

ARTICLE 29 THREATENED: A CRITICAL DISSECTION OF VARIOUS LAWS PASSED THAT UNDERMINE FUNDAMENTAL FREEDOMS OF SPEECH, EXPRESSION & ASSEMBLY

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“I disapprove of what you say, but I will defend to the death your right to say it”²

– Evelyn Beatrice Hall –

I. Introduction

Under national, regional and international laws, Uganda is obligated to respect the right to freedom of speech, expression and assembly of all persons. Article 29 of the Constitution of the Republic of Uganda 1995, guarantees protection of these individual rights—which include freedom of the press, media practitioners, civil society organizations (CSOs) and all political groupings.³ The article also contains freedom of religion—which has over the years been observed relatively consistently, with minimal interferences from state agencies.⁴ However, this paper shall only concentrate on the rights of freedom of speech, conscience, expression and assembly.

The overriding importance of the freedom of expression—including the right to seek, receive and impart information, as a human right has been widely recognized, both on its own and as an essential underpinning of democracy and means of safeguarding other human rights.⁵ In essence, the enjoyment of other fundamental human rights are adversely affected if the masses

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² Evelyn Beatrice Hall, ‘The Life of Voltaire’ (1903).

³ Constitution of Uganda, 1995, art. 29, Protection of freedom of conscience, expression, movement, religion, assembly and association. (1) Every person shall have the right to— (a) freedom of speech and expression which shall include freedom of the press and other media; (b) freedom of thought, conscience and belief which shall include academic freedom in institutions of learning; (c) freedom to practise any religion and manifest such practice which shall include the right to belong to and participate in the practices of any religious body or organisation in a manner consistent with this Constitution; (d) freedom to assemble and to demonstrate together with others peacefully and unarmed and to petition; and (e) freedom of association which shall include the freedom to form and join associations or unions, including trade unions and political and other civic organisations.

⁴ US State Department, International Religious Freedom Report, <http://www.state.gov/j/drl/rls/irf/2009/127261.htm>.

⁵ Toby Mendel, Article 19, The International Centre Against Censorship, ‘False News as a Restriction on Freedom of Expression,’

are denied the right to freely express their opinion—even if theirs, are divergent views to what the majority or the government accepts. It is therefore pertinent to appreciate that “the free flow of information and ideas lies at the heart of the very notion of democracy and is crucial to effective respect for human rights.”⁶

This notwithstanding, it is important to note that the enjoyment of this right is not absolute and is subject to restrictions or limitations. This paper will revisit the legally sanctioned limitations and restrictions at a later stage.

II. Regional and International Legal Provisions

Freedom of expression with its underlying tenets is universally guaranteed in various regional and international instruments to which Uganda is a party. Article 19 of the Universal Declaration of Human Rights proclaims that “everyone has the right to freedom of opinion and expression and that, the right includes freedom to hold opinions without interference and to seek, to receive and impart information and ideas through any media regardless of frontiers.”⁷ Article 19 of the International Covenant on Civil and Political Rights reflects the same provision and adds that this may either be orally, in writing or in print, in the form of art, or through any other media of his [or her] choice.⁸ The article further imposes legal obligations on states to protect freedom of expression and information.

Similarly, Article 9 of the African Charter on Human and Peoples Rights (ACHPR) guarantees freedom of expression. The article provides that “every individual shall have the right to receive information [and the] right to express and disseminate his opinions within the law.”⁹

The importance of protecting these fundamental freedoms cannot be overemphasized. Promotion and protection of this freedom of speech and expression is as old as the general human rights discourse. In the first session of the United Nations General Assembly in 1946, it was declared that “freedom of information is a fundamental human right and ...the touchstone of all the

⁶ Foreword by Abdul Waheed Khan Assistant Director-General for Communication and Information UNESCO

⁷ Article 19, Universal Declaration of Human Rights.

⁸ Article 19, International Covenant on Civil and Political Rights

⁹ African Charter on Human and Peoples’ Rights, adopted June 27, 1981, entered into force October 21 1986, ratified by Uganda May 10, 1986, art.9.

freedoms to which the United Nations is consecrated.” On the same note, the ACHPR has reiterated that “article 9 [of the ACHPR] reflects the fact that freedom of expression is a basic human right, vital to an individual’s personal development, his political consciousness, and participation in the conduct of the public affairs of his country.”¹⁰ Similarly, the African Commission on Human and People’s Rights has also reaffirmed that “the fundamental importance of freedom of expression as an individual human right, as a cornerstone of democracy and as a means of ensuring respect for all human rights and freedoms.”¹¹ It is imperative to note that these protections are not only for information that is more pleasing and acceptable to the general public or the government—but more relevant for those ideas and opinions that may appear harsh or offensive to the main stream majority or the government.

In fact, the European Court of Human Rights weighed in on the subject in the case of *Lingens* and noted that

Freedom of expression constitutes one of the essential foundations of a democratic society, one of the basic conditions for its progress and for the development of every man....it is applicable not only to information or ideas that are favorably received... but also to those which offend, shock or disturb the state or any other sector of the population. Such are the demands of pluralism, tolerance and broadmindedness without which there is no democratic society.¹²

On the domestic stage, in a landmark ruling, the Supreme Court of Uganda in the *Onyango Obbo* case held that

It is evident that the right to freedom of expression extends to holding, receiving and imparting all forms of opinions, ideas and information. It is not confined to categories, such as correct opinions, sound ideas or truthful information. Subject to the limitation under article 43, a person's expression or statement is not precluded from the constitutional protection simply because it is thought by another or others to be false, erroneous, controversial or unpleasant. Everyone is free to express his or her views.

¹⁰ *Ibid.*

¹¹ Declaration of Principles on Freedom of Expression in Africa, African Commission on Human and Peoples' Rights, 32nd Session, 17 - 23 October, 2002: Banjul, The Gambia, <https://www1.umn.edu/humanrts/achpr/expressionfreedomdec.html>. (accessed December 02, 2015)

¹² European Court of Human Rights, *Lingens v Austria*, judgment of July 8, 1986, application No. 9815/82, accessed at http://www.oas.org/en/iachr/expression/docs/jurisprudence/european/CASE_OF_LINGENS_v_AUSTRIA.doc.

Indeed, the protection is most relevant and required when a person's views are opposed or objected to by society or any part thereof, as 'false' or 'wrong'.¹³

All in all, the notion that the expression of false, dissent, erroneous or unpleasant views should be tolerated is not a new phenomenon. *Areopagitica*, published in 1644 was John Milton's response to the Parliament of England's re-introduction of government licensing of printers. Church authorities had previously ensured that Milton's essay on the right to divorce was refused a license for publication.¹⁴ In *Areopagitica*, Milton made an impassioned plea for freedom of expression and toleration of falsehood, arguing that "give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."¹⁵ It is therefore pertinent to protect these fundamental freedoms enshrined in Article 29, for they impart greatly to the enjoyment of all other freedoms. A population devoid of access to and exchange of information, is heavily inept on innovation and developmental undertaking.

III. Article 43 on Limitations/Restrictions

As noted above, the right to freedom of expression is not absolute—in its enjoyment, it is subject to certain restrictions. Both international and domestic legal frameworks have weaved "carefully drawn and limited restrictions on freedom of expression to take into account the values of individual dignity and democracy."¹⁶ Article 43 of the Ugandan Constitution lays out the prescribed limitations to the enjoyment of the right. It provides 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. (2) Public interest under this article shall not permit— (a) political persecution; (b) detention without trial; (c) any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond

¹³ Charles Onyango Obbo & Andrew Mujuni Mwenda v. Attorney General, Supreme Court of Uganda, Constitutional Appeal No.2 of 2002, pg. 10.

¹⁴ Sarah Bireete, Centre for Constitutional Governance, 'Freedom of Speech, Assembly, Association and Expression in Uganda - Which Way Forward?' <http://ccgea.blogspot ug/2014/10/freedom-of-speech-assembly-association.html>.

¹⁵ John Milton, *Areopagitica*, 1644, quoted in 'An Analysis of Freedom of Speech,' <https://www.kibin.com/essay-examples/an-analysis-of-freedom-of-speech-4dDxw3Wc>. Also in Sarah Bireete, *Ibid*.

¹⁶ Toby Mendel, Article 19, *supra* note 4.

what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.¹⁷

Similarly, the ICCPR also permits governments to impose certain limitations on freedom of expression, if such restriction is provided by law and is necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order, or of public health or morals.¹⁸

Internationally, enforcement of these restrictions to the enjoyment of the right must meet a strict three-part test.¹⁹ Firstly, the interference must be provided for by law which must be accessible and “formulated with sufficient precision to enable the citizen to regulate his conduct.”²⁰ Secondly, the interference must pursue one of the legitimate aims listed in Article 19(3), and thirdly, the interference must be necessary to secure that aim, in the sense that it serves a pressing social need, that the reasons given to justify it are relevant and sufficient and that the interference is proportionate to the legitimate aim pursued.²¹

This test is very important and dates as far back as 1986, when the Canadian Supreme Court set out what has come to be known as the “Oakes Test”, the accepted standard since that time: To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures responsible for a limit on a Charter right or freedom are designed to serve, must be “of sufficient importance to warrant overriding a constitutionally protected right or freedom”²²

In essence, “the right to freedom of expression cannot be limited at the whim of a public official.”²³ It must follow a clear legitimate and uniform legal provision. The masses to which the law is intended to apply must fully be able to appreciate its provisions and understand its

¹⁷ Ibid., art.43.

¹⁸ Ibid., art.19 (3).

¹⁹ *Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N.Doc. CCPR/C/51/D/458/1991 (1994, quoted in Toby Mendel, Article 19, The International Centre Against Censorship, ‘False News as a Restriction on Freedom of Expression,’ accessed at <https://www.article19.org/data/files/pdfs/cases/uganda-onyango-obbo-v.-uganda.%20Uganda>.

²⁰ Ibid.

²¹ Ibid.

²² *R. v. Big M Drug Mart Ltd.*, at p. 352

²³ Catherine Anite, James Nkuubi, Human Rights Network for Journalists, *Media Freedom in Uganda: Analysis of Inequitable Legal Limitations*, March 2014.

application and consequences of their actions in breach. Secondly, the limitation must be necessary. It should be appreciated that “even if a limitation is in accordance with a clear law and serves a legitimate aim, it will only pass the test if it is truly necessary for the protection of that legitimate aim.”²⁴

These standard have been well enunciated by the highest court of the land in Ugandan—the Supreme Court, arguing that,

The yardstick is that the limitation must be acceptable and demonstrably justifiable in a free and democratic society. The limitation on the enjoyment of a protected right in defence of public interest is in turn limited to the measure of that yardstick. In other words, such limitation, however otherwise rationalised, is not valid unless its restriction on a protected right is acceptable and demonstrably justifiable in a free and democratic society.²⁵

Various international human rights bodies and courts around the world have also noted that protection of freedom of expression must include pluralism, tolerance and broadmindedness from public officials regarding open criticism.²⁶ The limitation on the right has often been enforced in relation to speeches and expressions made against public officials and the government. In Uganda, cases of restraint and prosecution have always stemmed from expressions made in conflict with the government or the presidency. This in a way is mostly triggered by the failure to separate institutions and systems from personalities holding various offices. There is always attachment of the person to the office. The African Commission has stated that, “It should be assumed that criticism of the government does not constitute an attack on the personal reputation of the head of state. People who assume highly visible public roles must necessarily face a higher degree of criticism than private citizens; otherwise public debate may be stifled altogether.”²⁷

²⁴ Ibid.

²⁵ Charles Onyango Obbo & Andrew Mujuni Mwenda v. Attorney General, Supreme Court of Uganda, Constitutional Appeal No.2 of 2002, pg. 13.

²⁶ European Court of Human Rights, *Lingens v Austria*, judgment of July 8, 1986, application No. 9815/82, accessed at http://www.oas.org/en/iachr/expression/docs/jurisprudence/european/CASE_OF_LINGENS_v_AUSTRIA.doc.

²⁷ Media Rights Agenda & others v, Nigeria, African Commission on Human and Peoples' Rights, Comm. Nos. 105/93, 128/94, 130/94 and 152/96 (1998), accessed at http://www1.umn.edu/humanrts/africa/comcases/105-93_128-94_130-94_152-96.html.

The UN Human Rights Committee, which monitors state compliance with the ICCPR, has stated that

While a State party can restrict freedom of expression where provided for by law, it must still be determined whether the measures taken against the author [of any statements are] necessary for the safeguard of national security and/or public order..... The legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights.²⁸

IV. Various Laws that Threaten Article 29

Over the years, a number of laws have been debated and passed to address prevailing gaps in the peaceful management of gatherings and meetings in the country—especially around civic participation of the citizenry in the democratic governance of the country. This has seen the resolute ban of open air radio broadcasts known as *bimeeza*, which were a famous mode of media engagement with the public on matters of public interest, especially around service delivery, accountability and governance. This ban was followed by further stringent measures to stifle freedom of speech and expression. This witnessed the coming into force of several laws especially the criminal laws, a step backward on some fundamental constitutional protections—including Article 29 on freedoms of expression, speech and assembly. These enacted laws are contrary to domestic, regional and international legal provisions as they are intended to oust the supremacy of the constitution in total disregard of the constitutional provision “that any other law that is inconsistent with the constitution is null and void to extent of its inconsistency.”²⁹

The African Commission has emphasized that governments should not enact provisions which limit freedom of expression “in a manner that override constitutional provisions or undermine

²⁸ *Womah Mukong v. Cameroon*, Communication No. 458/1991, U.N.Doc. CCPR/C/51/D/458/1991 (1994), para. 9.7.

²⁹ 1995 Ugandan Constitution, Article 2.

fundamental rights guaranteed by the [Charter] and other international human rights documents.”³⁰

Nevertheless, this has been evidenced in a number of laws that have been passed in Uganda. Some of these include the Computer Misuse Act 2011, The Non-Government Organizations Act 2015, and The Public Order Management Act. There are also some provisions within the Penal Code Act that criminalize certain conduct and operations by journalists and media practitioners.³¹ It is from these provisions that threats and intimidation of sanction criminal charges against journalists and media houses are mostly used in order to censor media content and restrict their fundamental freedoms. Most of these laws contain provisions that are inconsistent with domestic and international obligations.

a. The Computer Misuse Act 2011:

In February 2011, the Ugandan Parliament passed the Computer Misuse Act, intended to ensure safety and security of electronic transactions and information systems. It had broad objectives to prevent unlawful access, abuse or misuse of information systems including computers and to make provisions for securing the conduct of electronic transactions in a trustworthy electronic environment. However, the Act contains numerous vague provisions that infringe on fundamental constitutional provisions of individuals—including free access to information, right to privacy and freedom of expression.

On June 8, 2015, Robert Shaka, an information and security analyst with USAID in Kampala was arrested by police officers from the Special Investigation Unit (SIU) and taken to their headquarters in Kireka where in the course of interrogation and recording of a statement, he was informed that while using computers and other electronic devices, he issued offensive communications against the sovereign state of Uganda, bringing it into hatred and contempt and accordingly committing the offence of promotion of sectarianism contrary to Section 41 of

³⁰ Constitutional Rights Project and Civil Liberties Organization v. Nigeria, African Commission on Human and Peoples Rights, Comm. No. 102/93, (1998), para. 57-58, <http://www1.umn.edu/humanrts/africa/comcases/102-93.html>. (accessed December 02, 2015)

³¹ Penal Code Act, 1950, Sec.41 (sectarianism), Sec. 51 (inciting violence) and Sec. 179 (libel).

the Penal Code Act.³² [And that]he issued offensive communication against President Yoweri Museveni, Janet Museveni, Kale Kayihura, a one "Mbabazi" and a one "Kelen" thereby committing the offence of offensive communication contrary to Section 25 of the Computer Misuse Act.³³

Section 25 of the Computer Misuse Act 2011 provides that “[any] person who willfully and repeatedly uses electronic communication to disturb or attempts to disturb the peace, quiet or right of privacy of any person with no purpose of legitimate communication whether or not a conversation ensues commits a misdemeanor and is liable on conviction to a fine not exceeding twenty four currency points or imprisonment not exceeding one year or both.”³⁴

According to Mr Nicholas Opiyo, Shaka’s lawyer, criminalizing offensive communication as described in section 25 is unconstitutional, and that his clients’ unceremonious arrest and detention represents an affront to the freedom of expression for all Ugandans especially those using new media platforms to express their views and opinions.³⁵ He further argued that Shaka’s arrest was an unjustified restriction of freedom of expression.³⁶

The Shaka case represents a specific curtailment of the freedom of expression—especially when it is directed to people in power. It is such laws that contravene fundamental human rights that are protected by the Constitution. Whereas this right is not absolute, curtailments should be those demonstratively justifiable in a democratic society. We cannot always be comfortable with only speech on opinions about ourselves that we agree with. As noted people in power and government must be broadminded and accept that all that is said about them is not going to be praises—in fact they should be tolerant to speech that sometimes may be false. It is from this that

³² Sec.41(1) A person who prints, publishes, makes or utters any statement or does any act which is likely to— degrade, revile or expose to hatred or contempt; create alienation or despondency of; raise discontent or disaffection among; or promote, in any other way, feelings of ill will or hostility among or against, any group or body of persons on account of religion, tribe or ethnic or regional origin commits an offence and is liable on conviction to imprisonment for a term not exceeding five years.

³³ Chapter Four, ‘UPDATED: Further Statement on the Status of Mr. Robert Shaka,’ <http://chapterfouruganda.com/articles/2015/06/10/updated-further-statement-status-mr-robert-shaka>. (accessed on December 9,2015).

³⁴ The Computer Misuse Act 2011, section 25.

³⁵ Social Media Critic Arrested in Uganda, supra note 6.

³⁶ Douglas Mpuga, ‘Social Media Critic Arrested in Uganda,’ VOA, July 13, 2015, <http://www.voanews.com/content/social-media-critic-arrested-in-uganda-/2820626.html>. (accessed on December 09, 2015.)

political maturity can be enjoyed. A true taste of the democratic maturity of a government is how it addresses minority views or divergent views. A democratically mature government should not suffocate minority or divergent views through threats, intimidation and arrests. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression made an appeal to governments all over the world “to adopt laws and regulations that allow people to communicate freely over the Internet.”

b. The Public Order Management Act 2013

The Public Order Management Act (POMA), which came into force in November 2013, has been used to impose wide-ranging restrictions on public meetings—especially those by opposition politicians and civil society organization dealing with matters of governance and democracy. The law has been misinterpreted to give police powers to prohibit and disperse any meeting or public gathering of a political nature which it has not permitted. It has generally been implemented selectively to undermine fundamental constitutional rights to assembly and association—especially of those members creating awareness of governments’ failures and demanding accountability. It is important to appreciate that protecting public order is a legitimate concern, but it must be within those limitations permitted by law. The POMA in its current scope goes far beyond what both domestic and international restrictions prove. Similarly, it appears driven to overthrow a decision of the Constitutional Court.

Some of the criticisms to the POMA have been largely due to its reintroduction of s.32 (2) of the Police Act which the Constitutional Court struck out in 2005 for being unconstitutional.³⁷ The subsection authorized police to prohibit assemblies including public rallies and demonstrations which are protected under article 29 of the constitution. The court held that the subsection gave police powers to impose conditions which inconsistent with article 29 (1) (d) of the 1995 Ugandan Constitution.

The brief facts of the case were that Muwanga Kivumbi, a member and coordinator of the Popular Resistance Against Life Presidency (PRALP), had on numerous occasions informed police of the organisations intention to hold rallies and demonstration in Masaka, Lugazi and

³⁷ Muwanga Kivumbi v. Attorney General, Constitutional Petition No. 9 of 2005.

Seeta among others. In all these cases the police advised him to hold indoor consultations and meetings and warned him that if he went ahead with the demonstrations, they would come in and disperse the crowd—a threat that they enforced in all the cases he went ahead with the demonstrations. Kivumbi, aggrieved by the conduct of police, filed the constitutional petition to have Section 32 of the Police Act declared unconstitutional. In 2008, the Constitutional Court indeed found merit in the petition and nullified sub-Section 2 of Section 32 of the Police Act. Section 32 (2) provided that

If it comes to the knowledge of the Inspector General that it is intended to convene any assembly or form any procession on any public road or street or at any place of public resort, and the Inspector General has reasonable grounds for believing that, the assembly or procession is likely to cause a breach of the peace, the Inspector General may, by notice in writing to the person responsible for convening the assembly or forming the procession, prohibit the convening of the assembly or forming of the procession.

The Court held that subsection (2), which empowered the Inspector General of Police to prohibit the convening of an assembly or forming of a procession in any public place, on subjective reasons contravened the fundamental right to freedom of assembly and to demonstrate together with others peacefully, and did not fall within the limitation clause. A critical assessment of the POMA shows a clear connection to the nullified provision within the Police Act. Police continues to stop and disperse public meetings and rallies citing POMA, under the same narrative as was in enforcement of s.32 (2) of the police Act.³⁸ While blocking the FDC Rukungiri Mobilization on 9th October 2015, Assistant Inspector General of Police Abbas Byakagaba argued that the FDC did not meet all the conditions prescribed in the POMA.³⁹

Important to note is that a petition challenging the POMA's constitutionality was filed with the Constitutional Court in December 2013, but to date, it has never been determined.

All in all the POMA is structured to reinvent the law that was nullified by the Constitutional Court. It has been selectively applied to suffocate opposition rights to freely express and assemble. The role of the police and other military agencies ought to be to protect and facilitate

³⁸ Amnesty International, Uganda Report, accessed at <https://www.amnesty.org/en/countries/africa/uganda/report-uganda/>.

³⁹ Andante Okanya and Umaru Kaskaka, 'Besigye, FDC Leaders Arrested,' The New Vision, 10th October 2015.

the enjoyment of fundamental human rights including the freedom of expression and assembly. It should not be to perpetuate and involve themselves in partisan politics of stifling any form of dissent against the government. It is these democratic tenets that an impartial police force is supposed to respect and protect.

c. The Non-Governmental Organizations Bill 2015

On November 27, 2015 the Parliament of the Republic of Uganda passed into law, The Non-Governmental Organisations (NGO) Bill, 2015. The Bill was introduced to address the gaps in the existing law—including the arguments that there has been a rapid growth of NGOs some of which are engaged in subversive activities and thus the sector needs stringent regulations and monitoring. According to Human Rights Watch,

The minister of internal affairs proposed amending the current nongovernmental organization (NGO) law to further constrict civil society operating space.” The government has accused organizations of engaging in “political activism,” and in one case suspended an NGO working on sexual rights, arguing that it was “promoting homosexuality.” Four NGO offices in Kampala were burgled and computers and servers stolen, raising concerns among civil society that the incidents were an orchestrated attempt to curtail NGO operations.⁴⁰

Whereas most of the Committees suggestions and recommendations were considered and adopted in the final Bill as passed, there remains some issues that will ultimately affect some groups and organizations working with marginalized groups.

In its current state, the most critical area is under Clause 40(d) and (f) which provides for ‘Special Obligations’ and is to the effect that organisations are prohibited from engaging in any activities that are prejudicial to the security interests and laws of Uganda, as well as the dignity of the people of Uganda. This provision is vague and very problematic—as what amounts to ‘dignity of the people of Uganda’ cannot be defined. In a joint statement by Chapter Four, Human Rights Watch and HRAPF, they noted that “[groups] should be able to criticize government action without fear of facing criminal charges, jail time, or harassment for the undefined violation of “the dignity of all Ugandans” or working in ways that are deemed

⁴⁰ World Report 2015: Uganda, accessed at <https://www.hrw.org/world-report/2015/country-chapters/uganda>.

prejudicial to national interests.”⁴¹ In fact organisations doing research and advocacy on rights of minorities especially sexual minorities may find themselves most affected as it is a subject that may easily be deemed to be against the dignity of the people of Uganda. Similarly, “Government officials have alleged that some organizations are “economic saboteurs” and “anti-government” for their legitimate criticism of government actions.”⁴²

Maria Burnett, a senior Africa researcher at Human Rights Watch argues that “the vague wording of this bill means that it’s impossible to know when someone’s conduct may run afoul of the government’s views.”⁴³ She further adds that “groups should have the ability to organize and push for change in critical areas – including good governance, oil transparency, land rights, and human rights, without fear of ending up behind bars.”⁴⁴ Similarly, Adrian Juuko, Executive Director of Human Rights Awareness and Promotion Platform (HRAPP) has noted that “any law regulating the nonprofit sector should have a presumption in favor of free, informal and peaceful association of citizens without requiring a permit, as the bedrock of freedom of association.” He adds that the general government presumption that civic organizations are ill-intentioned is without basis and the criminalization of free and informal organizing unjustifiably violates association rights.”⁴⁵

d. The Anti-Terrorism Act 2002

The war on terror has in the last decade or so become a global phenomenon, and all countries have a concerted effort to weave terror off the face of the earth. Uganda has as a country suffered terror attacks—most notably in July 2010.⁴⁶ The Anti-Terrorism Act 2002 was amended in 2015, expanding the definition of an ‘act of terrorism’ to accommodate international organisations, penalizing indirect involvement in acts of terrorism, creating the offense of terrorist financing and to prescribe appropriate penalties; and providing for the freezing, seizure

⁴¹ Human Rights Watch, Uganda: Reject Vague Crimes in Proposed Law: Proposed Act Violates Free Association Rights, December 13, 2015, accessed at <https://www.hrw.org/news/2015/12/13/uganda-reject-vague-crimes-proposed-law>.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Xan Rice, ‘Uganda bomb blasts kill at least 74,’ The Guardian, July 12, 2010, accessed at <http://www.theguardian.com/world/2010/jul/12/uganda-kampala-bombs-explosions-attacks>.

and forfeiture of funds or property reasonably lined or intended to be used for terrorist activities, among others.

Whereas this law should ideally be applauded in the face of the current global terror and its sophisticated way of operation, Section 9 of the act directly affects the practice of media in Uganda. This section provides that “Any person, who establishes, runs or supports any institution for ... publishing and disseminating news or materials that promote terrorism ... commits an offence and shall be liable on conviction, to suffer death.”⁴⁷ The biggest problem with this section is that the offence of terrorism has been so broadly defined. The law as it is, is susceptible for abuse by state operatives who often use it to threaten and attack political opponents or specific individuals that are very critical of the government. Journalists who report on governance and rule of law matters can be intimidated and threatened into self-censorship for fear of prosecution under this provision. Increasingly, this law is being used to muzzle journalist rights to report on matters affecting the wider population. Human Rights Watch noted that “journalists critical of the government face intimidation and sometimes criminal charges from state agents and members of the ruling party.”⁴⁸ Threats from agencies to journalists always have undertones referencing possible prosecution under the Anti-Terrorism law if some reports that are deemed against the government are published. All in all these provisions should be reconciled with constitutional protections of freedom of expression and speech and access to information.

V. Conclusion & Recommendations

The importance of Article 29 to the enjoyment of all other rights cannot be overstated. A country that cannot freely engage in discussions about issues that affect them—especially on governance matters suffocates growth and development. Overall, “Freedom of expression is not only a fundamental human right in and of itself, but it has ramifications for economic development as well.”⁴⁹ The declaration further adds that the “media has a “corrective” function by bringing to

⁴⁷ Anti-Terrorism Act 2002, article 9 (1), accessed at http://www.vertic.org/media/National%20Legislation/Uganda/UG_Anti-Terrorism_Act_2002.pdf.

⁴⁸ Human Rights Watch, World Report 2011: Uganda, Events of 2010, accessed at <https://www.hrw.org/world-report/2011/country-chapters/uganda>.

⁴⁹ Joint Declaration on the right to freedom of expression generally, regulation and responsibility of the media, access to information, defamation and prevention and investigation of attacks against freedom of expression, accessed at <https://www.article19.org/resources.php/resource/3042/en/>.

the public's attention corruption and inequitable practises. The absence of free media can lead to economic stagnation and improper practises by both governments and businesses."⁵⁰

More still, "Implicit in freedom of expression is the public's right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people's participation in government would remain fragmented."⁵¹ Other fundamental human rights freedoms will be bereft of all effectiveness if the people have no access to information and can not engage in the free flow of all kinds of information. It is from this perspective that any laws that are enacted with the sole purpose of stifling space to engage in exchange of opinions, discussions and even attack on government programs and policies cannot be tolerated in a free and democratic society, unless they fit the yardstick of the permissible restrictions.

Therefor there is need for parliament and all stakeholders in the protection and promotion of human rights to review all laws enacted that directly attack article 29 and not within the permissible limitations and article 43.

Secondly, parliament and government need to assess their compliance with international human rights standards especially those they have signed on to and where there are international norms not yet ratified, they should urgently undertake the process of ratifying and domesticating them. There is a human rights checklist that was launched by the Standing Committee on human rights in Parliament. It was intended to draw attention to the promotion and protection of human rights in the legislature.⁵² The checklist was informed by the need to guide parliament to ensure that bills and business of parliament complies with human rights standards. Parliament has to ensure that all legislation passed is in compliance with the checklist. However, this has not yielded the intended goals as the committee rarely sits to discuss the human rights implications in bills and other business before parliament. There is not to equip the committee with committed members to ensure that all laws proposed before parliament meet human rights standards as espoused in the Ugandan Constitution and the human rights checklist.

⁵⁰ Ibid.

⁵¹ Ibid

⁵² "Standing Committee On Human Rights: Checklist for Compliance with Human Rights in Policy, Bills, Budgets, Government Programmes and All Business Handled by Parliament," Parliament of Uganda,, accessed at, http://www.parliament.go.ug/new/images/stories/hr_checklist_13.pdf.

Thirdly, security agencies should desist from trampling on individual rights to assemble and associate in public. They should conduct investigations into acts of their own officers that have continued to brutally attack and disperse peaceful demonstrators enjoying constitutionally protected rights to freedom of expression, assembly and speech.

Lastly, parliament should carry out an assessment of all laws passed and harmonize them with Article 29 of the Constitution, and those that don't conform to the law should be repealed.