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THE STIFLING OF MEDIA FREEDOMS; THE CASE OF UGANDA'S MEDIA BROADCASTING REGIME.

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Abstract

This article scrutinizes the broadcasting regime in Uganda. It specifically dwells on the endless and arbitrary directives from Uganda's broadcasting regulator, Uganda Communication Commission, to radio and television broadcasters. The article also considers whether the directives are consistent with international best practices or whether they are a violation of freedom of expression, media freedoms and the other interconnected human rights. A comparative case law analysis of the regulatory regimes in Burundi, Zambia, Botswana, Zimbabwe and Nigeria is carried out. The major finding of the study is that the broadcasting legal regime is ambiguous and as a result is used to promote partisan political interests. The ambiguous regulatory framework has, subsequently, facilitated violation of freedom of expression. It recommends for reform of the broadcasting regime in Uganda.

Key words: freedom of expression; media freedoms; broadcasting regime; violations; Uganda

1 Introduction

The Uganda Communications Commission (UCC) has since 2013² when it integrated with the Uganda Broadcasting Council, made several directives that have affected the freedom of expression of not only broadcasters and Journalists, but also ordinary Ugandan citizens.³ These directives are based on the licensing conditions that were issued to the broadcasters.

It is important to note, from the onset, that the conditions for limiting the exercise of freedom of expression by citizens must be justifiable in a democratic society. The right to freedom of expression is protected by human rights instruments.⁴ Uganda has ratified the International Covenant on Civil and Political Rights (ICCPR).⁵ It

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² The Uganda Communications Commission (UCC) was initially established in 1997 by the Uganda Communications Act Cap. 106. This law split up the Uganda Posts and Telecommunications Company Limited into four entities, with the UCC as the regulator of the communications sector. With the amendment of the Uganda Communications Act, CAP 106 in 2013, UCC merged with the Broadcasting Council.

³ The UCC has consistently cited sec 31 of Uganda Communication Commissions Act No. 1/2013 and schedule 4 that provides for minimum broadcasting standards.

⁴ See Art 19, Universal Declaration on Human Rights (UDHR); Art 19, International Covenant on Civil & Political Rights (ICCPR) & Art 9, African Charter on Human and Peoples Rights (African Charter).

⁵ In 1995.

has also ratified the African Charter on Human and Peoples' Rights (African Charter).⁶ The East African Community Treaty (EAC Treaty) includes amongst its fundamental principles, the principles of good governance. These include democracy, rule of law, accountability, transparency and the rights contained in the African Charter.⁷ Uganda is a state party to the EAC Treaty.

Article 29 of the Constitution of the Republic of Uganda guarantees the right to freedom of expression of every individual.⁸ This basic human right, however, has had significant challenges since the promulgation of the Ugandan Constitution in 1995.

Arising from the foregoing, the question before the courts has always been whether the restrictions set up in the media laws against sedition, publishing false news, and administrative measures such as censorship, the banning and closure of newspapers and radio stations, are permissible as limitations under Article 43(2) (c).⁹ Article 43 (2) (c) of the Constitution of the Republic of Uganda, 1995 (as amended) states that —Public interest under this article shall not permit; any limitation of 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|. Thus, in *Charles Onyango Obbo & Another v Attorney General*¹⁰, the two journalists were charged with publication of false news contrary to section 50 of the Penal Code Act. The Petitioners contended that section 50 was inconsistent with among others Articles 29(1) (a) and (b), 40(2) and 43(2) (c) of 1995 Constitution. The Constitutional Court ruled against the petitioners with only Justice Twinomujuni in a powerful dissent agreeing with petitioners. On appeal to the Supreme Court, Justice Mulenga stated that the protection of guaranteed rights is the primary objective of the constitution and the limitation of the enjoyment is an exception to their protection and is therefore a secondary objective. The Supreme Court therefore concluded that section 50 of the Penal Code Act was inconsistent with article 29(1) (a) and thus void.¹¹

This article is limited to critically analysing the UCC directives from January 2015 to December 2017. The first part introduces the article. The second part problematizes the directives of UCC. The analysis of the legal mandate of UCC, specifically in relation to the regulation of media houses is discussed under part

⁶ In 1986.

⁷ Art 6(d), EAC Treaty.

⁸ Art 29(1) of the Constitution of the Republic of Uganda, 1995 (as amended).

⁹ Constitution of the Republic of Uganda, 1995 (as amended).

¹⁰ *Constitutional Petition No. 15/1997*.

¹¹ *Constitutional Appeal No. 2/2002*.

three. This part also canvasses the conduct of the UCC for three years under examination. The fourth part briefly investigates the international environment within which the right to freedom of expression is situated. It also details what the international best practices are on this basic human right. The fifth part analysis the impact of the conduct of UCC on media freedoms. Recommendations to reclaim this fundamental civic space from an authoritarian government are canvassed in the sixth part. Part seven concludes the article. The doctrinal research methodology was used to collect and analyse data for this article.

2 Problematizing UCC Directives

The right to freedom of expression is a fundamental right of every human being. This right can only be restricted under very strict circumstances, that are set out under international human rights law. Uganda is a state party to many international human rights instruments which provide for the guidelines on how this fundamental human right may be restricted¹².

The directives issued by UCC to media outlets since 2015 have affected the media freedoms of Ugandan citizens. The UCC has consistently cited section 31 of Uganda Communication Commissions Act 1 of 2013 (UCC Act) and schedule 4 that provides for minimum broadcasting standards in Uganda, as its yardstick of what responsible media freedoms are. Perhaps it is now important to interrogate whether the law upon which the UCC directives to media houses are established, is a fetter on the freedom of expression and by extension on a sustainable democracy for Uganda.

3 Uganda Communications Commission

The Uganda Communications Commission was established to enable one regulator take charge of the communications sector in Uganda. Section 3(a) of the UCC Act indicates that the objectives of the law are to develop a modern communications sector by establishing one regulatory body for communications in line with international best practice.¹³

3.1 Mandate of Uganda Communications Commission

The mandate of the UCC is quite wide. For purposes of this article, the author will highlight the functions that relate to media freedoms. They include the following; to implement the objectives of the Act;¹⁴ to monitor, inspect, license, supervise, control and regulate communications services;¹⁵ to allocate, license, standardize and

¹² For example Uganda is state party to the ICCPR which it ratified in June, 1995.

¹³ sec 3(a).

¹⁴ sec 5(a).

¹⁵ sec 5(b).

manage the use of the radio frequency spectrum resources in a manner that ensures widest variety of programming and optimal utilization of spectrum resources;¹⁶ to set national standards and ensure compliance with national and international standards and obligations laid down by international communication agreements and treaties to which Uganda is a party;¹⁷ to receive, investigate and arbitrate complaints relating to communications services, and take necessary action;¹⁸ to advise the Government on communications policies and legislative measures in respect of providing and operating communications services;¹⁹ to set standards, monitor and enforce compliance relating to content,²⁰ among other functions.

3.2 Licensing of Media Houses

Part IV of the UCC Act provides for the licensing of radio and television stations. Perhaps it is important to highlight a few provisions that are relevant to this article. Section 21 of the UCC Act provides for the issuance of a licence by UCC for radio communications. A person also shall not install or operate a radio or television station without a licence issued by UCC.²¹ Section 26(5) criminalises operation of a radio or television station without a licence.²² A producer of a radio or television station is required to ensure that what is broadcast is not contrary to public morals.²³ The producer is also supposed to keep a record of a broadcast for sixty (60) days.²⁴ Section 31 of the UCC Act which is often cited by UCC when issuing directives to media houses provides that —A person shall not broadcast any programme unless the broadcast or programme complies with Schedule 4||. Schedule 4 details the minimum broadcasting standards as follows: -

A broadcaster or video operator shall ensure that—

- (a) any programme which is broadcast—
 - (i) is not contrary to public morality;
 - (ii) does not promote the culture of violence or ethnical prejudice among the public, especially the children and the youth;
 - (iii) in the case of a news broadcast, is free from distortion of facts;
 - (iv) is not likely to create public insecurity or violence;
 - (v) is in compliance with the existing law;
- (b) programmes that are broadcast are balanced to ensure harmony in such

¹⁶ sec 5(c).

¹⁷ sec 5(i).

¹⁸ sec 5(j).

¹⁹ sec 5(p).

²⁰ sec 5(x).

²¹ sec 26.

²² secs 27 & 28 that criminalizes broadcasting without a license.

²³ sec 29 (a).

²⁴ sec 29 (b).

programmes;

(c) adult-oriented programmes are appropriately scheduled;

(d) where a programme that is broadcast is in respect to a contender for a public office, that each contender is given equal opportunity on such a programme;

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

Is the aforementioned provision of the law that is often cited by the UCC in tandem with international best practice, as specified by the objectives of the UCC Act?²⁵ We explore the answers to this question later in part 3.6.

3.3 Conditions and Sanctions

The UCC Act has a number of sanctions against radio and television stations including their staff. Some of the penalties provided for in the law, concerning this article, are as follows: The UCC Act provides that a person who broadcasts without a license issued by the UCC commits an offence and is liable on conviction to a fine not exceeding twenty-five currency points or imprisonment not exceeding one year or both.²⁶ One currency point under the UCC Act is twenty thousand Uganda shillings.²⁷ The law also provides for penalties for unethical broadcasting standards by media houses.²⁸ It prescribes that the ethical broadcasting standards which apply to broadcasters are the professional code of ethics specified in the First Schedule to the Press and Journalist Act.

It is important to note that a constitutional petition was filed challenging this code of ethics as restrictive and unconstitutional.²⁹ The key prayer in the said petition is that the Press and Journalists Act³⁰, violates Article 29 of the Constitution of Uganda. The petition also makes specific reference to the code of ethics that holds journalists liable for disseminating –incorrect or untrue|| news or allegations and requires them to disclose their sources if there is –an overriding consideration of public interest,|| as restrictive and compromising journalists’ ability to carry out their duties in a professional way.

²⁵ sec 5 (f) of the UCC Act that provides that the UCC shall set national standards and ensure compliance with national and international standards and obligations laid down by international communication agreements and treaties to which Uganda is a party.

²⁶sec 27 (2).

²⁷ sec 2 and schedule 1 of the UCC Act.

²⁸ sec 32 of the UCC Act.

²⁹*Centre for Public Interest Law, Human Rights Network for Journalists and East Africa Media Institute Versus Attorney General of Uganda, Constitutional Petition Number 9 of 2014.* The petition is yet to heard by Constitutional Court.

³⁰Ch 105.

The arbitrariness of the said code of ethics is also found in section 32(2) of the UCC Act that empowers the UCC to modify the standards as it wishes. Under section 41 of the UCC Act, the UCC may suspend or revoke the licence issued under the said law.

Under Section 44 of the UCC requires radio and television operators to file an annual report. The annual report must indicate to what extent the conditions under which the licence was issued were met for that particular year. The report must also indicate what operations and services were carried out in that year. Part eight of the UCC Act provides for circumstances under which UCC may carry out investigations and inquiries, if there is a complaint against a licensee³¹. The UCC also has powers to inspect premises where it suspects there are violations of the Act.³² Section 85 of the UCC Act provides for general penalties. It states that any person convicted of an offence under this Act for which no penalty is expressly provided is liable to a fine not exceeding ninety six currency points or imprisonment not exceeding four years or both.³³

3.4 Conduct of Uganda Communications Commission

For the last three years, the UCC has issued many directives to media houses that have stimulated public resentment and debate like the period under study. This is partly because 2016 was a general election year. The subsequent events surrounding the constitutional amendments to remove the age limit to allow President Yoweri Museveni to rule Uganda until his death, also engaged the year, 2017. A sample of UCC directives to media houses have been retrieved for the period under study. They are traversed hereunder.

In 2015, UCC issued numerous directives to media houses. We shall sample a few considering the directives seem to be couched in similar language. In March 2015, the UCC ordered radio and televisions stations to boost the live coverage of President Museveni, who was soon to contest for the presidency of the country, as a candidate in the general elections in 2016.³⁴ UCC told local broadcasters that they were subject to –licensing conditions issued by the commission, whereby all broadcast stations are expected to provide live coverage of major national events and addresses by the president. The directive also ordered the compulsory live coverage included the –pronouncements of natural emergency or disaster, security threats or any event… that necessitates the entire public to have simultaneous access to information. The UCC also threatened that any radio or television station

³¹ secs 45, 46, 47 & 48.

³² secs 49 & 50.

³³ The UCC Act No. 1/2013.

³⁴ <http://www.theeastafrican.co.ke/news> (accessed 5 January 2018).

that would not observe this directive, would be penalised.³⁵ In early July 2015, the Executive Director of UCC, Mr. Godfrey Mutabazi, issued a one-page directive, warning all broadcasters in Uganda.³⁶ This was against what he termed as –negative and unprofessional trends such as lack of balance, sensationalism, incitement, abusive language and relying on unauthorised and unreliable sources for information|. ³⁷ The UCC document did not state the justification for such a warning. This was a general election period for which the fundamental right to freedom of expression not only by the media but by the candidates and general public was key, if the said general election was to be considered free and fair. In December 2015, the UCC banned Tamale Mirundi, an outspoken government public relations operative, from being hosted on any radio or television station. The justification for banning Mirundi from being hosted by any station was premised on the fact that he allegedly used abusive language against some government officials. Godfrey Mutabazi stated that the language used by Mirundi –doesn’t deserve to be used on airwaves|. He directed that such programs be stopped with immediate effect. Media Houses, however, ignored the ban and continued to host the former presidential press secretary, who indicated he would continue to –spill| democracy on the airwaves.³⁸

In February 2016, the UCC issued a warning to media houses indicating that it was watching the situation closely. This was a few days to the polling day of the general elections. UCC subsequently switched off social media and other social communication platforms. MTN confirmed that they had been instructed by the regulator to block access for security reasons³⁹. President Museveni declared it a necessary measure to stop people from using the platforms to tell lies.⁴⁰ UCC subsequently half-heartedly apologised on 23 February, 2016 for any inconvenience caused to Ugandans in a post on its face book page but stated that their decision was in line with the UCC Act.⁴¹ In a letter to NTV, UCC threatened to revoke its licence over abusive language in July 2016.⁴² UCC alleged that a guest speaker, Frank Gashumba was using profane and abusive language on air. UCC ordered

³⁵ As above.

³⁶<http://www.ifex.org/uganda/2015/07/04/electionreporting/>> (accessed 5 January 2018).

³⁷ As above.

³⁸ As above., In May 2017 the UCC suspended the license of NBS TV for sixty days when Tamale Mirundi beat up Muyanga Lutaya, his host, on air.

³⁹ <https://www.unwantedwitness.or.ug/wp/content/uploads/2016/uganda-internet-freedom-report-2016.pdf>. > (accessed 5 January 2018).

⁴⁰ As above.

⁴¹ As above.

⁴²<https://www.guru8.net/2016/10/ucc-threatens-ntv-uganda-over-frank-gashumba>> (accessed 5 January 2018). Gashumba was recently arrested for –forging| passports in his names by the Chieftaincy of Military Intelligence. Other sources however state that the –forged| passports were planted in his office by Uganda’s military intelligence because he is a critic of the NRM government.

NTV to cease hosting programs which it stated –disparage views about government and individual leaders in government.⁴³ Following the Kasese massacre in December 2016, UCC warned that it would ban media stations that were airing live broadcasts of the Kasese massacre.⁴⁴ UCC also stated that there should be no live broadcasts of the court proceedings of the Rwenzururu Cultural leader, Wesley Mumbere.⁴⁵ The trial was taking place in the Chief Magistrate's Court in Jinja, hundreds of kilometres away from where the massacre occurred.

In March 2017, the UCC ordered all television broadcasters from using images of dead bodies of the late Assistant Inspector General of Police Andrew Felix Kaweesi, his late bodyguard and driver. Mr. Mutabazi argued that –such broadcasts were sensational and unnecessarily alarmist.⁴⁶ In May 2017, UCC issued two directives against media houses. On 11 May, 2017, UCC notified NBS television of the suspension of its licence for sixty days.⁴⁷ The suspension emanated from a show which regularly hosted Tamale Mirundi as a guest speaker. UCC stated that the actions and words used by the aforementioned guest were contrary to public morals. On 25 May, 2017, UCC suspended the broadcasting licence of radio Hoima allegedly over promotion of sectarian tendencies.⁴⁸ The UCC stated that radio Hoima had hosted a group calling itself Bunyoro Kitara Reparation Agency –BUKITEREPA who were uttering sectarian statements. UCC also ordered radio Hoima to provide all recordings where it had hosted members of the said group.⁴⁹ In September 2017, UCC issued two directives. ABS TV's licence to broadcast was suspended by UCC. UCC ordered all signal distributors to immediately disable ABS television content from their broadcasting platforms. UCC alleged that in spite of several warnings to ABS television management to review its programs and avoid offensive programs, it had continued to broadcast the same offensive programs.⁵⁰ On 26 September 2017, Godfrey Mutabazi issued a general directive on live broadcasts.⁵¹ This was a period when the age limit Bill was about to be tabled in the Ugandan Parliament. UCC claimed –broadcasting operators were –relaying live broadcasts which are inciting the public, discriminating, stirring up hatred, promoting a culture of violence amongst the viewers. UCC stated that the said live broadcasts were likely to create public insecurity or violence. UCC also

⁴³ As above.

⁴⁴ <https://www.ugandatoday.com/ucc-moves-to-ban-media-houses-over-kasese-massacre>> (accessed 5 January 2018).

⁴⁵ As above.

⁴⁶ UCC Notice referenced UCC/LA/181 and dated 17 March, 2017.

⁴⁷ UCC Notice referenced LA/181/39 and dated 11 May, 2017.

⁴⁸ UCC letter referenced CMM/433.

⁴⁹ As above.

⁵⁰ '2017 and Mutabazi's endless media orders' *The Observer* 1 January 2018.

⁵¹ UCC Notice referenced LA/181.

warned that any broadcaster that would disobey its directive on live broadcasts on what was happening in Parliament would have its licence suspended and revoked.⁵² In October 2017, the UCC ordered Kanungu Broadcasting Station (KBS) suspend two of its staff, on what it alleged was breach of minimum broadcasting standards.⁵³ When KBS refused to heed to its directives, Godfrey Mutabazi directed the said station to cease its operations, three days later, on 20 October 2017. UCC had earlier on 17 October 2017, suspended the broadcasts of Pearl FM over what it termed as –breach of minimum broadcasting standards||.⁵⁴ It stated that it had received complaints regarding a program known as –the inside story|| hosted by Suliman Kalule. The UCC ordered Pearl FM to suspend Suliman Kalule immediately. UCC stated that this program was likely to cause public insecurity and violence.⁵⁵ A local weekly newspaper reported that George Mutabazi directed Mbarara-based Endigyito Radio in western Uganda to suspend a popular political programme - World Express and its host James Kasirivu.⁵⁶ The World Express runs weekly and is broadcast in Luganda. Mutabazi said the commission had also kick-started investigations into the programme.⁵⁷

To crown the year 2017, George Mutabazi ordered all radio and television stations to air President Museveni’s new year message on 22 December.⁵⁸ They were also required to run advertisements about the said new year message prior to its live coverage. This was to be done for free with no payment whatsoever from government especially to private broadcasters. When complaints intensified about broadcasters being forced to air the President’s New Year message, UCC a few days later issued a public warning to all broadcasters.⁵⁹ UCC indicated with –concern that despite the various engagements and warnings, some broadcasters have continued to breach the minimum broadcasting standards…|| UCC –strictly warned broadcasters to adhere and comply with the minimum broadcasting standards and all the laws of Uganda, failure of which the UCC would invoke regulatory sanctions including criminal proceedings against broadcasters.⁶⁰ UCC with that warning and threat of criminal proceedings managed to achieve its objective of having all media stations provide free, simultaneous live coverage for President Museveni’s 2018 New Year message.

⁵² As above.

⁵³ UCC Notice referenced LA/182/121.

⁵⁴ UCC Notice referenced LA/182/123.

⁵⁵ As above.

⁵⁶ The Observer, (n 48 above).

⁵⁷ As above.

⁵⁸ ‘Radios, TVs to air President’s New Year message’ *New Vision* 28 December 2017.

⁵⁹ A UCC Public Notice on Page 34 of the *New Vision* Newspaper dated 29 December, 2017.

⁶⁰ As above.

The thread that can clearly be gleaned from the UCC directives for the period under study, is that they are vague, not only to those who should enforce them, but also to the broadcasters who ought to obey them.

3.5 General limitations of freedom of expression

The UDHR provides a general limitation clause that states that –In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. 61 The African Charter has a similar general provision, which provides that –The rights and freedoms of each individual shall be exercised with due regard to the rights of others, collective security, morality and common interest. 62

Rights may only be limited on the basis of the specific conditions prescribed in the applicable treaty. As stated in the General Comment No. 34, 63 these grounds –may never be invoked as a justification for the muzzling of any advocacy of multi-party democracy, democratic tenets, and human rights, and one can never justify an attack on any person seeking to exercise their right to freedom of expression, including forms of attack such as arbitrary arrest, torture, threats to life and killings. 64

3.6 International Standards and Best Practices

The fundamental right to freedom of expression is not absolute. This basic right may be lawfully restricted. The restrictions are subject to conditions that are laid down by the law. These restrictions must be reasonable and justifiable in an open and democratic society. Perhaps we could look at the international, regional and sub-regional provisions restricting the right to freedom of expression.

Article 19(3) of the ICCPR and Article 9(2) of the African Charter present the internal limitations clauses to the right to freedom of expression in both treaties. In this regard, Article 19(3) of the ICCPR states that: –The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:(a) For respect of the rights or reputations of others;(b) For the protection of national security or of public order (order public), or of public health or morals. Article 9(2) of the African Charter

⁶¹ Art 29. <https://www.humanrights.com/what-are-human-rights/videos/responsibility.html> (accessed 17 May 2018).

⁶² Art 27(2) of the African Charter.

⁶³ General Comment 34 on art 19 of the CCPR.

⁶⁴ As above.

provides a much wider restriction, in that it requires that freedom of expression is exercised 'within the law'.⁶⁵ It states: (2) Every individual shall have the right to express and disseminate his opinions within the law. The challenge that remains for interpretation is whether the phrase –within the law‖ refers to domestic or international law. Thank fully, the African Union has resolved this dilemma.⁶⁶

3.7 The three-part test

To be justified, any limitation of the right to freedom of expression must meet the three-part test, requiring that; first, it must be provided for in law. Secondly, it must pursue a legitimate aim; and thirdly, it must be necessary for a legitimate purpose. In particular, restrictions on the right to freedom of expression may not put the right itself in jeopardy. This is coherent with article 5(1) of the ICCPR which provides that –nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant‖. Thus, rights cannot be limited in a way that would render the right itself nugatory. As stated by the Zimbabwe Constitutional Court, in *Chimakure versus Attorney General of Zimbabwe*⁶⁷ –To control the manner of exercising a right should not signify its denial or invalidation‖.⁶⁸

Furthermore, a restriction or limitation must not undermine the essence of the right to freedom of expression and the relationship between the right and the limitation – or between the rule and the limitation.

Importantly, all restrictions and limitations shall be interpreted holistically, in the light and context of the particular right concerned. Furthermore, it must be consistent with other rights recognized under the treaty in question and other international human rights instruments, as well as with the fundamental principles of universality, interdependence, equality and non-discrimination - on the basis of race, colour, sex, language, religion, political or other belief, national or social origin, property, birth or any other status. The burden of proving this, rests on the state.

Wherever doubt exists as to the interpretation or scope of a law imposing limitations or restrictions, the protection of fundamental human rights shall be the prevailing

⁶⁵ The African Commission in *Constitutional Rights Project & Others v. Nigeria* (2000) AHRLR 227 (ACHPR 1999), has interpreted the phrase –within the law to mean within international law and not domestic law.

⁶⁶ As above.

⁶⁷ SC 14-13.

⁶⁸ As above.

consideration. Restrictions already established must be reviewed and their continued relevance analysed periodically.

The United Nations Human Rights Council has highlighted certain categories of speech that ought not to be limited under Article 19(3) of the ICCPR. These include:-(i) Discussion of government policies and political debate; reporting on human rights, government activities and corruption in government; engaging in election campaigns, peaceful demonstrations or political activities, including for peace or democracy; and expression of opinion and dissent, religion or belief, including by persons belonging to minorities or vulnerable groups;(ii) The free flow of information and ideas, including practices such as the banning or closing of publications or other media and the abuse of administrative measures and censorship;(iii) Access to or use of information and communication technologies, including radio, television and the Internet. ||

While, indeed, all speech can arguably be limited in line with provisions of the applicable limitations clauses, certain forms of speech – for instance, political speech, or matters relating to corruption or human rights issues – should be carefully guarded in light of the important public interest role that it serves. The African Commission in *Amnesty International versus Zambia*⁶⁹ has found that freedom of expression is a fundamental human right essential to an individual's personal development, political consciousness and participation in the public affairs of a country. In *Kenneth Good versus Botswana*⁷⁰ court noted that –a higher degree of tolerance is expected when it is political speech and even higher threshold is required when it is directed towards the government and government officials. ||⁷¹

The EAC Treaty includes amongst its fundamental principles, the principles of good governance. These include democracy, rule of law, accountability, transparency and the rights contained in the African Charter.⁷² Uganda is a state party to the EAC Treaty. The aforementioned provision of the EAC Treaty was relied on by the East African Court of Justice (EACJ) in upholding the right to freedom of expression in a case brought before it recently.⁷³ The EACJ decided that when state parties are enacting laws they must adhere to the principles enshrined in Treaties that they have signed. The EACJ also stated that: -

Firstly, under articles 6(d) and 7(2), the principles of democracy must of necessity include press freedom. Secondly, a free press goes hand in hand with principles of accountability and transparency which are also enshrined

⁶⁹ (2000) AHRLR 325 (ACHPR 1999).

⁷⁰ (2010) AHRLR 313 (ACHPR 2005).

⁷¹ As above.

⁷² Art 6(d), EAC Treaty.

⁷³ *Burundi Press Union Versus Attorney General of Burundi*, Reference No. 7/2013, EACJ.

in articles 6(d) and 7(2). Thirdly, by acceding to the Treaty and based on our finding above that Articles 6(d) and 7(2) are justiciable, Partner States including Burundi, are obligated to abide and adhere by each of the fundamental and operational principles contained in Articles 6 and 7 of the Treaty and their National Laws must be enacted with that fact in mind.⁷⁴

We have, in brief, stated what the international, regional and sub-regional standards and best practices are on the right to freedom of expression. Uganda being a signatory to the ICCPR, the African Charter and the EAC Treaty ought to uphold these standards on this fundamental human right. The key question, however, is whether the UCC directives to media houses and the law upon which they are based meets these aforementioned standards. The aforementioned authorities and international best practices indicates that the law on which the UCC directives are issued to media houses is vague.

4. Implications of UCC's Conduct on Media Freedoms

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

The other implication of the conduct of the government agency is that it will lead to a loss of employment for journalists where the UCC orders for immediate suspension/sacking of presenters or producers. But more importantly, in cases where the broadcasters licence is revoked a large number of citizens working for that particular broadcaster will be out of jobs and a source of livelihood.⁷⁵ The aforementioned scenario will not only lead to unemployment, but also a loss of investment incentives for investors who will avoid investing in such businesses because of the arbitrary conduct of a regulatory agency. Therefore, this may lead to a reduction in tax revenue collected by government.

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

⁷⁴ As above.

⁷⁵ The most recent case is the closure of the Red Pepper Newspaper including its related publications and radio station. This was even when the other publications and radio station were not involved in –treason charges– that were read to the Red Pepper newspaper editors at Buganda Road Court.

UCC is trying to prevent, as citizens demand for the said social services from government.

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

5 Recommendations

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

A law reform strategy should be crafted and implemented by the key stakeholders. This law reform should be in tandem with international best practices. This strategy should involve as many legislators as possible to curtail detractors from bastardising provisions of reform bill when it is tabled before the committee stages of Parliament for scrutiny. The sponsoring of a private members bill should also be explored as a viable law reform strategy. The only challenge that a private members bill may meet is the procurement of a certificate of financial implication from the ministry of finance. The said certificate is a major challenge to private member bills that are usually intended to democratize the civic space and to curtail the arbitrary authority of government. This is because the government may not allow for the amendments to the UCC Act to proceed, considering the current broadcasting regime is facilitating its suppression of citizens dissent.

As a last resort, if all the aforementioned cumulative strategies fail to yield law reform of the broadcasting environment, the stakeholders have to pursue strategic public interest litigation at domestic, sub – regional, regional and international levels. This litigation strategy should also be carried out in an incremental manner. For example, at domestic level, the stakeholders may file cases both at the High Court and the Constitutional Court for enforcement of individual rights of journalists and media house proprietors. They may also petition the courts for interpretation of the UCC Act.

6 Conclusion

The article explored the impact of UCC directives to media houses on media freedoms. The study has found that the regulatory regime of the broadcasting industry is ambiguous. This legal environment has facilitated the issuance of vague directives by UCC to broadcasters. It has also facilitated the numbing of any criticism against the NRM government and bolstered the circulation of propaganda by the NRM government to sustain itself in power. This, subsequently, has led to the violation of the fundamental right to freedom of expression and other rights in Uganda. The aforementioned challenge has become a barrier to Uganda witnessing a peaceful transfer of power and, consequently, a sustainable democracy. The article also found that Uganda is not respecting the international instruments on the freedom of expression, to which it is a signatory. To enable comprehensive findings on media freedoms in Uganda, the print media needs to be considered, when further research is carried out.

