



THE PROPOSED PRESS AND JOURNALIST (AMENDMENT) BILL, 2010

An Analytical Report



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INTRODUCTION

Uganda boasts a relatively open and diverse media sector by regional standards. The last two decades have witnessed the emergence of especially a print press that is “pluralist and serious [and] is the sounding board of the country’s political crises”¹, as well as a vibrant radio industry that continues to amaze visitors from many other African countries. Until recently, Uganda was often cited as a good example of a vibrant media landscape in a region that has suffered wanton suppression of fundamental human rights and civil liberties.

Uganda, however, risks damaging its good standing on media freedoms. The draft Press and Journalist (Amendment) Bill, 2010, contains some backward-looking clauses. It requires the Media Council to register and license newspapers if they can show, for example, that they have the right equipment, and the right social, cultural and economic values. To get the licence renewed every year, a newspaper will not publish material the government deems harmful to national security, stability, unity; foreign relations; and the economy.

These provisions contradict the letter and spirit of the Constitution. They also go against international standards on freedom of expression as contained in the various instruments that Uganda has signed. These instruments include Article 19 of the Universal Declaration on Human Rights, Article 19 of the International Covenant on Civil and Political Rights, Article 9 of the African Charter on Human and Peoples’ Rights, and The Declaration of Principles on Freedom of Expression in Africa.

The government’s move has alarmed media owners and practitioners and the wider civil society. If the draft Bill becomes law, it would be too restrictive. The media would not be able to operate freely, hence denying the citizens their right to free flow information, which helps them make informed choices. This would amount to a significant reversal in the gains so far made in the quest for free expression and the media in Uganda in the last decade-and-a-half.

¹ [Uganda - Annual Report 2006](http://www.rsf.org/article.php3?id_article=17395&Valider=OK), Reporters Without Borders <http://www.rsf.org/article.php3?id_article=17395&Valider=OK>. Africa-wide, one study has noted “the central role of the print press in the cultivation of democratic attitudes and practices”. See “Freedom of Speech, Media Exposure, and the Defense of a Free Press in Africa,” Afrobarometer Briefing Paper No. 7 July 2003 <<http://www.afrobarometer.org/papers/AfrobriefNo7.pdf> >.

Independence

The draft Bill seeks to change the composition of both the Media Council and the Disciplinary Committee. The Council would comprise 12 members as has been, but six of them would now be appointed by the minister responsible for information – only two of whom in consultation with other bodies. The minister would directly appoint both the chairperson and the secretary. As a result, the control of the minister over the Council and, indeed, its Disciplinary Committee would be substantially increased.

Media regulatory bodies must be independent so that they do not interfere with the work of the media because of political and other motivations. Instead of bolstering the independence of the Council, the new proposals actually undermine it. They should therefore be removed.

Control of Newspapers

The most significant, and alarming, changes proposed in the draft Bill relate to the registration and licensing of newspapers. Council powers are expanded to include registering and licensing newspapers. Newspapers would be prohibited from operating unless the Council has registered them. Yet the draft Bill does not state any requirements or procedures for registration.

The draft Bill further requires newspapers to be licensed yearly by the Council and imposes harsh sanctions for a breach. To get a licence, a newspaper has to possess adequate technical facilities and the right “social, cultural and economic values”. The licence may be revoked for violation of a number of vague content rules.

The draft Bill also gives the Council the power to regulate investment in the print media sector, as well as to regulate foreign investment in the sector, including by “limiting the involvement of foreign media in the print industry”.

International law recognises that licensing of broadcasters is necessary, if only to prevent chaos in the airwaves, but it rules out licensing of newspapers. It even regards registration systems for the print media with great suspicion. Registration of the print media is unnecessary and may be abused and, as a result, is not required in many countries. Under international law, a *technical* registration requirement for the print media may not breach the guarantee of freedom of expression as long as it meets the following conditions:

- there is no discretion to refuse registration, once the requisite information has

been provided;

- the system does not impose substantive conditions upon the media;
- the system is not excessively burdensome; and
- the system is administered by a body which is independent of government.

The proposed licensing system for newspapers clearly breaches these rules. This is effectively a repressive and discretionary system for banning undesirable newspapers, which is completely illegitimate.

Some regulation of print media ownership may be necessary to prevent undue concentration of ownership in this sector, or between this sector and broadcasting. However, the powers of the Council to regulate both local and foreign investment in the print media sector are completely undefined and are not even linked to the objective of preventing undue concentration of ownership.

- *The proposed licensing system for newspapers should be removed from the draft Bill.*
- *The proposed registration system should either be removed entirely, or completely revised to bring it into line with international standards, including by making it clear that the Council has no discretion to refuse to register a newspaper.*
- *The powers of the Council to regulate investment in the print media sector should either be removed entirely or constrained to pursuing legitimate objectives, such as the prevention of undue control by one individual over the print media sector.*

Content Regulation

The draft Bill effectively adds to the functions of an editor when it talks about the obligation of a newspaper to ensure that nothing “prejudicial to the national security” or that “amounts to economic sabotage” is published. These also constitute some of the grounds for revoking a newspaper’s licence. The terms “national security” and “economic sabotage” are too vague to be legitimate as a restriction on freedom of expression, let alone to serve as the basis for a non-independent administrative body such as the Media Council to revoke the licence of a newspaper. Newspapers should be free to engage in reporting or criticism on matters relating to national security. In some instances, such criticism actually enhances security, as it is often only when problems are exposed in this way that they are taken seriously by security officials.

Thus, all content restrictions – including those referring to national security, relations with other states and economic sabotage – should be removed from the draft Bill.

Sanctions

The draft Bill provides for a number of harsh sanctions for breach of its provisions. For example, anyone who operates a newspaper without registering it may be fined up to 48 currency points (nearly Shs1,000,000), and/or imprisoned for up to two years. Operating a newspaper without a licence or in breach of a licence condition would attract the same penalty. A licence can be revoked for publishing prohibited material.

These are excessively severe sanctions for breach of provisions that are, of themselves, illegitimate. The system of licensing and revocation of licences envisaged by the draft Bill would allow for extensive government control over any newspaper it did not favour.

Thus the system of sanctions in the draft Bill should be substantially revised so that it only provides for proportionate sanctions for breach of legitimate rules.

- (a) The thrust of the government's argument is that Ugandan media are in infancy and therefore not yet capable of regulating themselves. The government thus must regulate them using legislation and possibly other means so as to strike a balance between media freedom and responsibility and the commercial/profit motive of media houses. The counter-argument is that instead of punishing the media for their infancy, help them grow and improve. For example, provide money to training institutions to help train mid-career journalists to improve their knowledge base and skill.
- (b) The government says it wants to regulate the media but the draft Bill is actually about control. This raises doubts about the government's actual intent.
- (c) If the government is acting in good faith, how come it is not moving quickly enough to operationalise the Access to Information Act, 2005, by giving the attendant regulations force through issuance of the relevant instrument by the minister responsible for information?
- (d) The proposed draft Bill is inconsistent with other laws and may be unconstitutional.
- (e) The proposed draft Bill must enumerate offences instead of hiding behind generalities like economic sabotage. According to the Constitution, one cannot commit an offence unless it is written down and passed by Parliament. But the offences, if any, must be as specific as possible. It is worrying that the minister responsible for information has made it clear that it is the government that will determine what is national security, or economic sabotage. This is handing the minister way too much power, which power could be abused.
- (f) The proposed draft Bill should be subjected to the human rights principles for imposing restrictions on free speech and see whether it passes the test. Essentially, the human rights principles say restrictions must be constructed in a narrow and focussed way to address a specific and serious concern.
- (g) Training of journalists is important for improving professional and ethical standards, which are presently inadequate as seen in lack of depth and accuracy, lack of balance and fairness, moralisation rather than analysis, provision of excitement and incitement rather than information, and unwarranted attacks on lives of private citizens. Media owners and the government need to think about this seriously.

- (h) Self-regulation is the way to go, borrowing from especially the Zambian model that merged the statutory and independent media councils. Ghana's model, where the government has only two members on the National Media Commission, is also worth emulating. Self-regulation is the best way to ensure responsibility in the media.
- (i) By coming up with the draft Bill, Uganda is effectively reneging on its international commitments it signed up to in documents like the International Covenant on Civil and Political Rights, and the Declaration of Principles on Freedom of Expression in Africa.
- (j) There is no single offence the media can commit today that cannot be tried under the present legislation.

RECOMMENDATIONS

General Recommendation

- ✓ The whole Press and Journalist Act be repealed, rather than amended, and the rule on protection of confidential sources in the Act should be moved to another piece of legislation.

Independence of Regulatory and Oversight Bodies

- ✓ Instead of attempting to give the minister greater control over the Media Council and the Disciplinary Committee, the manner of appointing their members should be completely revised so as to ensure their independence.

Restrictions on Journalists

- ✓ The whole system of mandatory membership for, licensing of and conditions on journalists and editors should be removed from the current Act.

Regulation of Content

- ✓ All primary content restrictions in the Act and draft Bill – including those referring to national security, relations with other states, and economic sabotage – should be removed.
- ✓ Instead of providing for a statutory complaints system, the Ugandan media should be given an opportunity to develop a self-regulatory system as it is doing under the Independent Media Council of Uganda. At a minimum, the system should apply to media outlets rather than individual journalists and the specific rules should be reviewed to ensure that they are not too vague or excessively stringent.

Registration and Licensing of Newspapers

- ✓ Neither the proposed licensing system nor the proposed registration system for newspapers should be imposed.

Sanctions

- ✓ The system of sanctions in the draft Bill should be substantially revised so that it only provides for proportionate sanctions for breach of legitimate rules.
- ✓ Specifically, the Council should not have the power to suspend a journalist from practice and the courts should not have the power to ban media outlets.

REFERENCES

ARTICLE 19. Memorandum on the Press and Journalist Act and the Press and Journalist (Amendment) Bill, 2010 of Uganda. (The analysis in the highlights and the recommendations are heavily borrowed from this Article 19 Memo.)

Report from Consultative Forum on Uganda's Media Laws Held at Kampala Serena Hotel on April 30, 2010.

Report from Roundtable on Uganda's Media Laws Held at Protea Hotel in Kampala on May 31, 2010.

About ACME

The African Centre for Media Excellence (ACME) is a Kampala-based independent, non-governmental, non-partisan and non-profit professional organisation committed to helping African journalists to seek and achieve professional excellence and improving journalism and mass communication in Africa.

ACME conducts research and training that helps make our news media more reliable and credible sources of information on public affairs, effective tools for monitoring official power, and vibrant forums for public debate. We also work on interventions to equip the private sector, civil society, academia, and the government with skills to engage more effectively with the media, as well as educating the public on how to better appreciate the forces that shape the news. ACME is also involved in local and international advocacy to promote and defend freedom of expression and press freedom.



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