the Official Secrets Act that unlawfully encumbers access to information to ensure that all laws conform to acceptable international human rights law to enhance open government.
4. Investigate and take legal action against state security agents and agencies violating, harassing, intimidating, and physically assaulting journalists and others exercising freedom of expression.
5. Strengthen and harmonize human rights training for state law enforcement and security agencies.
6. Extend an open and standing invitation to all the UN and African Commission on Human and Peoples' Rights Special Procedures and specifically facilitate the formal country visits of the UN and ACHPR Special Rapporteurs on the promotion and protection of the right to freedom of opinion and expression; the rights to freedom of peaceful assembly and of association; and human rights defenders.

7. Appoint an independent authority to investigate communications monitoring and surveillance programmes conducted by the Ugandan government with a view of ensuring that these programmes are in compliance with international human rights obligations providing for the protection of citizen personal data collected by government.
8. Enact a law on data protection to enhance the protection of the right to privacy of citizens in the context of digital communication in accordance with the Constitution of Uganda and international human rights law.
9. Introduce safeguards to ensure that the rights of mobile telephone subscribers in relation to their personal data are guaranteed.