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Uganda



1 INTRODUCTION

The Republic of Uganda is the world's most ethnically diverse nation, according to a study by Harvard University's Institute for Economic Research.¹ It is a landlocked country in the Great Lakes region of East Central Africa. Lying astride the equator, it is bordered to the east by Kenya, to the north by South Sudan, to the west by the Democratic Republic of the Congo, to the southwest by Rwanda and to the south by Tanzania.

A system of customary law applied in Uganda prior to Britain declaring it a protectorate in 1884 and establishing colonial administrative law throughout the territory. In Buganda, largest of the traditional kingdoms in present-day Uganda, the *kabaka* (king) appointed a trusted official, the *katikkiro*, to be in charge of the kingdom's administrative and judicial systems. Importantly, the country was never fully colonised, as non-Africans were not allowed to acquire freeholds.²

Following the rise of African nationalism, a constitutional monarchy with a government based on the British model was implemented in 1955, and in 1957 political parties emerged and direct elections were held. Uganda became an independent Commonwealth nation on 9 October 1962, with Milton Obote as prime minister.³

Within four years, however, Obote abrogated this constitution and declared himself president under an interim constitution. Following an attempt on his life in 1969,

Obote banned opposition political parties, leaving himself the country's *de facto* absolute ruler.⁴ Less than two years later, on 25 January 1971, Obote was ousted in a military coup led by armed forces commander Idi Amin Dada. Amin declared himself president, dissolved Parliament, and amended the constitution to give himself absolute power. The subsequent eight years proved a reign of terror marked by political repression, ethnic persecution, gross human rights abuses (including extrajudicial killings) nepotism, corruption and economic mismanagement.⁵

Obote was given sanctuary by Tanzanian leader Julius Nyerere, and was joined by some 20,000 followers. A year later, a group of these exiles attempted, unsuccessfully, to invade Uganda and remove Amin, who blamed Nyerere for backing and arming his enemies. Relations between the two states remained strained for many years.

By 1977, the Ugandan economy was floundering, as was Amin's hold on power. In an attempt to bolster his position, Amin ordered troops to attack Ugandan exiles in the Kagera salient, a narrow strip of Tanzania that juts north past Rwanda and Burundi and forms part of the southern border of Uganda.

On 21 January 1979, Nyerere ordered a Tanzanian invasion of Uganda. By early April, Tanzanian forces had captured the capital, Kampala, and Amin had fled the country. Tanzanian troops then spread throughout Uganda to maintain law and order during preparations for elections. As there was no potential successor who enjoyed national support, Obote was returned to the presidency in December 1980, but his government struggled to suppress opposition.⁶

In 1985, Obote was ousted in another military coup, this time led by Brigadier General Tito Okello, who ruled for six months before being deposed by the rebel National Resistance Army led by Yoweri Museveni, who was installed as president. Following promulgation of a new constitution in October 1995, Museveni won Uganda's first ever direct presidential election.⁷

In a referendum in July 2005, 92.5% supported restoring multi-party politics. The following month, Parliament voted to change the constitution to allow Museveni to run for more than two terms. He is now in his fifth five-year term of office. Opposition leaders claimed, however, that the 2016 election was marred by voter intimidation, arrests of opposition leaders and other irregularities.⁸

The Museveni years have proved a period of relative political and economic stability. Gross domestic product (GDP) in Uganda was worth US\$26.37 billion in 2015,⁹ with GDP per capita ranking 37th of 53 African nations.¹⁰ While Uganda surpassed the Millennium Development Goals target of halving poverty by 2015, and made

significant progress in reducing hunger and empowering women, a large proportion of its current (2016) population of 37.8 million¹¹ – almost half of whom are aged under 15 years – remains vulnerable to falling back into poverty.¹²

The country has substantial natural resources, including fertile soils, regular rainfall, small deposits of copper, gold and other minerals, and recently discovered oil, with estimated deposits of at least 3.5 billion barrels.¹³ Agriculture is the most important economic sector, employing more than two-thirds of the workforce. Coffee accounts for the bulk of export revenues.¹⁴

Until the late 1990s, Uganda had only one television station, the state-owned Uganda Television, which began broadcasting the year after independence.¹⁵ It is now called the Uganda Broadcasting Corporation, and also operates five radio stations. Competition came in the form of Sanyu TV and Wavah, and opened the way for other stations.

Radio was dominated by the state-owned Radio Uganda until the early 1990s, when the first independent radio stations received licences to operate. There are now more than 200 radio stations serving the country.¹⁶

There are some 30 newspapers in Uganda, almost all of them publishing in English. The state-owned *New Vision* is Uganda's oldest newspaper and has the largest national circulation. The *Daily Monitor* is independent, and the second oldest newspaper in the country.¹⁷ *Red Pepper*, a daily tabloid that began publication in 2001, is arguably Uganda's most controversial news medium with its mix of politics, sensationalism and scandal. When, in May 2013, *Red Pepper* and the rival *Daily Monitor* published a confidential letter purportedly written by Army general David Sejusa calling for an investigation into allegations of a plot to assassinate people who were opposed to the Museveni family holding on to political power in perpetuity, the offices of both publications were raided by the police, who shut down operations for several days.¹⁸ Since then, however, *Red Pepper* has extended its reach by upgrading its online presence.

Social media have made a significant impact on the country, but were ordered blocked by the Uganda Communication Commission in advance of Museveni's latest inauguration. Some analysts fear this could become a routine government practice.¹⁹

That said, relations between the media and the government are widely recognised as having improved since the mid-1980s, with government members holding open press briefings and making television appearances. This may, it is noted, have much to do with the fact that journalists now have avenues of legal recourse available to them.

In this chapter, working journalists and other media practitioners will be introduced to the legal environment governing media operations in Uganda. The chapter is divided into five sections:

- Media and the constitution
- Media-related legislation
- Media-related regulations
- Media self-regulation
- Media-related common law based on decided cases

The aim of the chapter is to equip the reader with an understanding of the main laws governing the media in Uganda. Key weaknesses and deficiencies in these laws will also be identified. The hope is to encourage media law reform in Uganda, to better enable the media to fulfil its role of providing the public with relevant news and information, and to serve as a vehicle for government–citizen debate and discussion.

2 THE MEDIA AND THE CONSTITUTION

In this section you will learn:

- The definition of a constitution
- What is meant by constitutional supremacy
- How a limitations clause operates
- Which constitutional provisions protect the media
- Which constitutional provisions might require caution from the media or might conflict with media interests
- What key institutions relevant to the media are established under the Constitution of Uganda
- How rights are enforced under the Constitution
- What is meant by the ‘three branches of government’ and ‘separation of powers’
- Whether there are any clear weaknesses in the Constitution of Uganda that ought to be amended to protect the media

2.1 Definition of a constitution

A constitution is a set of rules that are foundational to the country, institution or organisation to which they relate. For example, you can have a constitution for a soccer club or a professional association, such as a press council. Such constitutions set out the rules by which members of the organisation agree to operate. However, constitutions can also govern much larger entities, indeed, entire nations.

The Constitution of the Republic of Uganda, which came into force on 8 October 1995 and which has been amended numerous times since then, sets out the foundational rules for the Republic of Uganda. These are the rules upon which the entire country operates. The Constitution contains the underlying principles and values of Uganda.

The Preamble to the Constitution contains clear references to Uganda's violent history in its references to its 'struggles against the forces of tyranny, oppression and exploitation', and to building a better future 'by establishing a socio-economic and political order through a popular and durable national constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress'.

Additional constitutional provisions which set out the principles and values of Uganda are contained in article I(i) of the part of the Constitution headed 'National objectives and directive principles of state policy', which states that:

The following objectives and principles shall guide all organs and agencies of state, all citizens, organisations and other bodies and persons in applying or interpreting the constitution or any other law and in taking and implementing any policy decisions for the establishment and promotion of a just, free and democratic society.

The objectives and principles referred to are those set out in articles II–XXIX of that part of the Constitution, namely:

- Democratic principles
- National unity and stability
- National sovereignty, independence and territorial integrity
- Guaranteeing and protecting institutions responsible for protecting and promoting human rights
- Gender equality and fair representation of marginalised groups, including persons with disabilities
- Providing adequate resources for organs of state
- Right to balanced and equitable development, and the roles of the people and the state in that development

- Protection of natural resources and the environment
- State promotion of recreation, sports, education, the family, medical services, water, food security, cultural values, Ugandan languages, public property and heritage, accountability (including taking measures to combat corruption and abuse of power) and foreign policy objectives
- Effective responses to natural disasters
- Duties of citizens, which include promoting democracy and the rule of law and contributing to the well-being of the community.

Similarly, article 1 of Chapter 1 of the Constitution is headed ‘Sovereignty of the people’ and it too sets out certain values of democratic governance, including, that:

- The authority of the state emanates from the people, who shall be governed through their will and consent
- The people’s will and consent on who shall govern them shall be expressed through regular, free and fair elections or referenda.

2.2 Definition of constitutional supremacy

Constitutional supremacy means that the constitution takes precedence over all other law in a particular country, for example, legislation or case law. It is important to ensure that a constitution has legal supremacy: if a government passed a law that violated the constitution – was not in accordance with or conflicted with a constitutional provision – such a law could be challenged in a court of law and could be overturned on the ground that it is ‘unconstitutional’.

The Constitution of Uganda makes provision for constitutional supremacy. Article 2(1) of Chapter 1 of the Constitution specifically states that: ‘[T]his Constitution is the supreme law of Uganda and shall have binding force on all authorities and persons throughout Uganda.’ Article 2(2) expands on this, stating that if any law or any custom is inconsistent with any of the provisions of the Constitution, ‘the Constitution shall prevail, and that other law or custom shall, to the extent of the inconsistency, be void’.

2.3 Definition of a limitations clause

It is clear that rights are not absolute as society would not be able to function. For

example, if the right to freedom of movement were absolute, society would not be able to imprison convicted criminals. Similarly, if the right to freedom of expression were absolute, the state would not be able to protect its citizens from hate speech or false defamatory statements made with reckless disregard for the truth. Clearly, governments require the ability to limit rights in order to serve important societal interests; however, owing to the supremacy of the constitution this can be done only in accordance with the constitution.

The Constitution of Uganda makes provision for three types of legal limitations on the exercise and protection of rights contained in Chapter Four of the Constitution of Uganda, ‘Protection and Promotion of Fundamental and Other Human Rights and Freedoms’.

2.3.1 General limitations clause

Article 43(1) is headed ‘General limitation on fundamental and other human rights and freedoms’, and it specifically provides that the various rights provided for in Chapter Four are subject to such limitations designed to ensure that 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 or the public interest’.

Importantly, article 43(2) of the Constitution provides that the public interest in article 43(1) shall not permit:

- (a) political persecution;
- (b) detention without trial;
- (c) any limitation of the enjoyment of rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.

This is an interesting provision that requires some explanation:

- It is clear that rights can be limited on two main bases: to protect the rights and freedoms of other individuals; and to protect the public interest. Note that the term ‘public interest’ is not defined so this is potentially extremely broad.
- What is useful, from a rights protection point of view, is the requirement in article 43(2)(c) that limitations be acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution. The effect of this is that, apart from what is provided for in the Constitution, there is a focus on standards required of freedom and democracy. And these limitations have also to

be ‘demonstrably’ justifiable. Consequently, if there is another method of dealing with the societal good protected by the limitation that is less limiting of rights, the limitation would not be ‘demonstrably’ justifiable.

- It is important to note that the prohibition on detention without trial is subject to the state of emergency provisions dealt with below.

2.3.2 Internal limitations

These limitations are rights-specific and contain limitations or qualifications to the particular right that is dealt with in a particular section of the Bill of Rights. An example of an internal limitation is found in article 41 of the Ugandan Constitution, which deals with the right of access to information and which is covered in more detail below. Other rights of relevance to the media do not have such an internal limitation.

2.3.3 States of emergency

Article 46 of the Ugandan Constitution is headed ‘Effect of laws enacted for a state of emergency’ and addresses the situations in which the rights provided for in Chapter Four may be limited or suspended during a declared state of emergency. A state of emergency can be declared, in terms of article 110, if the president is satisfied that circumstances exist in Uganda or in that part of Uganda:

- In which Uganda or that part of it is threatened by war or external aggression
- In which the security or economic life of the country or that part is threatened by internal insurgency or national disaster
- Which render necessary the taking of measures which are required for securing public safety, the defence of Uganda, and the maintenance of public order and supplies and services essential to the life of the community.

Article 46(1) provides that an act of Parliament ‘shall not be taken to contravene the rights and freedoms guaranteed in this Chapter, if that Act authorises the taking of measures that are reasonably justifiable for dealing with a state of emergency’.

Article 46(2) provides that there can be emergency provisions other than an act of Parliament, but these emergency provisions apply only to the part of Uganda where the emergency exists. The effect of this is that declarations of states of emergency can happen other than by way of an act of Parliament, provided this is for a localised emergency.

Article 46(3) provides that an act of Parliament that makes provision for a state of emergency may make provision for the detention of persons where necessary for the purposes of dealing with the emergency, but these are subject to the requirements of articles 47–49, which deal with detentions under emergency laws and the obligations of the Uganda Human Rights Commission (UHRC) and Parliament in reviewing such emergency detentions. Further, article 44 of the Constitution deals with rights that cannot be derogated from in terms of the Constitution (and these would apply in emergency situations too). These are:

- Freedom from torture and cruel, inhuman or degrading treatment or punishment
- Freedom from slavery or servitude
- The right to a fair hearing
- The right to an order of *habeas corpus* – that is, the right to have a detained person produced in court.

Note that rights that are critical for the press – such as the right to freedom of expression, and freedom of thought and opinion – are rights that can be derogated from in a state of emergency.

2.4 Constitutional provisions that protect the media

2.4.1 Rights that protect the media

The Constitution of Uganda contains a number of important provisions in Chapter Four, which is headed ‘Protection and Promotion of Fundamental and Other Human Rights and Freedoms’, which directly protect the media, including publishers, broadcasters, journalists, editors and producers.

RIGHT TO FREEDOM OF EXPRESSION

The most important provision that protects the media is article 29(1)(a), part of the article headed ‘Protection of freedom of conscience, expression, movement, religion, assembly and association’, which states:

Every person shall have the right to –
 freedom of speech and expression which shall include freedom of the press
 and other media.

This provision needs some explanation:

- This freedom applies to ‘every person’ and not just to certain people, such as

citizens. Hence everybody (both natural persons and juristic persons, such as companies) enjoy this fundamental right.

- The freedom is not limited to speech (oral or written) but extends to non-verbal or non-written expression. There are many different examples of this, including physical expression, such as mime or dance, photography or art.
- Article 29(1)(a) specifies that the right to freedom of speech and expression includes ‘freedom of the press and other media’. This is very important for two reasons:
 - It makes it clear that this right can apply to corporate entities such as media houses, newspapers or broadcasters, as well as to individuals.
 - It makes it clear that the right extends to both the ‘press’ – with its connotation of the news media – and ‘other media’, which could include fashion, sports, gardening or business publications or broadcasting services, thereby protecting all media.

RIGHT TO FREEDOM OF THOUGHT AND CONSCIENCE

Another important provision that protects the media is article 29(1)(b), part of the article headed ‘Protection of freedom of conscience, expression, movement, religion, assembly and association’, which states:

Every person shall have the right to –
freedom of thought, conscience ...

Freedom of thought and conscience is important for the media as it protects the right to think and to hold opinions. This protects commentary on public issues of importance, which is critically important for the media as it protects editorials, opinion pieces, etc. As the right is available to ‘every person’, media houses, as well as individual journalists and editors, enjoy this right.

FREEDOM OF ASSOCIATION

Another important provision that protects the media is article 29(1)(e), part of the article headed ‘Protection of freedom of conscience, expression, movement, religion, assembly and association’, which states:

Every person shall have the right to –
freedom of association which shall include the freedom to form and join

associations or unions, including trade unions and political and other civic organisations.

Similarly, article 40(3)(a) provides that ‘every worker has the right to join a trade union of his or her choice for the promotion and protection of his or her economic and social interests’.

These provisions need some explanation:

- These rights guarantee the right of the press to form press associations as well as to form media houses and media operations more generally.
- Further, the specific freedom to join and form trade unions is an important right for working journalists.

FREEDOM OF MOVEMENT

Another important provision that protects the media is article 29(2)(a), part of the article headed ‘Protection of freedom of conscience, expression, movement, religion, assembly and association’, which states:

Every Ugandan shall have the right to –
move freely throughout Uganda... .

This is important as it makes it clear that all Ugandan journalists have the right to move freely in Uganda. This is useful when covering stories that require travelling to different parts of the country. Note that this would not apply to foreign journalists.

RIGHT TO PRIVACY OF PERSON, HOME AND OTHER PROPERTY

Another important right that protects the working journalist is the right to privacy, which is contained in article 27 of the Ugandan Constitution. The right provides as follows:

- (1) No person shall be subjected to –
 - (a) the unlawful search of the person, home or other property of that person; or
 - (b) unlawful entry by others of the premises of that person.
- (2) No person shall be subjected to interference with the privacy of that person’s home, correspondence, communication or other property.

This requires some explanation:

- This right applies to all persons and not just citizens.
- The protection given to correspondence and communication is particularly important for working journalists as it gives additional protection to their sources of information.

CIVIC RIGHTS AND ACTIVITIES

Another important provision that protects the media is article 38(2), part of the article headed ‘Civic rights and activities’, which states:

Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organisations.

This is important as it makes it clear that all Ugandan journalists, media owners and media activists have the right to form and/or participate in media-related organisations in order to influence government-related media policy. This right does not apply to foreigners.

RIGHT OF ACCESS TO INFORMATION

Another important right for the media is article 41(1) of the Ugandan Constitution, part of the right of ‘access to information’. It provides:

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 the privacy of any other person.

Article 42(2) provides that Parliament is to make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.

This requires some explanation:

- The right is available to citizens only and not to everyone.
- The right is against the state and organs and agencies of the state. Consequently, it is not available in respect of privately held information.

- The right is subject to an internal limitation, namely that the right does not apply in cases ‘where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person’.
- It is clear that Parliament is to give effect to the right through legislation. It has indeed passed such legislation, which is dealt with elsewhere in this chapter.

RIGHT TO JUST AND FAIR TREATMENT IN ADMINISTRATIVE DECISIONS

Another important right for the media is article 42 of the Ugandan Constitution, which is the right to ‘fair treatment in administrative decisions’. It provides:

Any person appearing before any administrative official or body has a right to be treated justly and fairly and shall have a right to apply to a court of law in respect of any administrative decision taken against him or her.

This requires some explanation:

- The reason why this provision is important for journalists and the media is that it protects them (as it does all people) from administrative officials, such as broadcasting regulatory authorities, who act unjustly and unfairly.
- An administrative body is not necessarily a state body; indeed, these bodies are often private or quasi-private institutions. These constitutional requirements would therefore apply to non-state bodies too.
- Many decisions taken by bodies are ‘administrative’ in nature, and this requirement of just and fair administrative decision-making is a powerful one that prevents or corrects unjust and unfair conduct on the part of administrative officials.
- The reference to applying to a ‘court of law’ is clearly a reference to the right to seek judicial review of administrative action in terms of which judges consider the exercise of administrative discretion on the part of the decision-maker.

2.4.2 Other constitutional provisions that assist the media

It is important to note that there are provisions in the Ugandan Constitution, apart from the fundamental rights provisions, that are important and assist the media in performing its functions.

PROVISIONS REGARDING THE FUNCTIONING OF PARLIAMENT

Article 97(1) of the Ugandan Constitution provides that the speaker, the deputy speaker, members of Parliament (MPs) and any other person participating in, assisting in or acting in connection with or reporting, the proceedings of Parliament or any of its committees shall be entitled to such immunities and privileges as Parliament shall by law prescribe.

These immunities and privileges were already provided for in the Parliament (Powers and Privileges) Act, 1955, Chapter 258, which act remains in force. Section 2 provides, among other things, that no civil or criminal proceedings may be instituted against any MP for words spoken before, or written in a report to, Parliament or to a committee.

These provisions assist the media by protecting the right of parliamentarians to speak freely in Parliament without facing arrest or civil or criminal proceedings for what they say.

Parliament has incorporated the provisions of the Parliament (Powers and Privileges) Act, 1955, Chapter 258, relating to privilege in its prescribed Rules of Procedure of the Parliament of Uganda, and the latest version thereof is dated 2012.²⁰

In terms of section 22(1) of the Rules of Procedure of the Parliament, the sitting of Parliament shall be public, subject to those rules. Section 22(2) does allow the speaker, with the approval of the House, and having regard to national security, to move into a closed sitting. No strangers are permitted to be present during a closed sitting – section 22(3) – and no person other than someone specifically authorised by the speaker may purport to describe the proceedings or any decision of a closed sitting – section 22(6).

Section 216 of the Rules of Procedure of the Parliament provides that parliamentary proceedings may be broadcast by electronic media, having due regard to the dignity of the House. In terms of section 217(1) of the Rules of Procedure of the Parliament, the parliamentary session shall be available for broadcast on radio and/or television during all hours of sitting unless determined otherwise by the House or speaker. Annexure G to the Rules of Procedure of the Parliament sets out the rules relating to television coverage of parliamentary proceedings.

These provisions assist the media by ensuring that it has a great deal of access to the workings of Parliament by being able to be physically present in Parliament and to broadcast the proceedings thereof.

PROVISIONS REGARDING THE ROLE OF THE PEOPLE IN DEVELOPMENT

Article X appears in the part of the Constitution headed ‘National objectives and directive principles of state policy’. It provides that the state shall ‘take all necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them’.

This provision helps the media because popular involvement in policy development and programmes is difficult to achieve without an informed citizenry. Consequently, transparency and responsiveness is required of government which, almost by definition, requires the free flow of information to the country’s press, and between the press and the citizens.

RIGHT TO A PUBLIC HEARING

Article 28(1) of the Ugandan Constitution provides that in the determination ‘of civil rights and obligations or any criminal charge, a person shall be entitled to a ... public hearing before an independent and impartial court or tribunal established by law’. Article 28(2) goes on to provide that the court or trade tribunal may exclude the press or the public from any proceedings before it ‘for reasons of morality, public order or national security, as may be necessary in a free and democratic society’.

This provision helps the media because it makes it clear that the proceedings of courts and tribunals must be public and open to the press, unless they are specifically excluded. Further, the only basis for such exclusion are morality, public order or national security. This provision assists the media in reporting on civil and criminal cases before courts and tribunals.

PROVISIONS REQUIRING SECURITY ORGANISATIONS TO OBSERVE HUMAN RIGHTS

Article 221 of the Ugandan Constitution is interesting in that it requires the defence forces, the police force, the prisons service, all intelligence services and the National Security Council ‘to observe and respect human rights and freedoms in the performance of their functions’. This is useful for working journalists as security forces sometimes make it difficult for journalists to perform their reporting functions. This provision would prevent these security organisations from being able to undermine a journalist’s right of access to information or freedom of expression, for example.

2.5 Constitutional provisions that might require caution from the media or might conflict with media interests

Just as there are certain rights or freedoms that protect the media, other rights or freedoms can protect individuals and institutions *from* the media. It is important for journalists to understand which provisions in the Constitution can be used against the media.

2.5.1 The right to dignity

Article 24 is headed ‘respect for human dignity and protection from inhuman treatment’, but in fact article 24 contains no wording in respect of human dignity as it deals entirely with prohibiting torture and cruel, inhuman or degrading treatment or punishment. Nevertheless, the right to have one’s dignity respected is clear from the title of the right even if the language of the right does not specifically mention this.

The right to dignity requires caution on the part of the media because it is a fundamental aspect upon which the right to reputation is based, and this in turn is foundational to the legal right to claim damages for defamation. Defamation suits, whether civil or criminal, are a significant worry for journalists personally and for the media houses that employ them. Journalists therefore need to be aware of the right to dignity, and need to ensure that a person’s right to his or her reputation is not unlawfully undermined in the course of reporting a story.

2.5.2 The right to privacy

A second right that requires caution from the media is contained in article 27 of the Constitution of Uganda, which guarantees the right to privacy. It provides:

- (1) no person shall be subjected to –
 - (a) unlawful search of the person, home or other property of the person; or
 - (b) unlawful entry by others of the premises of that person.

- (2) No person shall be subjected to interference with the privacy of that person’s home, correspondence, communication or other property.

The right of privacy is an interesting right because the way that it is worded in the Ugandan Constitution appears to envisage only state interference with personal privacy. Nevertheless, we are of the view that the right requires caution on the part of the media when reporting the news or investigating the conduct of individuals. While the right to privacy can give way to the public interest, there is a zone of

privacy around a person's private and family life which is relevant to the public only in fairly exceptional circumstances.

2.5.3 State of emergency provisions

Article 110 empowers the president, after consulting with the Cabinet, Parliament, the National Security Council and the Constitutional Court, to declare a state of emergency, as is set out above. This is important because of the fact that a number of rights can be derogated from during a state of emergency, including the right to freedom of expression, access to information and administrative justice.

2.6 Key institutions relevant to the media established under the Constitution of Uganda

The Constitution of Uganda establishes a number of institutions that indirectly affect the media, namely, the Uganda Human Rights Commission, the Public Service Commission, the Inspector General of Government, the Judicial Service Commission and the judiciary.

2.6.1 The Uganda Human Rights Commission

The Uganda Human Rights Commission (UHRC) is established in terms of article 51 of the Ugandan Constitution. Article 51 provides that the UHRC shall be composed of a chairperson (who shall be a judge of the High Court or qualified to be a judge of the High Court) and no fewer than three other persons appointed by the president with the approval of Parliament. In terms of article 52 of the Ugandan Constitution, the functions of the UHRC include:

- Investigating violations of human rights
- Visiting jails, prisons and places of detention to inspect conditions of the inmates and to make recommendations
- Establishing a continuing programme of research, education and information to enhance human rights
- Recommending to Parliament effective measures to promote human rights, including the payment of compensation to victims
- Creating and sustaining within society the awareness of the provisions of the Constitution

- Monitoring government’s compliance with international treaty or convention provisions on human rights
- Publishing periodic reports on its findings and submitting annual reports to Parliament on the state of human rights and freedoms in the country.

Article 53 sets out the powers of the UHRC, which are extensive.

Article 54 provides that subject to the provisions of the Constitution, the UHRC shall be ‘independent and shall not, in the performance of its duties, be subject to the direction or control of any person or authority’.

Article 55 makes it clear that the UHRC’s funding is to come from the Consolidated Fund, which is essentially the state treasury.

Article 56 makes it clear that commissioners of the UHRC enjoy the same security of tenure as judges of the High Court – that is, they can be removed only in accordance with the constitutional provisions for removing a judge of the High Court.

Traditionally, human rights commissions are significant for the media because they protect not only the media’s rights to publish information and to inform the citizenry but also citizens’ rights to access information and to the free flow of information regarding both the public and private sectors.

2.6.2 The Public Service Commission

The Public Service Commission (PSC) is established in terms of article 156 of the Ugandan Constitution. The PSC consists of a chairperson, a deputy chairperson and seven other members appointed by the president with the approval of Parliament.

The functions of the PSC set out in article 166 of the Ugandan Constitution include, in brief:

- Promoting and exercising disciplinary control over persons holding office in the public service of Uganda
- Reviewing terms and conditions of service, standing orders, training and qualifications of public officials.

While article 166(2) provides that the PSC is independent, the PSC is also required to ‘take into account government policy relating to the public service’.

Bodies such as the PSC are important to the media because they are useful in a number of ways. First, they are a source of information in relation to the functioning of the public service. For example, article 166(3) requires the PSC to report annually on the performance of its functions. Second, the fact that there is a PSC assists in developing an ethic of good governance within the state itself. Consequently, the PSC ought to assist in promoting transparency and accountability, which assist the media in reporting on governmental activities.

2.6.3 The Inspectorate of Government

Chapter Thirteen of the Ugandan Constitution is headed 'Inspectorate of Government'. Article 225 sets out the functions of the Inspectorate of Government (IG) and these include to:

- Foster strict adherence to the rule of law and principles of natural justice in administration
- Eliminate and foster the elimination of corruption, abuse of authority and of public office
- Promote fair, efficient and good governance in public offices
- Supervise the enforcement of the Leadership Code of Conduct provided for in article 233 of the Constitution (essentially this is a code signed by all government officials, parliamentarians and the like, to promote clean government)
- Investigate any act, omission, advice, decision or recommendation made by a public officer in the exercise of his or her administrative functions
- Stimulate public awareness about the values of constitutionalism.

In terms of article 223(2) of Ugandan Constitution, the IG consists of the inspector general of government and such number of deputy inspectors general as Parliament may prescribe, at least one of whom shall be a person qualified to be appointed a judge of the High Court. The members of the IG are appointed by the president with the approval of Parliament, in terms of article 223(4), and members of the IG may not hold any other offices in the public service. Article 223(5) sets out the necessary criteria to qualify as a member of the IG. Article 224 sets out the grounds for removal of a member of the IG by the president on the recommendation of the special tribunal constituted by Parliament, and these are inability to perform the functions of office, misconduct or incompetence.

It is clear that the aim of the IG is to promote an efficient, responsive government devoid of corruption. Again, such a body can only assist the media in performing its work through aiding in the promotion of transparency. This is particularly so given that the IG is required to submit reports to Parliament on the performance of its functions at least once every six months, in terms of article 231(1).

2.6.4 The Judicial Service Commission

The Judicial Service Commission (JSC) is important to the media because of its role in ensuring the independence and professionalism of the judiciary, which is itself an important institution for the media, as is more fully set out below.

Article 142(1) of the Ugandan Constitution provides that the key judicial appointments of the chief justice, the deputy chief justice, the principal judge, a justice of the Supreme Court, a justice of the Appeal Court and a judge of the High Court are all appointed by the president acting on the advice of the JSC and with the approval of Parliament. Article 143 of the Ugandan Constitution sets out the necessary qualifications for the appointment of judges in Uganda.

Consequently, the JSC is an extremely important institution for the independence and professionalism of the judiciary. It is established in terms of article 146(1) of the Ugandan Constitution. Importantly, the JSC is made up of persons appointed by the president with the approval of Parliament. In terms of article 146(2) and (3), the JSC consists of:

- A chairperson and deputy chairperson qualified to be appointed as justices of the Supreme Court
- One person nominated by the PSC
- Two advocates with at least 15 years' experience nominated by the Uganda Law Society
- A judge of the Supreme Court nominated by the president in consultation with the judges of the Supreme Court, the justices of Appeal and judges of the High Court
- Two members of the public, who shall not be lawyers, nominated by the president
- The attorney general shall be an *ex officio* member of the JSC.

In terms of article 146(4) of the Ugandan Constitution, the chief justice, deputy chief

justice and principal judge shall not be appointed to be chairperson, deputy chairperson or a member of the JSC. Further, in terms of article 146(5), a person is not qualified to be appointed a member of the JSC unless the person is of high moral character and proven integrity.

Article 147(1) read with article 148 of the Uganda Constitution sets out additional functions of the JSC and these include:

- Advising the president on the exercise of his or her power to appoint, exercise disciplinary control over and remove persons from particular positions
- Reviewing and making recommendations on the terms and conditions of service of judges
- Preparing and implementing educational programmes for judicial officers and the public about law and the administration of justice
- Receiving and processing complaints regarding the judiciary and the administration of justice, and generally acting as a link between the people and the judiciary
- Advising government on improving the administration of justice
- Appointing judicial officers of lower courts and exercising disciplinary control over persons holding such offices, including removing such persons from office.

Article 147(2) provides that in the performance of its functions, the JSC shall be independent and shall not be subject to the direction or control of any person or authority.

2.6.5 The judiciary

The judiciary is an important institution for the media because the two rely on each other to support and strengthen democratic practices in a country. The judiciary needs the media to inform the public about its judgments and its role as one of the branches of government, and the media is essential to building public trust and respect for the judiciary, which is the foundation of the rule of law in a society. The media needs the judiciary because of the courts' ability to protect the media from unlawful action by the state and from unfair damages claims by litigants.

Chapter 8 of the Constitution of Uganda is headed 'The Judiciary'. Article 126 set out generally applicable principles in regard to the exercise of judicial power in Uganda.

In terms of article 126(1), judicial power in Uganda ‘is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with the law and with the values, norms and aspirations of the people’.

Article 128(1) provides that in the exercise of judicial power, ‘the courts shall be independent and shall not be subject to the control or direction of any person or authority’.

Article 129 of the Ugandan Constitution provides that judicial power of Uganda shall be exercised by the courts of judicature, which shall consist of:

- The Supreme Court of Uganda
- The Court of Appeal of Uganda
- The High Court of Uganda
- Such subordinate courts as Parliament may by law establish, including courts relating to family law.

THE SUPREME COURT OF UGANDA

Article 130(1) provides that the Supreme Court of Uganda shall consist of the chief justice and at least six other justices of the Supreme Court as Parliament may by law prescribe.

In terms of article 131(1), the Supreme Court must have at least five judges sitting to consider a matter but may not consist of an even number of judges.

When hearing appeals from decisions of the Court of Appeal sitting as a constitutional court, the Supreme Court shall consist of a full bench of all members of the Supreme Court, in terms of article 131(2) of the Constitution.

In terms of article 132, the Supreme Court is the final court of appeal and is therefore the apex court in Uganda. In terms of article 132(4), all other courts are bound to follow the decisions of the Supreme Court on questions of law.

THE COURT OF APPEAL OF UGANDA

In terms of article 134, the Court of Appeal of Uganda consists of the deputy chief justice and at least seven other justices of Appeal as Parliament may prescribe by law.

In terms of article 135(1), the Court of Appeal must have at least three judges sitting

to consider a matter but may not consist of an even number of judges. The Court of Appeal hears appeals from such decisions of the High Court as may be prescribed by law, in terms of article 134(2).

Further, in terms of article 137(1) of the Ugandan Constitution, any question as to the interpretation of the Constitution shall be determined by the Court of Appeal sitting as the Constitutional Court. When sitting as the Constitutional Court, the Court of Appeal shall consist of a bench of five members of that court.

HIGH COURT OF UGANDA

The High Court of Uganda consists of the principal judge and such number of judges of the High Court as may be prescribed by Parliament, in terms of article 138 of the Ugandan Constitution.

Article 139(1) of the Ugandan Constitution provides that the High Court shall have unlimited original jurisdiction in all matters, subject to the provisions of the Constitution. Further, article 139(2) provides that, subject to the Constitution and any other law, decisions of any court lower than the High Court shall be appealable to the High Court.

2.7 Enforcing rights under the Constitution

A right is only as effective as its enforcement. All too often rights are enshrined in documents such as a constitution or a bill of rights, and yet remain empty of substance because they cannot be enforced.

The Ugandan Constitution contains a number of provisions dealing with the enforcement of rights and freedoms by the courts.

According to article 50(1), any person who claims that a fundamental right or freedom has been infringed or threatened is entitled to apply to a competent court for redress, which may include compensation. Importantly, article 50(2) provides that any person or group may bring an action against the violation of another person's or group's human rights. This is important because it enables a person or a non-governmental organisation (NGO), for example, to take action to protect a person when that person is incapable of doing so themselves, for example when they are in detention.

Further, article 137(3) of the Constitution of Uganda provides that a person (note that this would include a natural or juristic person – for example, a company or an

organisation) who alleges that an act of Parliament, or any other law or anything done in or under the authority of any law or any act or omission by any person or authority, is inconsistent with or in contravention of the Constitution may approach the Constitutional Court (that is, the Court of Appeal sitting as the Constitutional Court) for a declaration to that effect, and for redress where appropriate.

In this regard, article 137(4) makes provision for the kind of redress that may be awarded by the Constitutional Court, and this includes granting an order of redress or referring the matter to the High Court to investigate and determine the appropriate redress.

Usually, one of the most effective ways in which rights are protected is through special protections granted to the provisions of a Bill of Rights when considering amendments thereto. Unfortunately, the Ugandan Constitution does not contain any special protections to safeguard the Bill of Rights from constitutional amendments, except in respect of article 44, which deals with rights that are non-derogable during a state of emergency. In this regard, article 260(1) and (2) provides that where a bill seeks to amend article 44 of Chapter Four, it must be supported at the second and third readings by not less than two-thirds of all MPs and it must have been approved by the people in a referendum.

2.8 The three branches of government and separation of powers

All too often, politicians, commentators and journalists use political terms such as ‘branches of government’ and ‘separation of powers’, yet working journalists may not have a clear idea what these terms mean.

2.8.1 Branches of government

It is generally recognised that governmental power is exercised by three branches of government, namely: the executive; the legislature; and the judiciary.

THE EXECUTIVE

Chapter Seven of the Constitution of Uganda deals with the executive, and article 99(1) provides that the executive authority of Uganda vests in the president and shall be exercised in accordance with the Constitution and the laws of Uganda. Article 99(4) empowers the president to exercise executive authority either directly or through subordinate officers. Note that such subordinate officers would include the vice president (article 108) and members of the Cabinet (article 111) who are ministers (article 113).

In terms of article 111(2), the functions of the Ugandan Cabinet are to determine, formulate and implement government policy and perform such other functions as may be conferred by the Constitution or any other law.

The exalted position of the president under the Ugandan Constitution is clear from the provisions of article 98(2), which provide that the president 'shall take precedence over all persons in Uganda'. Further, in terms of article 98(4), the president shall not be liable to proceedings in any court while holding office.

Article 102 of the Ugandan Constitution requires a president to be a citizen of Uganda by birth, between the ages of 35 and 75, and qualified to be an MP.

Article 103 of the Ugandan Constitution sets out the process for the election of the president which is done, as a general rule, in a presidential election by universal adult suffrage through a secret ballot. Article 103(4) and (5) provides that where a candidate does not obtain more than 50% of valid votes cast in an election, a second election shall be held within 30 days between the two candidates who obtained the highest number of votes in the first election.

In terms of article 105(1), a president holds office for a term of five years. Note that as a result of constitutional amendments in 2005, the Ugandan Constitution no longer contains term limits for a president.

The Constitution of Uganda makes provision for a number of functions of the president, including to:

- Be head of state, head of government, commander-in-chief of the Uganda Peoples' Defence Forces and 'the Fountain of Honour' – article 98
- Deliver the annual state of the nation address – article 101
- Declare a state of emergency (in consultation with the Cabinet) – article 110
- Appoint ambassadors (with the approval of Parliament) – article 122
- Make treaties, conventions, agreements or other arrangements between Uganda and any other country, or between Uganda and any international organisation or body – article 123
- Declare a state of war with another country (with the approval of two-thirds of the MPs) – article 124.

Article 107 contains the grounds for removing a president, and these are:

- Abuse of office or wilful violation of the oath of allegiance, presidential oath or any provision of the Constitution
- Misconduct
- Physical or mental incapacity.

The process for removing the president is complicated and is set out in article 107. It commences by a notice signed by not fewer than one-third of all of the MPs, includes the sitting of a tribunal constituted by the chief justice and comprising three justices of the Supreme Court to investigate the proposed removal and to determine whether there is a *prima facie* case for removal, and a parliamentary resolution supported by at least two-thirds of all MPs to remove the president.

In terms of article 109 of the Ugandan Constitution, the vice president shall assume the Office of President until fresh elections are held if the sitting president dies, resigns or is removed from office.

THE LEGISLATURE

Legislative or law-making power in Uganda vests in Parliament, in terms of article 79(1). In terms of article 79(2), ‘except as provided for in the Constitution, no person or body other than Parliament shall have the power to make provisions having the force of law in Uganda except under authority conferred by an Act of Parliament’.

Article 78 deals with the composition of Parliament and provides that Parliament consists of:

- Members directly elected to represent constituencies on the basis of universal adult suffrage and by secret ballot
- One woman representative for every district
- Such numbers of representatives of the army, youth, workers, persons with disabilities and other groups as Parliament may determine
- The vice president and ministers who, if not already elected MPs, shall be *ex officio* MPs without the right to vote in Parliament.

Article 79 sets out the functions of Parliament. These include:

- The power to make laws on any matter for the peace, order, development and good governance of Uganda
- To protect the Constitution and promote democratic governance of Uganda.

Article 86 sets out the qualifications and disqualifications of MPs. A person is qualified to be an MP if he or she is a citizen of Uganda, is a registered voter, and has completed a minimum formal education of Advanced Level standard or its equivalent as prescribed by Parliament. A person is not qualified for election as an MP if that person is of unsound mind, is holding an office which involves conducting elections, is a traditional leader, bankrupt, under sentence of death or a sentence of imprisonment exceeding nine months without the option of a fine, or has been convicted of a crime involving dishonesty or moral turpitude or an electoral offence in the past seven years.

Article 89 provides that except as otherwise prescribed by the Constitution or any law consistent with the Constitution, any question proposed for decision of Parliament shall be determined by a majority of votes of the members present and voting in a manner prescribed by the rules of procedure made by Parliament under article 94.

Parliament also performs an oversight function in respect of the executive, as is clear from its powers to remove the president (article 107) and to censure and ultimately cause the removal of members of the Cabinet, in terms of article 118 of the Constitution of Uganda.

THE JUDICIARY

Judicial power, as discussed previously in this Chapter, vests in the courts. Essentially, the role of the judiciary is to interpret the law and to adjudicate legal disputes in accordance with the law.

2.8.2 Separation of powers

It is important in a functioning democracy to divide governmental power between different organs of the state in order to guard against the centralisation of power, which may lead to abuses of power. This is known as the separation of powers doctrine. The aim, as the Constitution of Uganda has done, is to separate the functions of the three branches of government – the executive, the legislature and the judiciary – so that no single branch is able to operate alone, assume complete state control and amass centralised power. While each branch performs a number of

different functions, each also plays a ‘watchdog’ role in respect of the others. This helps to ensure that public power is exercised in a manner that is accountable to the general public and in accordance with the Constitution.

2.9 Weaknesses in the Constitution that ought to be strengthened to protect the media

There are a number of respects in which the Constitution of Uganda is weak. If these provisions were strengthened, there would be clear benefits for Uganda’s media and democratic credentials more broadly.

2.9.1 Remove internal constitutional qualifiers to certain rights

The Constitution of Uganda, as has been set out above, makes provision for certain rights to be subject to ‘internal’ limitations – that is, the provision dealing with a right contains its own limitations clause, setting out ways in which a government can legitimately limit the ambit of the right.

These internal limitations occur within a number of articles on rights in the Constitution of Uganda. They deal specifically and only with the limitation or qualification of the particular right that is dealt with in that article. In other words, the article that contains the right also sets out the parameters or limitations allowable in respect of that right. As has been more fully discussed above, the right to access to information contains such an internal limitation.

The rights contained in the provisions dealing with fundamental human rights and freedoms, set out in Chapter Four of the Constitution of Uganda, would be strengthened if the rights were subject to a single generally applicable limitations clause rather than each having its own limitations clause. Indeed, such a general limitations clause already exists in article 43 of the Ugandan Constitution and so it is not clear why the internal limitations clauses are necessary.

2.9.2 Amending the provisions of article 110 dealing with the state of emergency

The Ugandan Constitution, at article 110, empowers the president, in consultation with Cabinet, to declare a state of emergency. In so doing, a number of rights that protect the media can be derogated or departed from. Article 110 is problematic because it appears to be subjectively framed – that is, the president has to be ‘satisfied’ that the relevant circumstances exist. In our view it is important that the conditions for the declaration of a state of emergency must objectively exist and this ought not to be dependent on whether or not the president is satisfied that they do so exist.

2.9.3 Independent broadcasting regulator and public broadcaster

There is no doubt that the broadcasting sector would be greatly strengthened if the Ugandan Constitution made provision for an independent broadcasting regulator and public broadcaster. Given the importance of both of these institutions for ensuring access to news and information by the public, it is suggested that such amendments to the Constitution would be in the public interest and would serve to strengthen both the media and democracy more generally in Uganda.

2.9.4 Reintroduce presidential term limits

Uganda has been subject to criticism for amending the Constitution to do away with presidential term limits, with the result that the current incumbent has been in power since 1986, some 30 years as at the time of writing. Reintroducing term limits would assist in strengthening democratic practices in Uganda by ensuring that changes in presidents would become a routine democratic occurrence.

3 THE MEDIA AND LEGISLATION

In this section you will learn:

- What legislation is and how it comes into being
- Legislation governing the print media
- Legislation governing the exhibition of films and the performance of plays and other public entertainments
- Legislation governing the broadcasting media generally
- Legislation that governs state media
- Legislation that undermines a journalist's duty to protect sources
- Legislation that prohibits the publication of certain kinds of information
- Legislation that codifies and clarifies aspects of the crime of defamation
- legislation that specifically assists the media in performing its functions

3.1 Legislation: An introduction

3.1.1 What is legislation?

Legislation is a body of law consisting of acts properly passed by Parliament and assented to by the president. As is set out above, legislative authority in Uganda vests in Parliament.

Article 91 of the Ugandan Constitution lays down the procedures for exercising legislative powers. Media practitioners should be aware that the Ugandan Constitution requires different types of legislation to be passed in accordance with particular procedures. These include:

- Legislation that amends the Constitution – articles 259–263
- Ordinary legislation – article 91.

3.1.2 The difference between a bill and an act

A bill is a piece of draft legislation that is debated and usually amended by Parliament during the law-making process.

If a bill is passed by Parliament in accordance with the various applicable procedures required for different types of bills, as set out above, it becomes an act once it is assented to by the president, according to article 91(1) of the Ugandan Constitution. It is important to note that article 91(3) gives the president the right to return a bill to Parliament for reconsideration. Where a bill is returned by the president to Parliament twice under article 91(3)(b), it shall then be laid before Parliament and only with the support of two-thirds of all MPs shall a bill become an act without consent of the president – article 91(6). An act must be published in the Gazette – article 91(8).

It is also important to be aware that some laws governing certain media-related issues came into force prior to the coming into effect the 1995 Constitution of Uganda. As they were passed by the governing authority of the time and have yet to be repealed, they are still good law.

3.2 Legislation governing the print media

❖ The Press and Journalist Act of 2000, Chapter 105 (Press Act)

The preamble to the Press Act states that it is, '[a]n Act to ensure the freedom of the press, to provide for a council responsible for the regulation of mass media and to establish an institute of journalists of Uganda'.

Section 2(1) of the Press Act provides for the right of a person to publish a newspaper. Section 2(2) provides a protection for the media in that no person or authority may take any action on grounds of the content of a publication to prevent the printing, publication or circulation among the public of a newspaper. However, as is articulated in section 3, '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
- Prohibiting any publication which improperly infringes on the privacy of an individual or which contains false information’.

Section 8 of the Press Act establishes the Media Council and provides it with the authority to regulate aspects of the print media. These are laid out in section 9 of the Press Act and include:

- Regulating the conduct and promoting good ethical standards and discipline of journalists
- Promoting the flow of information
- Censoring media for public consumption, including the print media (but excluding pornography, which is dealt with by another body)
- Arbitrating disputes between the public or the state and the media.

According to section 5 of the Press Act, the appointment of an editor requires registration of that editor, which must include the editor’s name and address as well as certified copies of all ‘relevant testimonials as proof of his or her qualifications’. Section 5(1)(c) specifically requires the name and address of the newspaper for which the editor is being appointed.

Section 5(1)(d) of the Press Act empowers the Media Council to demand ‘additional particulars as may be prescribed by the council’.

Section 5(2) states that the proprietor of a media outlet shall inform the Media Council within ‘thirty days of its coming to his or her notice of any change in any of the particulars referred to in subsection (1)’. Failure to abide by any of the regulations laid down in section 5 constitutes an offence punishable by a fine, and in case of failure to pay the fine, a term of imprisonment – section 5(3).

Section 6 of the Press Act sets out the duties of an editor. These include:

- Ensuring what is published is not contrary to public morality
- Retaining a copy of each newspaper and a copy of each supplement to it for not less than ten years.

Section 7 is an interesting provision because it sets out grounds of disqualification of an editor. These include unremarkable grounds, such as insanity or insolvency, but also unusual grounds such as not being ordinarily resident in Uganda and not having the requisite qualifications prescribed by the Media Council.

Section 13 of the Press Act establishes the National Institute of Journalists of Uganda (NIJU), the objectives of which include maintaining professional standards of journalism and ensuring proper training of journalists. The NIJU is discussed in detail later in this chapter.

Section 27(3) and (5) of the Press Act provides that no person shall practice journalism, including freelance journalism, unless in possession of a valid practising certificate issued by the Media Council. The practising certificate is valid for one year and is renewable upon payment of the prescribed fee – section 27(2). A practising certificate shall not be issued unless the journalist is able to present a certificate of enrolment with the NIJU, established under section 13 of the Press Act – section 27(1). There are a number of disqualifications from being a member of the NIJU, which include insanity, insolvency or having been convicted of an offence – section 17.

Section 29 of the Press Act requires that no employee of, or freelancer for, a foreign mass media organisation shall practise journalism in Uganda unless he or she is in possession of an accreditation card issued by the Media Council. It is an offence in terms of section 27(4) to practise journalism without a practising certificate, the punishment for which is a fine or, in the case of a failure to pay, a period of imprisonment.

Part VII of the Press Act establishes a disciplinary committee of the Media Council to deal with complaints against journalists and media houses. In terms of section 33 of the Press Act, the disciplinary committee may impose a number of sanctions, including:

- Admonishing the journalist
- Requiring the journalist to apologise in his or her newspaper with the same prominence as the original article
- Suspending the practising certificate of the journalist for up to six months
- Demanding payment of compensation by media organisations to aggrieved parties.

Appeals against decisions of the disciplinary committee are made to the High Court, in terms of section 34. Also, the Media Council may revoke the suspension of a journalist on receiving new facts relating to the case, in terms of section 36.

Section 40(1) of the Press Act requires journalists to comply with the Professional Code of Ethics (Code of Ethics), which is set out in the Fourth Schedule of the Press Act. Failure to comply with the Code of Ethics constitutes professional misconduct and is dealt with by the disciplinary committee, in terms of section 40(2) of the Press Act. The Code of Ethics includes the following:

- No journalist shall disseminate information or an allegation without establishing its correctness or truth.
- No journalist shall disclose the source of his or her information; he or she shall divulge the source only in the event of an overriding consideration of public interest and within the framework of the law of Uganda.
- No journalist shall solicit or accept bribes in an attempt to publish or suppress the publication of a story.
- A journalist shall not plagiarise the professional work of others or expropriate works or results of research by scholars without acknowledging their contribution and naming his or her sources of information.
- A journalist shall obtain his or her information through the skilful application of journalistic principles and shall never bribe or offer inducements to his or her source.
- No journalist shall deny any person with legitimate claim a right to reply to a statement. Corrections and rejoinders are to be published in appropriate form without delay and in a way that they will be noticed by those who received the original information.
- A journalist shall at all times strive to separate his or her own opinions from factual news. Where personal opinions are expressed, this shall be made clear to the public.
- A journalist shall take the necessary steps to correct any inaccurate report he or she has made on any individual or organisation.
- A journalist shall not originate or encourage the dissemination of information

designed to promote, or which may have the effect of promoting, tribalism, racism or any other form of discrimination.

3.3 Legislation governing the exhibition of films and the performance of plays and other public entertainments

❖ The Uganda Communications Act, 2013. Act No. 1 of 2013, (Communications Act)

The Communications Act regulates matters relating to the exhibition of films. Section 4 of the act establishes of the Uganda Communications Commission (UCC). Section 37(4) makes it an offence to operate a cinematograph theatre or a video or film library without a licence issued by the UCC. The penalty for non-compliance is a fine, a period of imprisonment or both.

❖ The Stage Plays and Public Entertainments Act, 1943, Chapter 49 (Stage Plays Act)

The Stage Plays Act contains a number of provisions regarding the permissions and other requirements to present a play or public entertainment, which is defined as excluding sporting fixtures. Part III of the Stage Plays Act concerns permits for the presentation and performance of stage plays and public entertainment.

Section 4 of the Stage Plays Act makes it clear that no public performance or presentation may be undertaken without a permit obtained from the UCC. Posters depicting scenes, images or descriptions of public entertainment may not be displayed without approval by the UCC – section 9.

Scripts must be granted permits, and adjustments to scripts that have obtained permits must be approved and additional permits must be granted for each change – section 4(3). In order to obtain a permit, the complete script (and any adjustments) must be provided to the UCC – section 5(1). In the case of a script not written in English, a translation must be provided to the UCC for consideration – section 5(2).

The UCC may, at its discretion, choose to grant free permits in cases where they deem the performance to be for charitable, educational or public purposes – section 8.

Permits for a public presentation or performance may be refused by the UCC or the relevant minister at their absolute discretion and subject to any terms and conditions they deem fit.

❖ The Press and Journalist Act, 2000, Chapter 105 (Press Act)

The Press Act makes it a function of the Media Council to censor films, videotapes,

plays and so on for public consumption and it may refuse permission for a film, videotape or play to be exhibited – section 9.

3.4 Legislation governing the broadcast media generally

3.4.1 Legislation that regulates broadcasting media generally

Broadcasting in Uganda is regulated by:

- The Uganda Communications Act, Act 1 of 2013 (Communications Act)
- The Anti-Pornography Act, 2014
- The Press and Journalist Act, Chapter 105 of 2000 (Press Act).

3.4.2 Establishment of the UCC, the PCC, the Media Council, the NIJU and the UCT

Uganda has more than one regulatory authority that deals with different aspects relating to broadcasting, namely the:

- Uganda Communication Commission (UCC), established in terms of section 4 of the Communications Act
- Pornography Control Committee (PCC), established in terms of section 3 of the Anti-Pornography Act
- Media Council, established in terms of section 8 of the Press Act
- National Institute of Journalists of Uganda (NIJU), established in section 13 of the Press Act
- Uganda Communications Tribunal (UCT), established in terms of section 60 of the Uganda Communications Act.

3.4.3 Main functions of the UCC, the PCC, the Media Council, the NIJU and the UCT

THE UGANDA COMMUNICATION COMMISSION

Section 5(1) of the Communications Act sets out the UCC's main functions, which include to:

- Monitor, inspect, licence, supervise, control and regulate communications services – note that these are defined in section 2 as including broadcasting

- Allocate, license, standardise and manage the use of the radio frequency spectrum resources to ensure the widest variety of programming and optimal utilisation of spectrum resources
- Regulate rates and charges for communications services
- Coordinate and collaborate with the relevant national and international organisations in matters relating to communications
- Receive, investigate and arbitrate complaints relating to communications services, and take necessary action
- Promote and safeguard the interests of consumers and operators as regards the quality of communications services and equipment
- Promote research into the development and use of new communications techniques and technologies
- Improve communications services and distribution throughout the country
- Promote competition
- Establish and administer a fund for the development of rural communications and information and communications technology (ICT) in the country
- Advise the minister on the administration of the Communications Act
- Set standards, monitor and enforce compliance relating to content
- Encourage and promote infrastructure sharing among licensees.

THE PORNOGRAPHY CONTROL COMMITTEE

The functions of the PCC are laid out in section 7 of the Anti-Pornography Act and include:

- Taking all necessary measures to ensure the early detection and prohibition of pornography
- Ensuring all perpetrators of pornography are apprehended and prosecuted

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- Collecting and destroying pornographic objects or materials with the assistance of the police
 - Educating and sensitising the public about pornography
 - Promoting the rehabilitation of individuals, groups, families and communities affected by pornography
 - Expediting the development or acquisition and installation of effective protective software in electronic equipment such as computers, mobile phones and televisions for the detection and suppression of pornography
 - Promoting educational material against pornography in the school curriculum in consultation with the government
 - Promoting and coordinating local and international collaboration against pornography, in consultation with the government.

Section 11 of the Anti-Pornography Act gives authority to the PCC to, ‘at all reasonable times and without warrant’:

- Require the production, inspection and examination of records and other documentation relating to the enforcement of the Anti-Pornography Act
- Carry out inquiries or inspections to ensure compliance with the Anti-Pornography Act
- Carry out inspections of establishments that import, export, store, sell distribute or use any equipment that is likely to give the public access to pornography
- Seize any equipment, documentation ‘or any other thing which it believes has been used in the commission of an offence against this Act or regulations made under the Anti-Pornography Act’
- Close any internet service provider who promotes, publishes, sells or imports pornography
- Cause a police officer to arrest any person whom it believes has committed an offence under the Anti-Pornography Act.

THE MEDIA COUNCIL

The functions of the Media Council are set out in section 9 of the Press Act and include, in relation to broadcasting:

- Regulating the conduct and promoting good ethical standards and discipline of journalists. Within the Press Act is the Professional Code of Ethics which is dealt with previously in this chapter in the section headed ‘Legislation governing the print media’, and is not repeated here
- Arbitrating disputes between the public and the media, and the state and the media
- Exercising disciplinary control over journalists, editors and publishers
- Promoting the flow of information
- Censoring of films, videotapes, plays and other related apparatuses for public consumption.

THE NATIONAL INSTITUTE OF JOURNALISTS OF UGANDA

The functions of the NIJU are set out in section 14 of the Press Act and include, in relation to broadcasting:

- Establishing and maintaining professional standards for journalists
- Encouraging training, equipping and enabling journalists to play their part in society
- Establishing and maintaining a relationship with international journalists’ organisations and other organisations with a view to enhancing the objectives of the institute.

Additional functions of the NIJU are set out in section 14(2) of the Press Act and include:

- Advising on courses of study, the conduct of qualifying examinations and generally on matters related to professional education for journalists in Uganda
- Ensuring the maintenance of professional education for journalists

- Promoting journalism that is not contrary to public morality
- Encouraging research in journalism for the advancement of professionalism.

Members of the NIJU are bound by the Professional Code of Ethics, which is discussed in detail earlier in this chapter under the section headed ‘Legislation governing the print media’, and is not repeated here.

THE UGANDA COMMUNICATIONS TRIBUNAL

In terms of section 64 of the Communications Act, the UCT has jurisdiction to hear and determine all matters relating to communications services arising from decisions made by the UCC and the minister responsible for information and communications technology (ICT). The UCT’s jurisdiction does not include a trial of any criminal offence.

3.4.4 Appointment of UCC, PCC, Media Council, NIJU board and UCT members

THE UGANDA COMMUNICATIONS COMMISSION

In terms of section 9(2) of the Communications Act, all eight members of the UCC Board, who hold office for a period of three years, renewable once – section 9(5), are appointed by the minister responsible for ICT. They must include:

- A person with experience and knowledge in telecommunications, broadcasting or postal communications, as the chairperson
- A representative of professional engineers recommended by the Institute of Professional Engineers
- One lawyer who is a member of the Uganda Law Society
- A person knowledgeable in the field of economics, financial management and public administration
- A representative of the ministry responsible for ICT, who is an *ex-officio* member
- The executive director
- A representative of consumers recommended by the Uganda Consumers’ Association

- One person of good repute and proven integrity representing the public.

Section 10 outlines the attributes that would disqualify prospective board members. These include:

- Engagement in an organisation which operates or provides communications services, either directly or indirectly
- Engagement in the manufacture of communications equipment, either directly or indirectly
- Insolvency
- Inability to perform the functions of his or her office as a result of mental or physical disability.

THE PORNOGRAPHY CONTROL COMMITTEE

Section 3 of the Anti-Pornography Act establishes the PCC, all of whose members are appointed by the minister responsible for ethics, with the approval of the Cabinet – section 3(3) – and is made up of nine members including:

- A chairperson
- An advocate nominated by the Uganda Law Society
- A representative for the media houses
- A representative for the publishing houses
- A representative for the arts and entertainment industry
- A representative for education professionals
- A representative for health professionals
- A representative for cultural leaders
- A representative for religious leaders.

Section 6 of the Anti-Pornography Act sets out criteria for the disqualification or removal of a committee member from the PCC, which include:

- Inability to perform the functions of his or her office as a result of mental or physical disability
- Misconduct, misbehaviour or incompetence
- Conviction of an offence involving moral turpitude.

Section 12 of the Anti-Pornography Act creates the position of secretariat in the

Directorate of Ethics and Integrity, which shall be headed by the director for ethics, who shall be the secretary of the PCC but not a member of the PCC. The secretary will be responsible for:

- Ensuring the implementation of the recommendations and decisions of the PCC
- Taking minutes of PCC meetings
- Keeping the records of all the transactions of the PCC
- Performing any function that may be assigned for the PCC.

THE MEDIA COUNCIL

Section 8 of the Press Act establishes of the Media Council, whose membership consists of:

- The director of information or a senior member from the ministry responsible for information, who is secretary to the council
- Two scholars in mass communication, appointed by the minister of information in consultation with the NIJU
- A representative nominated by the Uganda Newspaper Editors and Proprietors Association
- Two representatives of electronic media
- Two representatives of the NIJU
- Two non-journalist members of the public, appointed by the minister
- One non-journalist member appointed by the Uganda Newspapers Editors and Proprietors Association
- One non-journalist member nominated by journalists
- A lawyer nominated by the Uganda Law Society.

Section 8(3) of the Press Act states that all members of the Media Council are appointed by the minister responsible for information. The chairperson of the Media Council is elected by the members of the council from among their number – section 8(4). Members of the council serve for a period of three years and are eligible for reappointment.

THE NATIONAL INSTITUTE OF JOURNALISTS OF UGANDA

The NIJU executive committee consists of a president, a vice president, a general secretary, a treasurer, an assistant general secretary and three other members, all of whom are elected annually by the members of the NIJU at a general meeting, in terms of section 18 of the Press Act.

THE UGANDA COMMUNICATIONS TRIBUNAL

The UCT is established in terms of section 60 of the Communications Act and consists of three members who will serve on the UCT for a period of four years, eligible for renewal. The members are:

- A judge appointed by the president on the recommendation of the JSC, who shall serve as the chairperson of the UCT
- Two other persons appointed by the president on the recommendation of the JSC.

In discharging its duties, the UCT may appoint up to four technical advisors from a group of technical people identified by the minister responsible for ICT. The appointment of a technical advisor is for a specific task only and lapses following the completion of that task.

Disqualification from appointment to the UCT is set out in section 62 of the Communications Act and includes:

- Engagement in a communications company or organisation which operates communications systems or provides services or is engaged in the manufacture or distribution of communications equipment in Uganda, as an owner, shareholder, partner or otherwise, whether directly or indirectly
- Financial or proprietary interest in an organisation referred to above, or in the manufacture or distribution of communications apparatus anywhere in Uganda
- Bankruptcy or financial arrangements with creditors
- Incapacitation by mental or physical illness
- Inability or unsuitability to discharge the functions of office of a member of the tribunal or technical adviser.

Section 63 of the Communications Act provides that a position on the UCT may fall vacant for a number of reasons, including:

- Continuous and persistent inability to perform the functions of the office
- Engagement in misbehaviour or abuse of office
- Disqualification from membership in accordance with section 62 of the Communications Act
- Failure to disclose to the UCT any interest in a contract or proposed contract or any other matter before the Tribunal
- Resignation in writing to the president.

A vacancy on the UCT under section 63(1)(a) shall be filled by the president on the recommendation of the minister responsible for ICT.

Section 63(4) provides that a technical adviser shall cease to be a technical adviser if he or she:

- Is disqualified from appointment in accordance with section 63(1)
- Fails to disclose to the UCT any interest in the communications sector or in a contract or other matter before the Commission or the Tribunal
- Acquires any material interest in the communications sector
- Has handed a resignation in writing to the minister responsible for ICT.

A vacancy for a technical advisor under section 63(4) shall be determined by the minister for responsible for ICT on the recommendation of the Commission.

3.4.5 Funding for the UCC, the PCC, the Media Council, the NIJU and the UCT

THE UGANDA COMMUNICATIONS COMMISSION

Section 67 of the Communications Act sets out the various sources of funding for the UCC. In brief, these include:

- Monies appropriated by Parliament from the national budget

- Licence fees and monies paid to the UCC for services rendered
- Revenue collected from the annual levy on a percentage of gross annual revenue of operators provided for in section 68
- Money borrowed by the UCC
- Loans, grants, gifts or donations from government and other sources made with the approval of the minister responsible for ICT, the minister responsible for finance, and Parliament.

THE PORNOGRAPHY CONTROL COMMITTEE

Section 21 of the Anti-Pornography Act provides that funds for the PCC consists of:

- Monies approved by Parliament
- Monies donated for the performance of the functions of the PCC.

Finances for the PCC budget are budgeted for under the budget estimates of the ministry responsible for ethics.

THE MEDIA COUNCIL

This is not dealt with in the Press Act and it is not clear how the Media Council is funded.

THE NATIONAL INSTITUTE OF JOURNALISTS OF UGANDA

Sources of funding for the NIJU are outlined in section 21 of the Press Act and include:

- Grants from the government
- Annual subscription fees from members of the NIJU
- Fees and other monies paid for services rendered by the NIJU
- Grants, gifts or donations from sources acceptable to the NIJU
- Monies borrowed by the NIJU.

All funding for the NIJU is managed through a fund established by the general assembly of the NIJU – section 21(2).

THE UGANDA COMMUNICATIONS TRIBUNAL

Section 61 of the Communications Act outlines the sources of funding for the UCT and include:

- Money appropriated by Parliament from time to time for enabling the UCT to perform its functions
- Grants, gifts or donations from the government or other sources acceptable to the minister responsible for ICT and the minister responsible for finance
- Funds provided to the UCT by the UCC under section 71 of the Communications Act.

3.4.6 Making broadcasting regulations

An independent regulatory authority usually has the power to make its own regulations; however, in Uganda all three bodies associated with broadcasting regulation – namely, the UCC, the PCC and the Media Council – are subject to the separate ministers under whose authority each of the regulatory bodies falls, in respect of making such regulations.

BROADCASTING REGULATIONS MADE BY THE UCC

The Communications Act puts the authority for making regulations administered by the UCC in the hands of the minister responsible for ICT. The minister may, after consultation with the Commission and with the approval of Parliament, by statutory instrument, make regulations for better carrying into effect the provisions of the Communications Act – section 93. These include regulations relating to:

- Fees payable on the granting or renewal of a licence
- Categories of licences
- Use of any communications station, apparatus or licence, and compliance with related technical specifications
- Anti-competitive practices
- The quantity and quality criteria of communications services to be provided by a licensee

- Reserved and mandatory services to be provided by an operator
- Consumer information about the range of commercial services and the conditions under which they are provided
- Compensation for a licensee incurring losses as a result of obligations imposed by the UCC on operators in pursuance of the objectives of the Communications Act
- Retention of records relating to programmes or broadcasts
- Obligations of licensees in respect of public broadcasters
- Licensing and management of orbital slots
- Regulation of community broadcasting.

Contraventions of these regulations are punishable by a fine, imprisonment or both.

It should be noted that at the time of writing, the Uganda Communications (Amendment) Bill of 2016 was before Parliament. The purpose of this bill is the removal of the requirement for parliamentary approval of regulations in terms of section 93 of the Communications Act.

BROADCASTING REGULATIONS MADE BY THE PCC

The Anti-Pornography Act places authority for making regulations in the hands of the minister responsible for ethics. The regulations may deal with, among other things:

- Establishing programmes aimed at educating and sensitising the public about pornography and its consequences
- Providing for rehabilitation of persons affected by pornography
- Providing for the eradication of pornography
- Providing for a multi-sectoral approach against pornography involving government departments, agencies, institutions and civil society organisations to develop anti-pornography strategies.

Contravening such regulations is an offence, the penalty for which is a fine, imprisonment or both – section 27(2)(b).

BROADCASTING REGULATIONS MADE BY THE MEDIA COUNCIL

Section 42 of the Press Act places authority for making regulations in the hands of the minister responsible for information, on the advice of the Media Council. These regulations include:

- Particulars and other matters to be entered in the register of the Media Council
- Fees to be paid under the Press Act
- Procedure of the disciplinary committee and the manner of lodging a complaint.

The minister may, with the approval of Parliament, by statutory instrument, increase any fines specified in the Press Act – section 42(3).

3.4.7 Licensing regime for broadcasters in Uganda

BROADCASTING LICENCE REQUIREMENT

Section 27 of the Communications Act empowers the UCC, with exclusive authority, to issue broadcasting licences in Uganda. Contravention of this requirement is punishable with a fine, imprisonment or both.

Section 26 of the Communications Act outlines the requirements to operate a television or radio station. Section 26(1) states that no person may operate either a television station or a radio station without a licence issued by the UCC. Section 26(2) outlines what the UCC must take into account when issuing a broadcasting licence. This includes:

- Proof of the existence of adequate technical facilities
- The location of the station and geographical area to which broadcast is to be made
- The social, cultural and economic value of the service
- An environmental impact assessment.

Failure to comply with section 26(1) of the Communications Act is an offence, the penalty for which is a fine, imprisonment or both. Section 26(4) states that in the case of a corporate body, any or all the persons who are authorised to sign any documentation on behalf of the corporate body may be held liable for the contravention.

Section 23 of the Communications Act exempts certain bodies, including the police, the armed forces, or any other service used by the state in the performance of official functions, from requiring a licence.

CATEGORIES OF BROADCASTING LICENCES

There are several categories for broadcasting licences outlined in the UCC's current application form for a broadcasting licence (UCC-BD/CSP/13/002), namely:

- Public broadcasting services
- Commercial broadcasting services
- Community broadcasting services
- Internet protocol television/radio (IPTV) service
- Cable television subscription service
- Terrestrial subscription broadcasting service
- Satellite subscription broadcasting service
- Broadcasting subscription management service
- Digital mobile television service
- Landing rights (satellite broadcasting cable, etc.).

BROADCASTING LICENSING PROCESS

Application

Section 38 of the Communication Act outlines the process for applying for a broadcasting licence. All applications must be made on a prescribed form to the UCC (the current prescribed form is UCC-BD/CSP/13/002). The UCC will then process the application, taking into account the considerations provided for in section 38(2) of the Communications Act. These include:

- The eligibility of the applicant
- The applicant's capability to operate a system or service for which a licence is sought
- The objectives of the Communication Act
- Whether granting the licence is in the public interest.

Once the UCC has evaluated the eligibility of the application it will then issue the licence upon the payment of the fees prescribed for the relevant licence. The licence will include:

- The terms and conditions upon which it is granted
- Specification of the services to be provided by the operator
- Where applicable, the network to be operated.

The UCC shall grant the licence within 60 days from the date of application. Where the UCC refuses to grant the licence, a written explanation for the refusal must be provided to the applicant within 14 days – section 38(5).

Licence terms and conditions

The UCC prescribes the terms and conditions of all operators licensed under the Communications Act – section 39(1). These may include the provision of services to rural or sparsely populated areas or other specified areas, and other conditions specified in Schedule 6 of the Communications Act – section 39(2).

Schedule 6 of the Communications Act states that a licence issued under the Communications Act may include conditions such as:

- The payment of sums of money calculated as a proportion of the rate of the annual turnover of the operator’s licensed system or otherwise
- The payment by the operator of a contribution toward any loss incurred by another operator as a result of such other operator’s obligation imposed on the operator by the UCC regarding the provision of uneconomic service in pursuance of the objectives of the Communications Act
- The provision of services to disadvantaged persons
- Prohibiting an operator from giving undue preference to, or from exercising undue discrimination against, any particular person or class of persons, including any operator
- Furnishing the UCC with such documents, accounts, returns or such other information as the UCC may require for the performance of its functions under the Communications Act
- Requiring an operator to publish in such manner as may be specified in the licence a notice stating the charges and terms and conditions that are to be applicable to facilities and services (for example, a subscription broadcasting service) provided, and the conditions for specifying tariffs
- Provision of service on a priority basis to government or specified organisations
- Requiring an operator to ensure that an adequate and satisfactory information system, including billing information, is provided to customers
- Requiring an operator to comply with such technical standards or requirements, including service performance standards, as may be specified in the licence
- Any other condition the UCC may consider appropriate or expedient.

Schedule 6 also provides that it is a condition of every licence issued under the Communications Act that the licensee must:

- Comply with all relevant international conventions or instruments to which Uganda is a party
- In the case of a broadcaster, allocate time for the coverage of national events and functions.

A licensee must provide a service for which the licence was obtained – section 39(3).

Modification of licence

Section 40(1) of the Communications Act authorises the UCC to modify the conditions of any licence if the UCC considers it necessary to achieve the objectives of the Communications Act or in the public interest, taking into account the justified interests of operators and the principles of fair competition and equality of treatment. Section 40(2) of the Communications Act provides that before modifying any condition of a licence, the UCC must give the operator notice of not less than 60 days, stating the reasons for the intended modification and giving the operator an opportunity to make representations thereon. Additionally, section 40(3) gives an operator a reasonable time within which to comply with the modification of the licence, determined by the UCC. A person aggrieved by a decision of the UCC may appeal to the UCT – section 40(4).

Suspension and revocation of licence

The Communications Act provides for the suspension and revocation of a broadcasting licence outlined in section 41. The UCC may suspend or revoke a licence issued under the Communications Act on the grounds of:

- Serious and repeated breach of the licence conditions
- Fraud or intentional misrepresentation by the operator applying for the licence
- Treasonous offences under the Penal Code Act by the operator
- Cessation of eligibility of the person to whom the licence has been awarded.

After considering any representations by the operator, the UCC may also:

- Prescribe the time period by which the operator is required to remedy the offending act or conduct
- Require the operator to pay a fine not exceeding the equivalent of ten percent of its gross annual revenue.

The UCC must give the operator written notice of not less than 60 days specifying the reasons for the intended suspension or revocation, during which the operator may make representations to the UCC. Where the UCC determines that the operator's representations under section 41(3) are not sufficient, the UCC may suspend or revoke the operator's broadcasting licence.

Transfer of licence

Section 42 of the Communications Act provides for the transfer of a licence issued by the UCC. A licence issued by the UCC may not be transferred without the prior written consent of the UCC. An application for a transfer of licence may be made by the operator to the UCC in terms of section 42(3) of the Communications Act, and must be accompanied by an application to grant a broadcasting licence to the person to whom the operator intends to transfer the licence. The UCC must then consider the application for the transfer of the broadcasting licence, taking into account the same considerations outlined in section 38 of the Communications Act when awarding a licence to a broadcasting operator. The UCC may, at its discretion, refuse to grant the application to transfer a broadcasting licence, in terms of section 38.

The UCC must give its decision on an application to transfer a licence within 45 days from the date of application – section 42(6). Where the UCC refuses consent, it must, within 14 days of the refusal, provide a written explanation giving reasons for the refusal – section 42(7).

Lapse and renewal of a licence

Section 43 of the Communications Act requires broadcasting licence holders to apply for a renewal of the broadcasting licence at least two months before the expiration of the licence. When considering an application for a renewal of a licence, the UCC must take into account the performance of the operator during the preceding period under which the licence was valid. A decision on the renewal of a broadcasting licence must be made within 30 days of the application for renewal. In situations where a licence is not renewed under section 43 of the Communications Act, the UCC must provide written explanation for the refusal within 14 days of the refusal.

Frequency spectrum licensing

This is an important aspect of broadcasting because all terrestrial and satellite broadcasting signals are distributed through radio waves, and consequently make use of the radio frequency spectrum.

Frequency spectrum licensing in Uganda is dealt with in section 24 of the Uganda Communications Act. Section 24 provides that the UCC is the exclusive issuer of licences for:

- Radio broadcasting, or communications apparatus and spectrum use
- Possession and operation of radio broadcasting or communication apparatus
- Broadcasting and communications as the UCC may consider appropriate.

The UCC may, through spectrum reformatting, withdraw spectrum where the UCC is satisfied that it is not being used optimally – section 25(2).

RESPONSIBILITIES OF BROADCASTERS UNDER THE COMMUNICATIONS ACT

Section 28 of the Communications Act outlines the responsibilities of a broadcaster. While section 28(1) prohibits unauthorised prevention of the broadcasting of a programme on account of its content, section 28(2), however, makes it clear that prohibited content may not be aired. Prohibited content includes:

- Pornographic material
- Material which infringes upon the privacy of any individual.

Additional responsibilities for a licensed broadcaster are outlined in section 29 of the Communications Act and include:

- Ensuring that what is broadcast is not contrary to public morality
- Retaining a record of all that is broadcast, for not less than 60 days.

Section 30 of the Communications Act sets out the grounds upon which a person may be disqualified from becoming a producer of a broadcasting station, and these include:

- Being under 18 years of age
- Being of unsound mind
- Not ordinarily being resident in Uganda
- Not possessing the requisite qualifications prescribed by the Media Council.

All broadcasters must follow the minimum broadcasting standards outlined in Schedule 4 of the Communications Act and may only broadcast programmes that comply therewith. According to Schedule 4(a), these standards include:

- Not being contrary to public morality
- Not promoting a culture of violence or ethnic prejudice, especially among children and youth
- News broadcasts that are factual
- Not being likely to create public insecurity or violence

- Being compliant with existing law.

Schedule 4(b) requires all programmes that are broadcast to be balanced to ‘ensure harmony’. Schedule 4(c) stipulates that adult-oriented programming must be appropriately scheduled. Any broadcaster that provides programming for a contender for public office must afford equal opportunity to all contenders seeking election – schedule 4(d). Schedule 4(e) stipulates that any broadcast that relates to national security must have the contents verified by the UCC before broadcasting.

It is also the responsibility of the broadcaster to ensure that any programming complies with the ethical broadcasting standards – section 32. The ethical broadcasting standards which apply to broadcasters are the professional code of ethics specified in the Fourth Schedule of the Press and Journalist Act. These are dealt with previously in the section titled ‘Legislation governing print media’ and are not repeated here.

The ethical standards in the Press and Journalist Act referred to in section 32(1) may be modified by the UCC to accord with the Communications Act.

ANNUAL REPORT ON OPERATIONS OF LICENSEE

Section 44 of the Communications Act requires that every licensee must, at the end of each year of business, prepare and submit an annual report on the extent to which the conditions of the licence were followed. The annual report must be provided to the UCC in the prescribed form.

3.4.8 Are the UCC, the PCC, the Media Council, the NIJU and the UCT independent regulators?

An independent regulatory authority generally has the right to create its own regulations regarding their sphere of influence. This is not the case in Uganda as all five regulatory bodies, namely the UCC (regulated under section 93 of the Communications Act), the PCC (regulated under section 27 of the Anti-Pornography Act), the Media Council (regulated under section 42 of the Press Act), the NIJU (regulated under section 15 and section 18 of the Press Act), and the UCT (regulated under section 60 of the Communications Act), are not able to make regulations without the involvement of other bodies. In particular, the government controls the regulation-making processes of all of these bodies through the ministers under whose authority they fall.

The lack of independence of these regulatory bodies is further emphasised through

their lack of control over the appointment of their executive staff, as this is also controlled by the ministers under whose authority they fall.

Lastly, none of these bodies is appointed via a public nominations process involving a multi-party body such as Parliament. In each case, except in respect of the NIJU, the executive is essentially responsible for the appointment and removal of the members governing structures of the institutions, rendering them not independent of the executive branch of government.

INDEPENDENCE OF THE UCC

The UCC cannot be said to be independent for, while section 8 of the Communications Act states that the UCC ‘shall exercise its functions independently of any other person or body’, this is subject to section 7 of the Communications Act, which states that the minister responsible for ICT may give policy guidelines to the UCC regarding the performance of its duties and functions, and that the UCC must comply with policy guidelines given by the minister responsible for ICT. Additionally, while the appointments process does give a ratification role to Cabinet, all appointments to the board of the UCC are made by the minister responsible for ICT without any public nominations process or involvement of a multi-party body such as Parliament – section 9(3). Independent regulation-making is also denied to the UCC, as pointed out above, by the provisions of section 93 of the Communications Act, which give the minister responsible for ICT the authority to make regulations for the UCC’s industry sector.

INDEPENDENCE OF THE PCC

The PCC cannot be said to be an independent regulatory authority as the authority for the appointment of members to the PCC is held by minister responsible for ethics without any form of public nominations process or involvement of a multi-party body such as Parliament – section 3(3). The independence of the PCC is further inhibited by section 27 of the Anti-Pornography Act, which places the authority for regulating the functions of the PCC in the hands of the minister responsible for ethics, who may make regulations ‘to provide for the better carrying into effect, the purposes of this Act’. Section 26 of the Anti-Pornography Act gives the minister responsible for ethics the authority to amend fees and fines payable and the processes of the PCC, with the approval of Cabinet.

INDEPENDENCE OF THE MEDIA COUNCIL

The Media Council cannot be said to be an independent regulatory authority as the

Press Act gives the authority to appoint council members to the minister responsible for information without any form of public nominations process or involvement of a multi-party body such as Parliament. The chairperson of the Media Council is, however, elected by the members of the Media Council from among their number – section 8. Section 42 of the Press Act places the authority for making regulations in the hands of the minister responsible for information, with advice from the Media Council.

INDEPENDENCE OF THE NIJU

The NIJU cannot be said to be independent due to the fact that, in terms of section 40(3), amendments to its Professional Code of Ethics set out in Schedule 4 of the Press Act are made by the minister responsible for information after consultation with the Media Council. This Code of Ethics must be followed by members of the NIJU, and failure to do so can result in disciplinary action.

INDEPENDENCE OF THE UCT

The UCT cannot be said to be independent for, while the members of the UCT are appointed by the president on the recommendation of the JSC, in terms of section 60(2) of the Communications Act, the technical advisors that assist the UCT, in terms of section 60(5), are selected from a group identified by the minister responsible for ICT. This means that decisions made by the UCT can be strongly influenced by the technical advisors identified by the minister.

3.4.9 Amending the legislation to strengthen the broadcast media generally

There are a number of weaknesses in the legislative framework for the regulation of broadcasting generally in Uganda:

- The UCC should be able to make regulations without reference to the minister responsible for ICT.
- The UCC should be able to appoint or dismiss the executive general of the UCC without reference to the minister.
- Appointments of the UCC board members ought to be made by the president on the recommendation of Parliament following a public nominations, interview and shortlisting process.
- There ought to be more public participation in the broadcasting service licensing

process. There is no public notice or comment required when issuing, amending, renewing or transferring broadcasting licences.

- Appointment to the PCC should be made by the president on the recommendation of Parliament after a public nominations, interview and shortlisting process.
- The PCC should be empowered to make regulations in respect of matters set out in the Anti-Pornography Act without the involvement of the minister responsible for ethics.
- Members of the Media Council should be appointed by the president on the recommendation of Parliament following a public nominations, interview and shortlisting process.
- The Media Council should be empowered to make regulations on its own without the involvement of the minister responsible for information, as is currently provided for in terms of the Press Act.
- Section 60(5) of the Uganda Communications Act should be amended to remove the ability of the minister responsible for ICT to pre-select eligible technical advisors for the UCT as this power should rest entirely with the UCT.

3.5 Legislation that governs state media

3.5.1 State newspapers

- ❖ **New Vision Printing and Publishing Corporation Act, Chapter 320, 1987 (New Vision Act)**

Section 2 of the New Vision Act establishes the New Vision Printing and Publishing Corporation (New Vision).

New Vision's mandate

Section 3 of the New Vision Act establishes the mandate for New Vision, which includes:

- Publishing government-owned newspapers in English and vernacular languages
- Publishing booklets or other publications which project the good name of Uganda and enhance the welfare and unity of its people
- Government stationary and forms, for example, licence applications and annual reports

- Commercial work ranging from stationary and book printing to text and exercise books, or any other books for general reading, advertising and other forms of posters, technical drawings and architectural plans, and carrying out any other activity that may be carried out by a printing press or publishing house.

Appointment of the New Vision Board

Section 5 of the New Vision Act outlines the composition of the board of New Vision. The board consists of a managing director and not fewer than four, and not more than eight, other directors, one of whom shall be the chairperson. Section 5(2) provides that the directors are appointed by the minister responsible for information. A director's term is three years – section 5(3) – and directors are eligible for re-appointment – section 5(7).

A director may resign his or her office in writing addressed to the minister, and the minister may remove any member from office for an inability to perform the functions of his or her office, or for any other sufficient reason – section 5(4). Should the office of a director become vacant for any reason other than the completion of his or her term of appointment, the minister responsible for information may appoint another person to hold office to complete the term – section 5(5). Appointments made under section 5(5) will complete their terms of office on the date when the person in whose place he or she holds office would have ceased to hold office in accordance with the New Vision Act.

Function of the New Vision Board

The New Vision Board is responsible for ensuring that the government newspapers are published in accordance with the New Vision editorial policy, which is outlined in section 19 of the New Vision Act. The New Vision editorial policy includes to:

- Provide wide coverage of events all over the world and in Uganda in particular
- Voice public opinion and criticisms of a given government policy in a fair and objective manner without becoming an institutional opponent to the government or its interests
- Uphold the integrity of the Republic of Uganda and promote harmonious relationships among its people, its neighbours and the world at large
- Propagate news and comment truthfully, honestly and fairly without jeopardising peace and harmony in the country
- Respect and uphold the sovereignty and unity of Uganda and to come out firmly

on its side on matters affecting such sovereignty and unity without affecting the truth, which must at all times be the guiding line and governing principle of the newspapers.

Funding for New Vision

Section 12 of the New Vision Act sets out sources of funding of New Vision, which include:

- Any grant of a capital nature from the government
- Any loan from the government, organisations or any person
- Any monies that may become payable to New Vision in the discharge of its functions
- Donations that may be made to New Vision.

New Vision: Public or state corporation?

New Vision is a state publishing house. This is evident from section 5 of the New Vision Act, which states that directors to the board of New Vision are appointed by the minister responsible for information and may be removed by the minister. The appointment and removal of a director appears to be at the discretion of the minister.

Another factor indicating that New Vision is a state publishing house rather than a public one is the editorial policy which is laid down in section 19 of the New Vision Act. Section 19(b) provides that while New Vision may publish criticism of the government, it may not become an institutional opponent to the government or its interests. What constitutes institutional opposition of the government is determined by the board, which is appointed by the minister responsible for information.

3.5.2 State broadcaster

❖ **Uganda Broadcasting Corporation Act, 2005 (UBC Act)**

Section 3 of the UBC Act establishes the Uganda Broadcasting Corporation (UBC) as the state broadcaster and successor to Uganda Television and Radio Uganda. Section 4 of the UBC Act highlights the objectives of the UBC, most notably to provide electronic media to the Ugandan public and to sustain comprehensive national radio and television coverage across Uganda.

The UBC's mandate

Section 5(1) of the UBC Act sets out the functions of the UBC. In brief, these include:

- Providing radio and television broadcasting services with an emphasis on national unity and cultural diversity

- Reflecting the government's vision regarding the objectives, composition and overall management of the broadcasting services
- Ensuring a sustainable system for gathering, analysing, storing and disseminating information
- Carrying out signal distribution as a common carrier (this makes the UBC both a competitor and service provider in the broadcasting signal distribution field)
- Ensuring indigenous programming and adapting foreign programmes to suit indigenous needs
- Maintaining editorial independence and setting national broadcasting standards
- Ensuring protection of the public interest in rendering broadcasting services
- Providing electronic media and consultancy services to educate the public
- Maintaining self-sustainability
- Achieving and sustaining comprehensive radio and television coverage throughout Uganda
- Achieving and sustaining reliable signals
- Ensuring accurate, reliable and timely reporting of events and presentation of programmes.

Appointment of the UBC Board

The UBC is governed by a board of directors – section 7 – which includes a managing director, plus five to seven directors, one of whom is the chairperson. Section 7(2) gives the power of appointment of the board of the UBC to the minister responsible for information and broadcasting. The directors are appointed for a period of four years – section 7(3). Any director may hold office for two terms only – section 7(7). The minister responsible for information and broadcasting may remove a director from office if it is determined that he or she is unable to perform the function of his or her office or is guilty of misbehaviour, misconduct or incompetence – section 7(4). Should a director's position become vacant other than by the expiry of their term, the minister responsible for information and broadcasting may appoint another person to hold office in his or her place – section 7(5) – to complete the original term – section 7(6).

Section 8 of the UBC Act provides for the appointment of a managing director to serve as the executive officer of the UBC. The managing director is appointed by the minister responsible for information and broadcasting.

Functions of the UBC Board

The functions of the UBC Board are outlined in Section 8 of the UBC Act. These include:

- Reviewing the policy of the UBC with regard to the UBC's objectives as set out in the UBC Act
- Approving the annual budget
- Appointing and disciplining staff members
- Determining the UBC structure, number of employees and terms and conditions of service
- Establishing the rules and procedures for appointing, developing and disciplining staff
- Managing the UBC's finances and assets
- Any other functions approved by the minister responsible for information and broadcasting.

Funding for the UBC

Section 27 of the UBC Act authorises the minister responsible for information and broadcasting to transfer all property, rights and liabilities belonging to both Uganda Television and Uganda Radio to the UBC. Section 14 of the UBC Act sets out the allowable sources of funding for the UBC. These are:

- Any capital grants from government
- Loans from government, organisations and persons
- Income payable to the UBC in performance of its functions and commercial activities
- Donations made to the corporation
- Television viewing licence fees
- Advertising revenue.

The UBC: Public or state broadcaster?

The UBC is a state broadcaster. Section 3(3) of the UBC Act states that the UBC is

wholly owned by the government. Section 5 further indicates the UBC is a state broadcaster. The UBC is required to reflect government's vision regarding the objectives, composition and overall management of broadcasting services – section 5(1)(b).

The UBC's status as a state broadcaster rather than a public broadcaster is further emphasised in section 7, in terms of which all board members are appointed by the minister responsible for information and broadcasting, who also has the ability to remove a director and replace him or her without consultation with Parliament or the board of the UBC.

3.5.3 Weaknesses in the provisions of the UBC Act which should be amended

A number of important weaknesses ought to be addressed through legislative amendments.

- Appointments of UBC board members ought to be made by the president on the recommendation of Parliament following a public nominations, interview and short-listing process.
- The UBC Board ought to be able to appoint and dismiss the managing director of the UBC without any involvement from the minister responsible for information and broadcasting.
- The UBC ought to be specifically stated to be an independent public broadcaster providing broadcasting services in the public interest.

3.6 Legislation that undermines a journalist's duty to protect sources

A journalist's sources are the life blood of his or her profession. Without trusted sources, a journalist cannot obtain information that is not already in the public domain. However, sources will often be prepared to provide critical information only if they are confident that their identities will remain confidential and this confidentiality will be respected and protected by a journalist. This is particularly true of so-called whistleblowers – inside sources that are able to provide journalists with information regarding illegal activities, whether by company or government personnel. Consequently, democratic countries often provide special protection for journalists' sources. It is recognised that without such protection, information that the public needs to know would not be given to journalists.

❖ The Penal Code Act, Chapter 120 of 1950

The Penal Code of Uganda establishes a code of criminal law. Surprisingly, the

interpretation of this law is still to be done in accordance with the principles of legal interpretation obtaining in England – section 1. Section 103(c) of the Penal Code makes it an offence to obstruct in any way the execution of civil or criminal legal processes. While this is not overtly aimed at journalists or the media, it can be interpreted that should a journalist fail to expose his or her source when ordered to do so in a legal proceeding, the journalist can be held to have committed an offence. The penalty for obstructing a legal process is a period of imprisonment.

Additionally, section 107(b) makes it an offence when called upon to give evidence in a judicial proceeding to:

- Fail to attend such proceedings, or
- Refuse to answer a question or produce a document without lawful excuse.

Punishment is a period of imprisonment or a fine – section 107(2).

❖ **The Anti-Terrorism Act, 2002**

The effect of paragraph 8 of the Third Schedule to the Anti-Terrorism Act is that it empowers an investigating officer in a terrorist investigation to apply to a magistrate for an order requiring a person who is in possession of, among other things, journalistic material, to produce it to the investigating officer or to give the investigating officer access thereto. Journalistic material is defined in paragraph 5(1) of the Third Schedule to the Anti-Terrorism Act as material ‘acquired or created for the purposes of journalism’.

Surprisingly, the Anti-Terrorism Act does not appear to contain specific provisions detailing the consequences of non-compliance with a magistrate’s order. We assume that the provisions of section 103(c) of the Penal Code, which makes it an offence to obstruct criminal legal processes, would apply, and the penalty therefore is a period of imprisonment.

❖ **Parliament (Powers and Privileges) Act, 1955, Chapter 258 (Parliament Act)**

Section 8 of the Parliament Act empowers Parliament, any sessional committee or other committee specially authorised by Parliament, to order any person to attend before Parliament or a committee and give evidence or to produce any paper, book, record or document in the possession or under the control of that person.

If a person does not comply with section 8, section 10 of the Parliament Act empowers the speaker of Parliament to direct the clerk of Parliament to issue a warrant (executed by a police officer) to apprehend a person and bring him or her before Parliament or the committee.

It is, however, important to note that whether or not requiring a journalist to reveal a source is in fact an unconstitutional violation of the right to freedom of expression will depend on the particular circumstances in each case, particularly on whether or not the information is available from any other source. It is therefore extremely difficult to state that these provisions are, by themselves, a violation of the right to freedom of expression under the Constitution.

3.7 Legislation that prohibits the publication of certain kinds of information

A number of pieces of legislation contain provisions which, looked at closely, undermine the public's right to receive information and the media's right to publish information. Such legislation is targeted and generally prohibits the publication of certain kinds of information, including:

- Prohibition of the importation of publications prohibited by the attorney general
- Prohibition of publications that are prejudicial to the security of Uganda
- Prohibition of publications that promote sectarianism
- Prohibition of publications that are obscene or pornographic
- Prohibition of publications relating to legal proceedings
- Prohibition of publications relating to terrorist investigations
- Prohibition of publications that incite violence
- Prohibition of publications that further wrongful boycotts
- Prohibition of publications that incite the refusal of or delay in the payment of tax
- Prohibition of publications intended to disturb foreign relations

3.7.1 Prohibition of the importation of publications prohibited by the attorney general

❖ The Penal Code Act, 2002

While section 34 of the Penal Code Act does not make specific reference to the publication of material in Uganda, it does give the attorney general authority at his or her absolute discretion, by statutory order, to prohibit the importation of any or all publications or periodicals. Where the publication is a periodical, the order may relate to any past or future publications. The attorney general may, in writing, exempt any publication that has been prohibited under this section of the Penal Code. Section 35 makes it an offence to import any publication that has been prohibited under section 34 of this act, the penalty for which is two years' imprisonment, a fine or both. The penalty for subsequent offences is three years' imprisonment and the forfeiture of any such publication to the government.

Section 36 of the Penal Code states that any person to whom prohibited material is

delivered in response to a request made, or who is in possession of a publication prior to the prohibition of any publication, must deliver the prohibited material to an administrative officer or the officer in charge of the nearest police station, as soon as the nature of the material or the prohibition thereof becomes known to him or her. The penalty for failing to do so is a term of imprisonment, a fine or both, and the prohibited material will be forfeited to the government.

3.7.2 Prohibition of publications that are prejudicial to the security of Uganda

❖ The Penal Code Act, 1950

Section 37 of the Penal Code makes it an offence to publish information considered prejudicial to the security of Uganda. This includes information relating to military operations, strategies or troop locations, locations of supplies or equipment of the armed forces or of the enemy which is likely to result in the endangerment of military installations, equipment, supplies and personnel. Additionally, the publication of material that may assist the enemy or else disrupt public order and security is an offence. The penalty for both is a term of imprisonment.

❖ The Official Secrets Act, 1964

The Official Secrets Act prohibits the production or publication of any material (sketch, note, plan or model) that is determined to be or might be, either directly or indirectly, useful to foreign powers – section 2(1)(b). Section 2(2) indicates that it is not necessary upon prosecution to show that the accused is guilty of any particular act tending to show a purpose prejudicial to the interests of Uganda. The person can in fact be convicted if, from the circumstances of the case, or from the accused's character or purpose, 'it appears' that he or she may have had a purpose prejudicial to the safety of Uganda.

Section 4 of the Official Secrets Act deals with the wrongful communication of information deemed to be subject to the Official Secrets Act. It states that any person who has been entrusted with information that relates to any information regulated under the Official Secrets Act, and allows any other person other than an authorised person to gain access to said information, commits an offence, and the punishment upon conviction is a term of imprisonment.

3.7.3 Prohibition of publications that promote sectarianism

❖ The Penal Code Act, 1950

Section 41 of the Penal Code prohibits the publication of material viewed to promote sectarianism. This includes material that is likely to degrade, revile or expose to hatred or contempt, create alienation or despondency, raise discontent or disaffection

or promote in any other way feelings of ill will or hostility among or against any group on account of religion, tribe, ethnicity or regional origin. The penalty for this offence is a term of imprisonment.

Section 42 of the Penal Code authorises the confiscation of printing machines that have been used to print sectarian material under the following circumstances:

- When a person is convicted of printing a sectarian publication, the machine on which it was printed may be confiscated for up to one year regardless of whether the person convicted of printing the seditious material was the owner of the machine or not – section 42(1). Any person who uses a machine confiscated in relation to section 42(1) commits an offence and is liable to imprisonment – section 42(8).
- When the proprietor, publisher, printer or editor of a newspaper as defined in the Press Act is convicted of printing or publishing sectarian material, the court may confiscate the printing machine and additionally prohibit any further publication of the newspaper for up to one year – section 42(2). Any person who prints or publishes a newspaper in contravention of an order made under section 42(2) commits an offence and is liable to imprisonment – section 42(9).

In any case where a printing machine has been ordered confiscated, the inspector general of the police may, at his discretion, cause the machine or any part of it to be removed or sealed to prevent its use. However, the owner of the machine or his agents may have access to the machine to maintain it in proper working order – section 42(6).

3.7.4 Prohibition of publications that are obscene or pornographic

❖ The Anti-Pornography Act, 2014

Section 13 of the Anti-Pornography Act makes it an offence to participate in the production, publication, broadcasting, procurement, import or export of, or in any way abet, any form of pornography. The penalty for this offence is a fine or imprisonment. Publishing child pornography is punished by a larger fine, longer imprisonment or both – section 14.

Section 17 of the Anti-Pornography Act regulates internet service providers. Section 17(1) of the act makes it an offence for any internet service provider which, by not using a method of content enforcement recommended by the PCC established under this act, permits the upload or download of pornographic material. The penalty for this offence is a fine, imprisonment or both – section 17(2). In the event of

subsequent offences, the court may suspend the business's operations. Continuing to operate after suspension is an offence, the penalty for which is a fine, imprisonment or both – section 17(3).

❖ **The Press and Journalist Act, 2000 (Press Act)**

Section 6 of the Press Act requires that editors of a mass media organisation ensure that what is published is not contrary to public morality, and this would apply similarly to internet content.

❖ **The Computer Misuse Act, No. 2, 2011 (Computer Act)**

Section 23 of the Computer Act regulates the production, distribution or transmission of child pornography – all these actions are determined to be an offence under the law. While this is not directly linked there is correlation between this section of the Computer Act and the Anti-Pornography Act mentioned above. The penalty for committing offences under section 23 is a fine, a term of imprisonment or both.

3.7.5 Prohibition of publications relating to legal proceedings

❖ **The Inspectorate of Government Act, 2002 (Inspectorate Act)**

The Inspectorate Act states that no person who is not an official may divulge information relating to an investigation except with the approval of the Inspectorate of Government or when ordered to do so by a court or required by law. The penalty for doing so is a fine, a term of imprisonment or both – section 20(3).

❖ **The Penal Code Act, 1950**

Section 184(b) of the Penal Code allows a court to prohibit the publication of anything said or shown before it on the ground that it is seditious, immoral or blasphemous and commits a misdemeanour offence, the penalty for which is a term of imprisonment.

3.7.6 Prohibition of publications relating to terrorist investigations

❖ **The Anti-Terrorism Act, 2002**

Section 17(2) of the Anti-Terrorism Act makes it an offence to disclose information that is likely to prejudice a terrorist investigation. Any person who commits an offence under section 17(2) of the act is liable to a fine, imprisonment or both – section 17(4).

3.7.7 Prohibition of publications that incite violence

❖ **The Penal Code Act, 1950**

Section 51 of the Penal Code makes it an offence to print or publish any statement

indicating or implying that it would be desirable to perform any acts calculated to bring death or physical injury to any person, class or community. The penalty for this offence is imprisonment. It should be noted that no person can be prosecuted under section 51 without written consent from the director of public prosecutions.

3.7.8 Prohibition of publications that further wrongful boycotts

❖ The Penal Code Act, 1950

Publication of material deemed to further a boycott that the attorney general has deemed wrongful is prohibited. Charges under section 49 of the Penal Code Act must be approved by the director of public prosecutions. The penalty for furthering a wrongful boycott is a term of imprisonment.

3.7.9 Prohibition of publications that incite the refusal of or delay in the payment of tax

❖ The Penal Code Act, 1950

Section 52 of the Penal Code makes it an offence to publish any material that incites any person to refuse or threaten to refuse to pay any lawful tax. Additionally, any material inciting a person to delay, obstruct, threaten to delay or obstruct the collection or assessment of any lawful tax commits an offence and is liable to a term of imprisonment. Prosecution under this section of the Penal Code may not go ahead without written consent of the director of public prosecutions.

3.7.10 Prohibition of publications intended to disturb foreign relations

❖ The Penal Code Act, 2002

Section 53 of the Penal Code states that any person who, without justification, publishes anything intended to degrade, revile or expose to contempt, a foreign prince, potentate, ambassador or other foreign dignitary with the intent to disturb the peace and friendship between Uganda and the country to which that person belongs, commits a misdemeanour offence.

3.8 Legislation that codifies and clarifies aspects of the crime of defamation

3.8.1 Introduction

Uganda codifies and clarifies libel and defamation in the Penal Code Act, Chapter 120, providing definitions for each in sections 179 and 180 respectively.

In terms of section 179 of the Penal Code, '[a]ny person who, by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words or

other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, commits the misdemeanour termed libel’.

Section 181 of the Penal Code Act defines the publication of libel as causing the print, writing, painting, effigy, exhibition, recitation, reading, description, delivery or otherwise of defamatory material such that it becomes known to either the person being defamed or any other person. It is not necessary for libel that a defamatory meaning be directly or completely expressed.

Section 180 of the Penal Code Acts defines defamatory matter as:

- Material likely to injure the reputation of a person by exposing that person to hatred, contempt or ridicule, or
- Material likely to damage a person in his or her profession or trade by damage to his or her reputation.

It is immaterial whether at the time of publication the person concerning whom the defamatory material is published is living or dead – section 180(2); however, no prosecution will be instituted in a case of libel concerning a deceased person without the approval of the director of public prosecutions – section 180(3).

3.8.2 Justifications for libel or slander

ABSOLUTE PRIVILEGE

In certain cases, the publication of defamatory material is privileged and no person is liable to punishment or prosecution, in terms of section 183 of the Penal Code. These cases include:

- Material published by the president, the government or Parliament
- Material published in Parliament by the government or by any member of that Parliament or by the speaker
- Material published by order of the president or the government
- Material published concerning a person subject to military, naval or air force discipline for the time being, which relates to his or her conduct as a person subject to such discipline, and is published by some person having authority over

him or her in respect of such conduct, and to some person having authority over him or her in respect of such conduct

- Material published in the course of any judicial proceedings by a person taking part in them as a judge, magistrate, commissioner, advocate, assessor, juror, witness or party to the proceedings
- Material which is a fair report of anything said, done or published in Parliament
- If the person publishing the matter is legally bound to publish it.

In cases where publications are absolutely privileged it is immaterial whether the matter is true or false, or whether a publication is made in good faith – no person shall be liable to punishment – section 183(2).

CONDITIONAL PRIVILEGE

In terms of section 184 of the Penal Code, defamatory material is conditionally privileged if the person publishing the material does so in good faith and meets certain other criteria including:

- Having a legal, moral or social duty to do so
- Having a legitimate personal interest in publishing it
- If the material published is in fact a fair report of anything said, done or shown in a civil or criminal inquiry or proceeding before any court; except if the court prohibits the publication of anything said or shown before it on the ground that it is seditious, immoral or blasphemous
- If the material published is a copy or reproduction, or a fair abstract, of any matter which has been previously published, and the previous publication was or would have been privileged under section 183
- If the material published is an expression of opinion in good faith as to the conduct of a person in a judicial, official or other public capacity or as to his or her personal character so far as it appears in such conduct
- If the material published is an expression of opinion in good faith as to the conduct of a person in relation to any public question or matter, or as to his or her personal character so far as it appears in such conduct

- If the material published is an expression of opinion in good faith as to the conduct of any person as disclosed by evidence given in a public legal proceeding, whether civil or criminal, or as to the conduct of any person as a party, witness or otherwise in any such proceeding, or as to the character of any person so far as it appears in any such conduct
- If the material published is an expression of opinion in good faith as to the merits of any book, writing, painting, speech or other work, performance or act published or publicly done or made, or submitted by a person to the judgment of the public or as to the character of the person so far as it appears therein
- If the material published is a censure passed by a person in good faith on the conduct of another person in any matter in respect of which he or she has authority, by contract or otherwise, over the other person or on the character of the other person, so far as it appears in such conduct
- If the material published is a complaint or accusation made by a person in good faith against another person in respect of his or her conduct in any matter, or in respect of his or her character so far as it appears in such conduct, to any person having authority, by contract or otherwise, over that other person in respect of such conduct or matter, or having authority by law to inquire into or receive complaints respecting such conduct or matter
- If the material is published in good faith for the protection of the rights or interests of the person who publishes it, or of the person to whom it is published, or of some person in whom the person to whom it is published is interested.

In terms of section 185 of the Penal Code, publication of a defamatory matter shall not be deemed to have been made in good faith in cases where:

- The matter was untrue and the person publishing it did not believe it to be true
- The matter was untrue and the person publishing it did not take reasonable care to discover whether it was true or not
- The intention in publishing the matter was to injure the defamed person to a greater degree than required for the interest of the public.

If it is proved on behalf of the accused person that the defamatory matter was published under such circumstances that the publication would have been justified if made in good faith, the publication shall be presumed to have been made in good

faith until the contrary is made to appear, either from the libel itself or from the evidence given on behalf of the accused person or from evidence given on the part of the prosecution – section 186.

3.9 Legislation that specifically assists the media in performing its functions

3.9.1 Introduction

In countries that are committed to democracy, governments pass legislation which specifically promotes accountability and transparency of both public and private institutions. Such statutes, while not specifically designed for use by the media, can and often are used by the media to uncover and publicise information in the public interest.

3.9.2 Access to information

Access to information was guaranteed in the 1995 Constitution under article 41(1):

[E]very citizen has a right 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.

The Access to Information Act, 2005 was created in accordance with article 41(2) of the Constitution: ‘Parliament shall make laws prescribing the classes of information, referred to in clause (1) of this article and the procedure for obtaining access to that information.’

❖ Access to Information Act, 2005

Section 2(1) of the Access to Information Act sets out the entities to which the act applies. These include:

- Government ministries
- Government departments
- Local government
- Statutory corporations and bodies
- Commissions
- Government organs and agencies.

It should be noted that sections 2(2) excludes the following records:

- Cabinet records and those of its committees
- Records of court proceedings before the conclusion of a case.

Section 5(1) of the Access to Information Act states that every citizen has the right of access to information and records held by the state or any public body, except where the release of information is likely to prejudice the security or sovereignty of Uganda. This information must be up to date so far as is practical – section 5(2).

A request for the right of access to information is not subject to any reason given by the person requesting the information, nor is it subject to the belief of the information officer as to the reason the request has been made – section 6.

A request for access to information must be made in writing on a prescribed form and should include sufficient information to identify:

- The records being requested
- The person requesting the information
- The address of the person requesting the information.

In terms of section 16, read with section 18, in cases where an information officer fails to make a decision on a request for access to information within 21 days of the request being made, it will be determined that the information officer has refused the request.

Part III of the Access to Information Act provides for the exemption of access to information. Where it is mandatory to refuse access to information, the word ‘shall’ (meaning ‘must’) is used. Legislation where refusal to provide information is discretionary is indicated by the word ‘may’ in the legislation. This is set out in section 23 of the Access to Information Act.

Mandatory grounds for refusing access to information

Section 25(1) of the Access to Information Act relates to Cabinet minutes and those of its committees, and provides that Cabinet minutes must not be accessible to any person other than an authorised public officer.

Section 27 provides that an information officer must refuse a request for commercial information of a third party should the requested information contain:

- Proprietary information
- Scientific or technical information if the disclosure is likely to harm the interests or proper functions of a public body

- Information provided by a third party in confidence that would put the third party at a disadvantage in contractual or commercial negotiations or else prejudice the third party in a commercial competition.

Section 27(2) provides that access to information about a third party may not be refused under section 27(1) when it relates to:

- Information that is already publicly available
- Information about a third party who has consented in writing to its disclosure to the person requesting the information
- The results of product, environmental or other investigation supplied to or carried out by a public body and where the disclosure would reveal serious public safety, health or environmental risks.

Section 28(1)(a) of the Access to Information Act provides that a request for access to information must be refused if the disclosure would constitute a breach of a duty of confidence owed to the person supplying the information in terms of an agreement.

Section 28(2) provides that information may not be refused under section 28(1) when it relates to:

- Information that is already publicly available
- Information about a third party who has consented in writing to its disclosure to the person requesting the information.

Section 29(1)(a) of the Access to Information Act provides that an information officer must refuse a request for information if the disclosure could reasonably be expected to endanger the life or physical safety of a person.

Section 30(1)(a) provides that an information officer must refuse access to information relating to court and legal proceedings if it would prejudice a person's right to a fair trial.

Section 31 provides that an information officer must refuse a request for privileged information from production in legal proceedings unless the person entitled to that privilege has waived the privilege.

Section 34(a) makes it mandatory for an information officer to disclose information in the public interest if the disclosure would reveal:

- A failure to comply with the law
- An imminent or serious public safety, health or environmental risk.

It should be noted that section 34(b) of the Access to Information Act creates an internal limitation to the public interest disclosure provided for in section 34(a) in that the disclosure in relation to public interest must be deemed greater than the potential harm such a disclosure could cause.

Discretionary grounds for refusing access to information

Section 26(1) of the Access to Information Act relates to information concerning the privacy of a person. It provides that an information officer may refuse a request for access to information if the disclosure would involve the unreasonable disclosure of personal information. Section 26(2) provides that access to the refused information must be made available in the following circumstances:

- Written consent by the person whom the information concerns
- The information was given to a public body and the supplier of that information was informed that the information may be made available to the public
- The information is already publicly available
- The person to whom the information relates is deceased and the information is being requested by or on behalf of, by written consent, the deceased's next of kin
- The person to whom the information relates is or was an official of a public body and the information relates to the position or function of that person.

Section 28(1)(b) of the Access to Information Act provides that an information officer may refuse a request for access to information if the information consists of information supplied in confidence by a third party if:

- The disclosure could reasonably be expected to prejudice the future supply of similar information, or information from the same source
- It is in the public interest that similar information, or information from the same source, should continue to be supplied.

Section 28(2) of the Access to Information Act provides that information may not be refused under section 28(1) when it relates to:

- Information that is already publicly available
- Information about a third party who has consented in writing to its disclosure to the person requesting the information.

Section 29(1)(b) of the Access to Information Act provides that an information officer may refuse a request for information if the disclosure is likely to prejudice the security of:

- Buildings, structures or systems including but not limited to computer and communication systems
- Means of transport
- Any other property
- A person in witness protection
- The safety of the public.

Section 30(1)(b)(i) of the Access to Information Act provides that an information officer may refuse access to information if the record contains techniques, procedures or guidelines:

- For the prosecution of alleged offenders and the disclosure of those methods
- Expected to prejudice the effectiveness of those methods
- Lead to the circumvention of the law or facilitate the commission of an offence.

Section 30(b)(ii) of the Access to Information Act provides that an information officer may refuse access to information if the prosecution of an alleged offender is being prepared or about to commence or pending, and the disclosure of the record could reasonably be expected to:

- Impede the prosecution
- Result in a miscarriage of justice.

Section 30(b)(iii) of the Access to Information Act provides that an information officer may refuse access to information if the disclosure is likely to:

- Prejudice an investigation of a contravention or possible contravention of the law which is about to, or is in the process of occurring, or has been terminated and is likely to be resumed

- Reveal or enable a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of law
- Result in the intimidation or coercion or a witness in legal proceedings
- Facilitate the contravention of the law
- Prejudice or impair the fairness of a trial.

Section 32(1) of the Access to Information Act provides that an information officer may refuse a request for information if the disclosure is likely to:

- Prejudice the defence, security and sovereignty of Uganda
- Prejudice international relations
- Reveal information provided by another state.

Section 32(2) of the Access to Information Act provides that an information officer may not refuse access to information requested under section 32(1) and relating to international relations, if the information is 20 years old or older.

Section 33(1) provides that an information officer may refuse a request for information if:

- The disclosure contains an opinion, advice, report or a recommendation
- The disclosure contains an account of a discussion or deliberation that includes, but is not limited to, meeting minutes.

Section 33(2) of the Access to Information Act provides that any information 10 years old or older may not be refused in terms of section 33(1).

Legal recourse for applicants refused access to information

Section 37 of the Access to Information Act makes provision for a person to lodge a complaint with the chief magistrate against a decision to refuse a request for information.

Section 38 provides for a person aggrieved by a decision made by the chief magistrate to appeal to the High Court against the decision. The appeal must be made within 21 days of the chief magistrate's decision.

Offences committed under the Access to Information Act

Section 46 makes it an offence for a person, with the intent to deny right of access to information under the act, to:

- Destroy, damage or alter any records
- Conceal any records
- Falsify or make false records.

The penalty for this offence is a fine, a term of imprisonment or both.

3.9.3 Protection of sources

❖ **Press and Journalist Act, 1995 (Press Act)**

The Fourth Schedule of the Press Act outlines the Professional Code of Ethics (Code of Ethics) for journalists in Uganda. Clause 2 of the Code of Ethics states that no journalist shall disclose the source of his or her information. However, it goes on to state that sources may be revealed in overriding circumstances considering the public interest and within the framework of the law of Uganda, so caution should be exercised in this respect.

❖ **Access to Information Act, 2005**

Section 44 of the Access to Information Act provides protection from any legal, administrative or employment-related sanctions, regardless of any breach of legal or employment obligation for releasing information about wrongdoing, or information that would disclose a serious threat to health, safety and the environment, as long as the person disclosing the information acted in good faith.

❖ **Whistleblowers Protection Act, 2010 (Whistleblowers Act)**

The Whistleblowers Act provides procedures by which individuals in both the private and public sectors may, in the public interest, disclose information that relates to irregular, illegal or corrupt practices.

Protected disclosures

Section 2 of the Whistleblowers Act provides for the disclosure of information that tends to show impropriety in that:

- Corrupt, criminal or unlawful acts have been committed, are being committed or are likely to be committed
- A public officer or employee has failed, refused or neglected to comply with any legal obligation to which that officer or employee is subject

- A miscarriage of justice has occurred, is occurring or is likely to occur
- Any matter referred to above is being deliberately concealed.

Section 2(2) provides that a whistleblower is protected provided the disclosure is made:

- In good faith
- With reasonable belief that the disclosure and allegations are substantially true
- To an authorised officer.

The whistleblower is required to maintain the confidentiality of the disclosure, and must take reasonable steps to maintain the confidentiality of his or her identity as well. The protection afforded to whistleblowers under the act will not cease should his or her identity be revealed where the whistleblower was not responsible for the revelation – section 2(3).

Who is protected under the Whistleblowers Act?

In terms of section 3(1), disclosures of impropriety may be made under the Whistleblowers Act by:

- An employee in the public or private sector in respect of their employer
- An employee in respect of another employee
- A person in respect of another person
- A person in respect of a private or public institution.

Nothing in this act prohibits the making of anonymous disclosures – section 3(2), however anonymous disclosures are not entitled to protection under this act – section 3(3). Section 9 provides that a person shall not be subjected to any form of victimisation by his or her employer or by any other person on account of having made a protected disclosure.

Who are public interest disclosures made to?

Section 4 of the Whistleblowers Act states that disclosures of impropriety may be made internally to an employer in cases where the whistleblower's complaint pertains to his or her place of employment.

External disclosures may be made in instances:

- Where the complaint does not pertain to the whistleblower's employment

- Where the whistleblower reasonably believes that he or she will be subjected to occupational detriment if he or she makes a disclosure to his or her employer
- Where the whistleblower reasonably believes or fears that evidence relating to the impropriety will be concealed or destroyed if he or she makes the disclosure to his or her employer
- Where the complaint has already been made and no action has been taken or the whistleblower reasonably believes or fears that the employer will take no action.

External disclosures of impropriety may be made to any of the following institutions:

- The Inspectorate of Government
- The Directorate of Public Prosecutions
- The Uganda Human Rights Commission
- The Directorate for Ethics and Integrity
- The Office of the Resident District Commissioner
- The Parliament of Uganda
- The National Environment Management Authority
- The Uganda Police Force.

Investigations relating to whistleblowers' disclosures

There are no grounds in Ugandan law whereby an officer to whom a public interest disclosure has been made may refuse to investigate or cause an investigation not to be undertaken. Section 8 of the Whistleblowers Act states that in the case of a disclosure of impropriety under section 4, the authorised person must investigate or cause an investigation into the matter. Where the authorised person to whom the disclosure is made is incapable of undertaking an investigation, he or she must refer the disclosure to the relevant authority.

Section 18 states that an authorised officer who does not take action upon receipt of a disclosure made to him or her commits an offence and is liable on conviction to imprisonment, a fine or both.

Provisions relating to the protection of whistleblowers

Section 9 of the Whistleblowers Act provides for the protection of whistleblowers from victimisation. These protections ensure that a whistleblower, in the case where the disclosure has been made against an employer, shall not be:

- Dismissed
- Suspended

- Denied promotion
- Demoted
- Made redundant
- Harassed
- Intimidated
- Threatened
- Subjected to a discriminatory or other adverse measure by the employer or a fellow employee.

In the case where the whistleblower is not an employee, the person or organisation who made the disclosure shall not be subjected to intimidation or discrimination by any person or establishment affected by the disclosure – section 9(2)(b). A whistleblower who honestly and reasonably believes that he or she has been victimised as a result of his or her disclosure may make a complaint to either the IG or the UHRC – section 9(3).

A whistleblower is protected against court action under section 10 of the Whistleblowers Act, which states a whistleblower shall not be held liable in either civil or criminal proceedings in respect of disclosures that contravene the duty of confidentiality or official secrecy laws made in good faith.

Section 11 of the Whistleblower Act provides for state protection of a whistleblower in cases where he or she may feel that their life or property, or the life and property of a family member, is endangered or is likely to be endangered.

Section 14 provides that a person who unlawfully discloses, directly or indirectly, the identity of a whistleblower, commits an offence and is liable on conviction to imprisonment, a fine or both.

Section 15 provides that where a person to whom the disclosure is made fails to keep the disclosure confidential, that person commits an offence and is liable on conviction to imprisonment, a fine or both.

Section 16 provides that a person who, either by him or herself or through another person, victimises a whistleblower for making a disclosure commits an offence and is liable on conviction to imprisonment, a fine or both.

Provisions relating to false disclosures

In terms of section 17 of the Whistleblowers Act, a person who knowingly makes a disclosure containing information he or she knows to be false and intending that information to be acted upon as a disclosed matter, commits an offence and is liable on conviction to imprisonment, a fine or both.

4 REGULATIONS AFFECTING THE MEDIA

In this section you will learn:

- What regulations are
- Key regulations that affect the media

4.1 Definition of regulations

Regulations are subordinate legislation. They are legal rules that are made in terms of a statute. Regulations are legal mechanisms for allowing a body other than parliament to make legally binding rules governing an industry or sector, without needing parliament to pass a specific statute thereon.

4.2 Key regulations that affect the media

❖ The Copyright and Neighbouring Rights Regulations, 2010 (Copyright Regulations)

The Copyright Regulations are made by the minister responsible for justice after consultation with the collecting societies. The regulations affect broadcasters in particular as the nature of their business is the distribution of audio and audio-visual material produced by other people and organisations.

Regulation 18 prohibits the unauthorised production, distribution or broadcasting of any sound or audio-visual recordings except under licence issued by the owner of the neighbouring rights or a collecting society.

The importation of pre-recorded sound recordings or audio visual recordings may only be done following the application and clearance from the owner of the material or else a collecting society representing the interests of the owner – regulation 23.

Regulation 24 specifies that no person may, without the consent of the performer or a collecting society representing the performer:

- Fix a performer's live performance not previously fixed on a physical medium
- Broadcast to the public a performer's unfixed performance
- Directly or indirectly reproduce a fixation of a performance
- Distribute to the public the original or copies of a performer's performance
- Conduct a public performance.

Consent to do any of these things must be by contractual agreement with either the

performer or representing collecting society setting out the terms and conditions in line with the performer's wishes.

Broadcasters themselves are also protected under regulation 25 of the Copyright Regulations, which provide that without contractual consent, no person may:

- Broadcast a broadcaster's broadcast
- Fix a broadcast
- Reproduce a fixation of a broadcast.

Any person who contravenes these regulations commits an offence and is liable to a fine, a term of imprisonment or both in terms of regulation 33 of the Copyright Regulations.

❖ **The Press and Journalist (Fees) Regulations, 2014 (Fees Regulations)**

The Fees Regulations are made by the minister responsible for information under section 42 of the Press Act after consultation with the UCC. The regulations relate directly to the press and outline the fees payable under the Press Act. These include:

- Registration of editors
- Enrolment of journalists
- Registration of journalists
- Accreditation of foreign journalists
- Fees in relation to disciplinary proceedings
- Classification of films, video material, plays and related apparatus.

5 MEDIA SELF-REGULATION

In this section you will learn:

- What self-regulation is
- Key self-regulatory provisions intended to govern the media in Uganda

5.1 Definition of self-regulation

Self-regulation is a form of regulation that is established voluntarily. A grouping or body establishes its own mechanisms for regulation and enforcement that are not imposed, for example, in a statute or regulation. Media bodies often introduce self-regulation in the form of codes of media ethics and good governance.

5.2 Key self-regulatory provisions intended to govern the media in Uganda

The Independent Media Council of Uganda (IMCU) was formed in February 2006 by 42 media houses. One of the objectives of the IMCU is to promote the growth of a responsible, free media adhering to the highest standards of journalism. The IMCU also deals with complaints concerning the conduct of the media. The IMCU was registered as an NGO in July 2006 and as a body corporate in January of 2007. It is also a member of the World Association of Press Councils.²¹

In order to ensure that journalists meet the standards the IMCU expects from its members, it introduced a Journalism Code of Ethics, the main aspects of which are summarised as follows:

- A journalist must maintain the highest levels of journalistic standards, integrity and independence.
- A journalist must always identify himself or herself as a journalist and the organisation for which he or she works.
- A journalist must not accept bribes or any other form of inducement meant to influence his or her professional performance.
- A journalist must always declare any conflicts of interest.
- A journalist has a responsibility to remain accurate, balanced and fair in the execution of his or her duties.
- Media houses and journalists must give aggrieved parties the right of reply to materials broadcast or published about them.
- Journalists have a moral responsibility to monitor government and other centres of influence and power on behalf of the public.
- Journalists have a social responsibility to educate the public regarding matters affecting them.
- Journalists must respect privacy and human dignity and weigh such matters against the public's right to know.
- No media practitioner shall engage in plagiarism.

- Journalists must protect the confidentiality of their sources and divulge them only as required by a court of law.
- Journalists may not intrude into grief and shall take utmost care and behave with discretion and sympathy when reporting matters relating to the dead and gravely ill.
- Media houses may not profiteer from deliberate exploitation of the misfortune of those afflicted by grief.
- The media must generally avoid identifying the innocent relatives or friends of persons accused or convicted of a crime.
- Media houses and journalists have a responsibility to protect both the victims of sex crimes and children.
- The media must take extra care when dealing with the publication of adults-only material.
- The media must use due caution when publishing pictures in order not to do unnecessary harm.
- The media may not publish or broadcast material intended or likely to cause hostility or hatred towards a person or group of people in relation to their race, ethnic origin, nationality, religion or political affiliation.
- The media must exercise a high level of individual and corporate citizen responsibility and in a manner that is conducive to an atmosphere that is congenial to national harmony.
- All news, views and comments must be backed by facts and measured in language and tone.
- It is the responsibility of the media to highlight potential conflicts before they explode, and help society heal wounds after conflicts have concluded.

While the IMCU ostensibly deals with complaints concerning the conduct of the media, there is no publicly available information that we have been able to find that deals with actual examples of enforcement by the IMCU. This is problematic because the effectiveness of self-regulation and the public's faith in self-regulation is only as good as the self-regulatory body's ability to enforce compliance with its codes of ethics. It is not clear if the IMCU is in fact an effective self-regulatory body.

6 COMMON LAW AND THE MEDIA

In this section you will learn:

- ❑ The definition of common law
- ❑ How Uganda's courts have dealt with a number of media-related common law issues, including:
 - Criminal libel and freedom of expression
 - The unconstitutionality of the prohibition on the publication of false news
 - The validity of an *in camera* ruling
 - The unconstitutionality of the prohibition on seditious speech
 - The illegality of a refusal of access to information

6.1 Definition of common law

The common law is judge-made law. It is made up of judgments handed down in cases adjudicating upon disputes brought by people, whether natural (individuals) or juristic (for example, companies). In common law legal systems such as Uganda's, judges are bound by the decisions of higher courts and also by the rules of precedent. This requires that rules laid down by the court in previous cases be followed, unless they were clearly wrongly decided. Legal rules and principles are therefore decided on an incremental, case-by-case basis.

This section focuses on a number of judgments that have a bearing on the media.

6.2 Criminal libel and freedom of expression

The Constitutional Court heard the case between *Joachim Buwembo and Others v Attorney General (Constitutional reference No. 1 of 2008)*, which arose out of a criminal case in the chief magistrate's court. A statutory interpretation was required as to:

- Whether or not the criminal libel provisions of section 179 of the Penal Code Act (Cap 120) were inconsistent with article 29(1)(a) of the Constitution (the right to freedom of expression)
- Whether or not section 179 of the Penal Code Act was a restriction permitted under article 43 of the Constitution (the general limitations clause) as being demonstrably justifiable in a free and democratic society.

In the criminal case in the magistrate's court, the applicants had been jointly charged

with libel under sections 179 and 22 of the Penal Code Act. The applicants were journalists with the *Monitor* newspaper and published articles in two consecutive Sunday editions titled, 'IG in salary scandal' and 'God's warrior Faith Mwendha stumbles'. A complaint was laid by the Hon. Lady Justice Faith Mwendha, at the time the IG, and the applicants were investigated and later charged with unlawful publication of defamatory matter. At trial, defence counsel contended that there was a point of law for interpretation by the Constitutional Court, and thus this application was brought to the Constitutional Court.

The court held that freedom of expression does not fall within the non-derogable rights enshrined in article 44 of the Constitution, and, in the light of article 43, it can be restricted in public interest. Although the Constitution does not expressly protect the reputation of individuals, reputations are, by necessary implication, protected by article 45 (additional human rights and freedoms) as well as article 43, which places public interest as a limitation on the rights to freedom of speech and expression, which include freedom of the press and other media.

According to the court, reputation has two rights embedded in it, namely the right of an individual to have his or her reputation protected by law, and the public interest embedded in the individual's reputation by virtue of the fact that the individual is a member of the public and renders a service to the public. Protection of reputation is thus a matter of public interest as well as protecting the right of the individual concerned. The continued existence of the parallel but distinct criminal and civil sanctions mean that while the victims of such wrongs may well deserve to be compensated, perpetrators who wilfully and knowingly publish lies calculated to damage the public reputation of a member of a democratic society ought to be punished, and this serves the objectives of criminal law. Section 179 of the Penal Code was thus regarded by the court as a safeguard against the infringement of a person's reputation. Criminal libel, unlike theft, affects the general public, and criminal law treats all crimes as offences against the state.

The court was of the view that it was in the interest of the public that the reputation of individual members of the public be protected. Freedom of expression was protected to enhance public knowledge and development, according to the court, and statements which defamed members of the public did not enhance public knowledge and development. The court held that defamatory libel was thus far from the core values of freedom of expression, press and other media, and the press would be doing a disservice to the public by publishing such.

According to the court, freedom of expression in Uganda should be enjoyed within the restriction imposed by section 179 of the Penal Code. It held that should section

179 be unconstitutional, the right of freedom of expression was unlimited and thus would contravene article 43 of the Constitution. The application was dismissed with each party bearing its own costs.

6.3 The unconstitutionality of the prohibition of the publication on false news

The Constitutional Court of Uganda heard the case of *Charles Onyango & Anor v Attorney General (Constitutional Appeal No. 2 of 2002)*, which was brought under article 137 (questions as to the interpretation of the Constitution) of the Constitution. The petition arose out of a case brought in a magistrate's court against the petitioners. The charges arose out of a story that the petitioners, an editor and a senior reporter of the *Monitor* newspaper, extracted from a foreign paper called *The Indian Ocean Newsletter*, and published under the headline 'Kabila paid Uganda in gold, say report'.

The petitioners sought a declaration that the action of the director of public prosecutions in prosecuting them was inconsistent with provisions of articles 29(1)(a), (b) and (e) (protection of freedom of conscience, expression, movement, religion, assembly and association), 40(2) (economic rights) and 43(2)(e) (general limitations on fundamental and other human rights and freedoms) of the Constitution. They further sought an order releasing them from the criminal prosecution, and a declaration that they were entitled to damages for unconstitutional prosecution in the case brought against them under section 50(1) of the Penal Code Act for the publication of false news. They also requested that the Constitutional Court refer the matter to the High Court to investigate and determine the quantum of damages.

The court held that the justice of appeal had omitted to consider if section 50 of the Penal Code was a justified limitation within the parameters of article 43(2)(c) and had been content to hold that section 50 was a necessary legal limitation. This was not the issue in the appellants' original petition, said the court. Their contention was that section 50 was inconsistent with the Constitution because it went beyond what is permitted under article 43.

The court held that section 50 of the Penal Code criminalised conduct that was otherwise a legitimate exercise of the constitutionally protected right to freedom of expression. It stated that applying the constitutional protections to false expressions was not to 'uphold falsity' as implied in the majority judgment – the purpose was to avoid the greater danger of smothering alternative views of fact or opinion. Further, the limitation on the right of freedom of expression in defence of public interest was itself limited, said the court, in that it is not valid unless its restriction is demonstrably justifiable in a free and democratic society.

The court held that article 43(1) (general limitation on fundamental and other human rights and freedoms) of the Constitution allows for the limitation of rights, where the enjoyment of one's right 'prejudices' either the personal rights of others or the public interest. The court held that the clause did not extend to a scenario where the enjoyment of one's right is 'likely to cause prejudice'. However, in the court's view, section 50 of the Penal Code relates precisely to that scenario, and was directed at preempting danger in the public interest even though that danger may be remote or uncertain. Because of its broad applicability, the court held that section 50 of the Penal Code lacked sufficient guidance on what is and what is not safe to publish, and thus left the determination thereof to the unfettered discretion of the state prosecutor.

Consequently, the Supreme Court unanimously declared section 50 of the Penal Code Act (prohibition on the publication of false news) to be inconsistent with article 29(1)(a) (right to freedom of expression) of the Constitution, and was declared void. It was struck out of the Penal Code.

6.4 Validity of an in camera ruling

The Civil Division of the High Court of Uganda heard the case of *Uganda Court Reporters Association Ltd (UCRA) v Attorney General (Miscellaneous Cause No. 87 of 2014)*, an application for judicial review. The case for which the review was requested was Criminal Case No. 303 of 2014, in which Poteri Ronald was charged with wrongful communication and leaking of information contrary to section 4(1)(a) of the Official Secrets Act. At the beginning of the hearing the state attorney leading the prosecution, without prior warning to the defence, applied orally to have the matter heard in camera. In support of his application the state attorney submitted that the magistrate could grant the application for reasons of morality, public order and national security. Further, the state attorney submitted that the accused was charged with disclosure of official secrets and that the evidence would include classified information, secrets of police investigative tactics and the calling of informants whose identities should not be revealed.

Counsel for the accused expressed reservations relating to trampling of the rights of the accused and argued that the application was not brought in good faith. He requested an adjournment to prepare argument of the issue if the court was inclined to accept the application.

The chief magistrate ruled that the application to hear the case in camera was allowed in the public interest and for protection of witnesses. She disagreed with defence counsel's submission that the information was already before a public wider than the

court. Accordingly, journalists and any other persons with recording equipment were ordered to vacate the court for the duration of the case. The applications for an adjournment by the counsel were rejected by the magistrate.

The application to the High Court for judicial review of the decision of the trial magistrate was brought by the chairman and executive director of the UCRA along with a senior court reporter.

The High Court held that in reaching her decision, the trial magistrate was duty bound to:

- Enquire into the evidence concerning the alleged secrecy of the audio recordings and communications that were the subject of the application, in order to satisfy herself that the limitation requested was objectively verified, justified and necessary
- Ask for this evidence in order to make an informed and evidence-based analysis in determining whether or not to proceed in camera
- Evaluate the nature, extent and importance of the limitations sought by the state and the relationship between the limitation and its intended purpose, especially where the purpose could be achieved through less restrictive means
- Caution herself of the importance of open hearings and the dangers of in camera proceedings before allowing the limitation
- Evaluate whether the limitation sought by the state was necessary in a free and democratic society.

The court stated that the cumulative effect of the trial magistrate's failures in these duties was that she reached her decision without taking into account several relevant considerations, and therefore acted unreasonably and unfairly. For this she committed an illegality, was irrational and her decision was clothed in procedural impropriety. In the view of the court, the trial magistrate indulged in procedural unfairness to the applicant when she reached her decision concerning the rights of members of the UCRA without hearing from any member of the organisation. The court further stated that it was not demonstrably clear that the trial magistrate properly took the public interest into account when making her decision.

The court quashed the order of the trial magistrate ordering in camera proceedings, as well as any proceedings carried out under that order.

6.5 Unconstitutionality of the prohibition on sedition

The Constitutional Court of Uganda heard the petition of *Andrew Mujuni Mwenda and The Eastern African Media Institute (U) LTD (EAMI) v Attorney General (Consolidated Constitutional Petitions No. 12 of 2005 and No. 3 of 2006)*.

The petition was brought by Andrew Mwenda under section 39(1)(a) (seditious intention) of the Penal Code, which provides that seditious intention is the intention to bring hatred, contempt or disaffection against the president, the government and the Constitution, and section 40(1)(a) (seditious offences) of the Penal Code, which states a seditious offence is committed by any person who does, attempts, prepares or conspires to perform an action with seditious intent. Andrew Mwenda was charged before the chief magistrate at Nakawa for words spoken on his radio programmes, which were alleged to have been said with the intention of bringing hatred or contempt or to excite disaffection against the person of the president, the government as by law established or the Constitution. Mr Mwenda petitioned the court that his prosecution was inconsistent with the Constitution.

As part of his petition Mr Mwenda cited articles 29(1)(a) (right to freedom of expression) and article 43(1) (general limitations on fundamental and other human rights and freedoms) of the Constitution. Article 29(1)(a) reads: ‘Every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media.’

Article 43(2)(c), which relates to general limitations on fundamental human rights and other freedoms, reads: ‘Public interest under this article shall not permit any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this constitution.’

The judgment of the court took account of article 29(1)(a) and article 43(2)(c) of the Constitution and found sections 39 and 40 of the Penal Code to be inconsistent with provisions of the articles 29(1)(a) and 43(2)(c) of the Constitution, and declared these null and void. They were struck out of the Penal Code.

6.6 Illegality of a refusal of access to information

In 2014, the Chief Magistrates Court of Mengo at Mengo heard the petition of *Edward Ronald Sekyewa t/a Hub for Investigative Media v National Forestry Authority in the Matter of Access to Information Act 2005, An Application for Access to Information*.

An application was made for access to information held by the National Forestry Authority (NFA) in terms of article 41 of the Constitution, which guarantees every citizen the ‘right 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’. The request for access to information was refused by the NFA. The applicant approached the magistrate’s court for an order granting access to the information and preventing the NFA from destroying any relevant information held by it.

The court found that the applicant (Mr Sekyewa) was unjustifiably denied the information requested and that the respondent (the NFA) had acted with blatant disregard for the law. The court directed the executive director of the NFA to grant the applicant access to any and all records or information that the applicant requested in accordance with the act. The court also restrained the executive director of the NFA from concealing information pertaining to the subject matter of the applicant’s request.

NOTES

- 1 www.washingtonpost.com/news/worldviews/wp/2013/05/16/a-revealing-map-of-the-worlds-most-and-least-ethnically-diverse-countries/, last accessed 13 July 2016.
- 2 <http://thecommonwealth.org/our-member-countries/uganda/history>, last accessed 14 July 2016.
- 3 www.constitutionnet.org/country/constitutional-history-uganda, last accessed 8 July 2016.
- 4 Robert C. Mitchell et al, *Black Africa: A Comparative Handbook*, Free Press, 1972.
- 5 www.nytimes.com/2003/08/17/world/idi-amin-murderous-and-erratic-ruler-of-uganda-in-the-70-s-dies-in-exile.html?pagewanted=all, last accessed 8 August 2016.
- 6 <http://africanhistory.about.com/od/militaryhistory/fl/1979-Kagera-War.htm>, last accessed 13 July 2016.
- 7 <http://ugandajournalistsresourcecentre.com/brief-history-elections-uganda/>, last accessed 8 July 2016.
- 8 www.theguardian.com/world/2016/feb/20/ugandan-election-yoweri-museveni-wins-arrests-opposition-leader-besigye, last accessed 8 August 2016.
- 9 <http://ugandajournalistsresourcecentre.com/brief-history-elections-uganda/>, last accessed 8 July 2016.
- 10 <http://www.tradingeconomics.com/uganda/gdp>, last accessed 7 July 2016.
- 11 <http://www.tradingeconomics.com/uganda/gdp>, last accessed 7 July 2016.
- 12 www.worldbank.org/en/country/uganda/overview, last accessed 14 July 2016.
- 13 www.bbc.com/news/business-19637784, last accessed 8 July 2016.
- 14 www.forbes.com/places/uganda/, last accessed 8 July 2016.
- 15 <http://ubc.ug/index.php/about-us/>, last accessed 7 July 2016.
- 16 <http://www.aboutuganda.com/uganda/media/radio-stations>, last accessed 8 August 2016.
- 17 <http://www.onlinenewspapers.com/uganda.htm>, last accessed 7 July 2016.
- 18 www.bbc.com/news/world-africa-22599347, last accessed 26 September 2016.

- 19 <http://acme-ug.org/2016/05/19/social-media-shutdown-in-uganda-will-become-a-norm-analysts/>, last accessed 8 July 2016.
- 20 http://www.parliament.go.ug/images/stories/constitution/rules_2012.pdf, last accessed 20 September 2016.
- 21 <http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/Independent%20Media%20Council%20of%20Uganda.pdf>, last accessed 20 September 2016.