

**AN ASSESSMENT OF THE IMPACT OF NEW TECHNOLOGIES ON THE RIGHT  
TO FREEDOM OF EXPRESSION IN UGANDA**

**JOHN SENOGA ZAKE KAGUTEMA**

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## DECLARATION

I KAGUTEMA JOHN SENOGA ZAKE do hereby declare that the work presented in this thesis is based on my own research, all the sources that I have used or quoted have been indicated and acknowledged by means of complete references and that I have not presented this thesis to any other university or institution of higher learning to obtain any academic qualification.

Signature:  .....

Date: 26 / 05 / 2025 .....

**APPROVAL**

This is to certify that this research has been conducted under my supervision and is now ready for submission to the School of Law at Uganda Christian University.

NAME: MR DANIEL RAYMOND KISA

  
.....

Signature

DATE 26.5.2025  
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## ABSTRACT

Because of the rapid development in technology, the right to freedom of expression in Uganda is in question, this research aims at providing a comprehensive analysis of laws and regulations in conjunction with technology from Uganda's perspective. It will explore the various approaches adopted by Uganda, highlighting key legislative instruments, regulatory bodies, and enforcement mechanisms. Using a quantitative research methodology, this research will examine the challenges met in implementing the laws on cyber security in Uganda and also analyses the laws such as the **Computer Misuse Act, 2011; (2) Electronic Transactions Act, 2011; and (3) Electronic Signatures Act, 2011**. Ultimately, this research underscores the importance of international cooperation and dialogue in addressing the complex and evolving landscape of cyber security threats. As cyber risks continue to evolve, so too must the legal frameworks designed to mitigate them, ensuring that they are both effective and adaptable to the changing dynamics of the digital age.

It should be equally noted that today a great part of life is based on digital connectivity and digital transformation is reshaping industries and societies, the protection of data and critical infrastructure from cyber threats has become a paramount concern. Cyber security incidents, ranging from data breaches to ransom ware attacks, have escalated in frequency and sophistication, underscoring the vulnerabilities inherent in our interconnected world. Governments, businesses, and individuals are increasingly recognizing the need for robust cyber security measures to safeguard sensitive information, protect privacy, and ensure the continuity of essential services.

The global nature of cyber threats necessitates a coordinated and comprehensive approach to cyber security governance. However, the legal and regulatory landscape governing cyber security is highly fragmented, reflecting the diverse political, economic, and cultural contexts of different regions. This fragmentation presents both challenges and opportunities as countries and regions strive to develop and implement effective cyber security frameworks.

## **DEDICATION**

I dedicate this research to my beloved grand mum Harriet Zake (RIP), My Cousin Generah Udemba Zake. My Mum Tracy Nalubega Zake My wife Acklean Ainembabazi, my Children Abigail Imani Nakimuli Zake, Myrah Arinda Nanteza Zake, and Meghan Keza Nakigozi Zake, Lastly Aunt Margaret Kaddu Kakoma thank you for your love and support which I highly value through this course.

I also dedicate this research to my true brothers and Friends Mr. Nakiyi Julius Muntu and Mr. John Baptist Bwanika I am humbled by your love and support may the almighty God richly bless.

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## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.0 Introduction

The advancement of information and communication technology in the 21st Century has paved way for the rise of social media and global interactions across through such platforms.

Social media can be defined as an array of web-based tools that harness the philosophical and infrastructure backbone of web 2.0, thereby enabling the curation and dissemination of grassroots digital content (Kaplan, 2010).

The internet especially through social media thus facilitates the exchange of user generated information including messages, pictures and videos, among others. It has been described as one of the best innovations of the century, in comparison to the pre-internet era where communication was mostly by letters, emails and phone calls. Social media platforms like twitter, Facebook, and snap chat not only enable communication between individual on their respective media accounts, but also facilitate the dissemination of information and opinion to other members of the public and beyond territorial and jurisdictional limitations.

The birth of social media has thus been hailed as an excellent avenue for the exercise of the right to unfettered discourse. This liberty, simply entails one's ability to express himself, his views and opinions without government and legal interference except when warranted and demonstrably necessary in a society that values democracy.

The right to freely express one is vital and vital and indicative of democracy in a state.

The liberty to articulate one's thoughts is a hallmark of democratic governance, albeit a prerogative that is tempered by constraints aimed at upholding the dignity and interests of others, fortifying national integrity, preserving civic harmony, or shielding communal well-being and ethics.<sup>1</sup>

This research is predicated on an examination of expressive liberty in Uganda, as manifested through the lens of social media, with a critical evaluation of the scope and legitimacy of restrictions imposed by prevailing legislation and governmental authorities.

This research also aims to draw insights from the legal precedents in jurisdictions such as the UK, USA to enrich the analysis of Uganda's existing cyber laws and expressive freedom framework. The study will also be guided by established norms of international human rights law.

### **Background of the study.**

Unfettered discourse is widely regarded as a pivotal and multidimensional liberty serving as the bedrock of democratic entitlements.<sup>2</sup> and incur [orates the ability to absorb and disseminate knowledge<sup>3</sup>, the right of the citizens to freely critic and debate over actions taken by the state authorities as well as the legislators and

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<sup>1</sup> Article 19 (3) of ICCPR

<sup>2</sup> UN General Assembly Resolution 59 (1)

<sup>3</sup> Freedom of Speech", available on the Web. URL: <http://en.wikipedia.org/freedom> of speech, accessed on 21/4/2025

other stakeholders need be protected to further democracy while accommodating positive debate as well criticisms directed toward the state.

The right and its enjoyment are thus a significant indicator of democracy and development in a state.

Online self-expression manifests in diverse formats, including imagery, videography, among others. (Kirunda, 2010).

Henceforth, derives its basis from the increased use of the internet as the widest platform for dissemination of all forms of information to the public. It seeks to specifically analyze Uganda's reaction as a state towards regulation of the right measured against instances of discriminatory rhetoric.

The inspiration of this paper is largely derived from the Freedom of expression situation in Uganda, noting the increased attention drawn to Facebook content posted by a one Tom Voltaire Okwalinga 'TVO<sup>4</sup> as well as Dr. Stella Nyanzi<sup>5</sup>. This paper also pays attention to the social media shutdown imposed by the state during the 2016 Polls depriving people of access to their social media accounts.

Concurrently, an examination will be conducted to assess the efficacy and comprehensiveness of current legislation in optimizing the realization of this right, and the degree to which the Ugandan legal framework is attuned amidst the evolving landscape of unfettered discourse in the digital realm and social networking, with the aim of proposing legislative overhauls.

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<sup>4</sup> <https://www.facebook.com/tom.okwalinga>. An anonymous Ugandan and famous social media critique of the Ugandan government. The tale of unmasking a ghost called TVO-New Vision Uganda, newvision.co.ug.2017-02-17.

<sup>5</sup> <https://www.facebook.com/stella.nyanzi/posts/101531016666570053>

## **Statement of the problem**

Expressive liberty as outlined under Article 29 of the 1995 Constitution is not a stand - alone right. With it, comes the duty to exercise it within the legal confines codified under Article 29 in the ICCPR<sup>6</sup> and Article 10 of ECHR.

As the world is fast embracing electronic media as opposed to print media, the use of the internet as a platform imposes novel benefits especially with regard to easing communication globally. This nonetheless, carries with it novel challenges especially with regard to regulation both at the International and domestic level, as well as the parallel observance of core liberties such as right to seclusion and unfettered discourse.

This research seeks to examine the Ugandan situation, to address the question whether the current Ugandan laws that were enacted largely in an era dominated by print or traditional media are adequate to accommodate the explosion of social media. The import of Ugandan laws such as the Computer Misuse Act<sup>7</sup>, Uganda Communications Commission Act<sup>8</sup>, and Penal Code Act<sup>9</sup> among others will be relied upon, examining the loopholes there in and how they can be tailored to better suit the age of social media. The focus shall be on a select mix of Facebook and twitter as a social networking services, measured against instances where such content has invited legal action resulting from expressions and opinions shared by Ugandan Citizens on the platforms.

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<sup>6</sup> Supra note 2

<sup>7</sup> Act NO=o. 2/2011

<sup>8</sup> 2013

<sup>9</sup> Cap 120

## **Objectives and significance of the study**

The primary aim is channeled towards identifying the loopholes in the existing Ugandan national laws on unfettered discourse in this era of modern technologies. This study further endeavors to dissect the lacuna in existing Ugandan legislation that appear to have obfuscated the delicate demarcation between legitimate restrictions on public discourse and outright suppression the right.

This objective will be pursued through a comparative examination of the process registered by nations in advanced legal systems, such as the United States, United Kingdom, benchmarked against Uganda's own trajectory.

The study will keenly examine literature on the right to unfettered discourse to ensure that the fundamentality of this right is upheld, as opposed to its limitation. The paper shall also include analyses and criticisms raised for and against the limitation of the right, in a bid to arrive a viable balance of recommendations to accommodate the Uganda as a state.

## **Hypothesis**

The study is hinged upon the position that;

- a. There is an overwhelming increase in the use of the social networking services by people world over through posting all forms of content that is often frowned upon by the state and thus bears implications for the realization and enjoyment of the right to freedom of expression.
- b. Uganda's current laws governing unfettered discourse are ill-equipped to handle the social media phenomenon.

- c. Citizens' understanding of their right to unfettered discourse and the boundaries that define its scope and limitations remains nebulous.
- d. The Ugandan legislative arm should borrow knowledge from other jurisdictions in order to come up an improved set of laws on freedom of expression that embraces the technological advancement today.

### **Research**

- a. What are the existing laws in Uganda that regulate expressive liberty on the internet?
- b. In what ways has the right to unfettered discourse been infringed upon in Uganda in the wake of internet use through social media?
- c. What recommendations can be made to the state and the legislative arm of government to accommodate and safe guard online expression?

## CHAPTER TWO

### 2.0 Literature review

The digital realm is a cyber frontier where people wield the ability to interact and engage with others in unprecedented ways. (Lipshultz, 2000)

This definition is particularly significant to the social Networking Aspect of the internet, which this paper seeks to address. Indeed, this means of communication has ‘never been seen before,’ and therefore, how can our laws embrace this new creature of science.

The UN Report on liberty of thought asserts that cutting-edging technologies, particularly the internet, embody a fundamentally egalitarian ethos, bridging the information divide by furnishing citizens with a vast array of sources and facilitating their immersive engagement in the discursive process<sup>10</sup>.

Parallel to the advancement in social media use, the subject of freedom of expression on such avenues has increasingly been written about by various scholars and experts in the field of media law across the globe.

These articles have informed a large part of this paper, cognizant of the fact that the advancement in social media also poses a threat to the fundamental right of unfettered discourse.

Tiwari explores the intricate conundrum surrounding freedom of thought in the social media age. He characterizes social networking platforms as digital ecosystems

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<sup>10</sup> E/CN.4/1998/40:iic4

that facilitate the formation of online communication with shared interests. (Tuwarum 2014).

Social media diverges from print publications, such as magazines, and mainstream media outlets, like television broadcasting, in several key aspects, including scope, accessibility, interactivity, timeliness, and durability. (shirky, 2011).

Social media operates under a transmission system that links many sources and many users together hence the reference to it as dialogic. On the contrary, traditional media operates under a monologic transmission system, that is, from one source to many other. (Shirky, 2011).

Unfettered discourse is thus a core liberty and spine for other liberties.<sup>11</sup>. Tiwari extensively highlights the fundamentality of public discourse. With reliance upon the UN report on the promotion and protection of public discourse. This Report establishes the position that the internet has emerged as a vital platform for individuals to assert their liberties.<sup>12</sup>..

The acknowledgement of access to internet as a human is essential with regard to the Ugandan case and is relevant in analyzing the legality of State imposed social media shut down. Furthermore, it is essential that in a bid to formulate a legal framework in regulating social media, the right to internet access as stated above needs to be included in the laws. The Ugandan population and legislators generally

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<sup>11</sup> Regardless of Frontiers: The International Right to freedom of Expression in the Digital Age, Centre for Democracy and Technology [www.cdt.org](http://www.cdt.org)

<sup>12</sup> Report of the Special Rapporteur on Key Trends and Challenges to the Right of All individuals to seek Receive and Impart Information and Ideas of All Kinds through the Internet. 2011, UN General Assembly Doc. A/HRC/17/27. This Report is also available on the web, URL:<http://daccess-ddsny.un.org/doc/UNDOC/GEN/G11/132/01/PDF/G1113201.pdf?OpenElement>.

seem not to have fully appreciated the right to access to internet and its interplay with the right to unfettered discourse.

Steppe identifies four foundational pillars of unfettered discourse, namely, its crucial role in fostering individual dignity and personal growth, its function as a catalyst for uncovering truth, its intrinsic link to democratic governance and decision-making, and its capacity to promote social cohesion and stability. (Steppe, 2014-2015).

On the above basis, he goes ahead to expound upon the online applicability of the right under Article 10 of the European Convention on Human Rights (ECHR) and Article 10 of the ICCPR. I am inclined to agree with his argument that in spite of the fact that social media presents new challenges that were not present during the use of 'traditional media', there is no validation of treating expression channeled in such a way with less respect. Furthermore, freedom of expression on social media and the internet need be accorded even more protection due its ability to facilitate expression to large masses across borders. The shortcomings with Steppe's analysis of freedom of speech on the internet are principally due to the fact that he advocates for equal protection of traditional media and internet alike.

Steppe also makes mention of the fact that the right may be limited as set out under Articles 10 and 29 (3) of the ECHR and ICCPR respectively with respect to the three part test<sup>13</sup>.

On the contrary, emphasis is made that human rights doctrines protecting freedom of expression are fully applicable to the internet and that these doctrines should

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<sup>13</sup> Necessity test, to meet a pressing social need. Proportionality test, limitation should not be overbroad. Charles Onyango Obbo V AG

offer especially among protection to the medium, given its unique features<sup>14</sup>. This statement in my opinion seems to slightly depart from the view of Steppe by adding qualification to the ‘uniqueness of the internet’.

This same argument is re-echoed in the 2014 Report by Reporters without Borders, asserting that given the internet’s distinct attributes, regulatory measures and restrictions that might be considered suitable and proportionate for legacy media may be superfluous or misaligned in the digital age.<sup>15</sup> In that regard therefore, this begs the question on how far Uganda as a state embraced the uniqueness of the internet as a global platform that goes beyond jurisdictional borders.

The issue of defamation is thus central to this paper as it is often the basis for the imposition of legislative sanctions to regulate online free speech. Issues of immorality or obscene content being posted on online sources have also invited the Legislative arm’s intervention in a bid to counter instances of abuse of the right.

Bainbridge delineates a defamatory act as one that, upon dissemination, tarnishes a person’s stature in the perception of rational and discerning individuals. (Bainbridge, 2008). This paper shall also touch on other issues of pornographic content and touch on hate speech.

Jacobs aptly notes that discriminatory rhetoric encompasses a vast array of vitriolic utterances, spanning from odium and instigation to animosity, derogatory remarks, and egregious manifestations of bigotry and partiality. (Jacobs & Potter, 1998).

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<sup>14</sup> “Reporters without Boarders’ March 2010

<sup>15</sup>

The above-mentioned aspects are of significance with the example of 'TVO' who many Ugandans would agree that he is propagating such speech on his Facebook account. The challenge presented still goes to drawing the line between political expressions which is protected by law, versus illegal speech.

McGonagle recognizes the contextual variables such as the content, context, status and intent of the speaker, severity of the interference. He seems to highlight that there is no standard form considered in law when handling such cases and hence the continued tension between protecting a limiting the right (McGonagall).

This goes to show that discussion of the right to freedom of expression and the corresponding limitations, inevitably invites the exploration of the aspect of regulation or lack thereof, as well as the respective implications of each initiative. This presents the two extremes or possibilities on whether to regulate the right, or to leave it unregulated. The debacle, in my opinion, stems from the fact that freedom of speech encompasses not only favorably received content but extends to statements that may be perceived as offensive<sup>16</sup> as well as those criticizing the government<sup>17</sup>.

Price notes, its simple to lose sight of the overarching open speech landscape amidst the proliferation of such content. (Price & Verhuslst, 2004). In my opinion, this statement indicates the tendency of states to respect and uphold the exercise of unfettered public discourse in instances where it is safe.

Other scholars have advocated for striking a 'permissible and legal' balance between enjoyment of the right and its restriction. This would curb the problem of hate

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<sup>16</sup> Obershlick v Russia (1997) No. 2 ECHR

<sup>17</sup> AG V Clarke (2008) AHRLR 259

speech, posting of pornographic and ‘immoral ‘content, internet trolls, among others.

### **Towards regulation of online content**

According to Mackinnon, regulation connotes deliberate efforts by a government or any other organs to regulate or control what is being said or communicated over the internet especially with regard to freedom of expression.

Mackinnon posits that its crucial to examine whether the emergence of digital communication platforms, such as the internet, alters the rationale and methodology for safeguarding media liberties. She underscores that a definitive regulatory framework for online media remains to be crafted. (Mackinnon, Hickon, & Bar, 2014)

Edwards also notes the challenges with regulation revolve around the intricacies of international law, principle of Territoriality and state sovereignty. ISPs are the core of internet usage and control important digital evidence such as electronic communications, storage of data and customer information. With specific regard to Uganda, these are issues that are crucial and need to be considered by the state if at all Uganda is to adopt a legal form of regulation, up to date with international standards.

The aspect of internet Governance is also essential while analyzing internet freedoms. According to Bygrave, internet governance revolves around the ordering of whatever technical systems enable the operation of the global network of networks (the internet) as a platform for applications. He adds that there is no single

governor of the internet; it is rather governed by various bodies private and public, old and new. (Bygrave & Bing, 2009)

Kirunda further makes the argument it seems safe to assert that the future of internet governance lies in the conclusion of soft international law. In defining internet governance he makes mention that it includes policy considerations related to content and conduct.

He states that internet governance should be understood to include

‘all means by which the internet is operated, the rules governing its provision and uses, the ways in which technology evolves methods for enforcing local, national or international agreements regarding the internet and the process by which governance practices are established’ (Kirunda, 2010).

This brings to light the important aspect of internet governance due to the fact it bears heavily in the exercise of the right to expression. In my opinion, the aspect of internet governance is important for this paper because the right faces the risk of being censored in the process of limitation and exercise of internet governance models.

With an analysis of these authorities, there is repeated mention of international Law as being the most workable solution towards coming up with legal framework that can deal with the social media explosion. This, in my opinion, would be a step in the right direction even for Uganda.

Kakungulu handles the right to freedom of expression on the internet while recognizing that the later offers the widest platform for the interplay of fundamental rights including the right to privacy. We regard to the aspect of hate

speech, he makes mention of the implications of censorship on the fundamental right to freedom of expression. He notes that ‘...though originally lauded and praised as a medium of communication and the epitome of freedom of expression, the internet has produced increased tensions especially in relation to hate speech, defamation, indecent speech as well as pornography (Kakungulu 2008).

The above statement captures the vital issues that this paper seeks to address with regard to the exercise of the right, keeping in mind the possible facilities if the right is left inadequately clothed with legal banking, in the dawn of internet era.

In one breath, the research seeks to explore the right to freedom of expression online, its developments and possible way forward towards online regulation with keen attention to International law and its influence on the existing and future Ugandan laws.

## **CHAPTER THREE**

### **3.0 METHODOLOGY**

The study employed a two-in one approach, predominantly qualitative with quantitative elements. Data collection will focus on analyzing international law and principles governing unfettered discourse, particularly in the context of social media. The research will also draw on scholarly works and academic literature addressing the complexities of social media and unfettered discourse.

The study will adopt a descriptive-analytical approach, examining existing research and applying critical analysis to address the research questions, with a specific focus on the Ugandan context.

## CHAPTER FOUR

### 4.0 AN ANALYSIS OF UNFETTERED DISCOURSE IN UGANDA.

#### Introduction

Uganda's online sphere is witnessing swift expansion, fueled by an increasing population of internet users. The nation's telecommunications industry is flourishing, marked by extensive adoption of mobile and fixed-line services. This upward trend can be attributed to substantial investments in digital infrastructure from both public and private stakeholders, the widespread availability of budget-friendly mobile devices, and a steady decline in communication costs.<sup>18</sup>

Uganda has enacted legislations to enhance online security, curb cyber threats, and safeguard digital users. Nevertheless, critics argue that these laws inadvertently restrict digital liberties, compromise personal data, and impede citizen's expressive liberty.<sup>19</sup>

A CIPESA report highlights that despite Uganda's internet landscape flourishing in terms of accessibility and affordability, the actualization of digital rights remains fraught with obstacles and curtailments. Notably, there's a surge in repressive measures by both governmental and non-governmental entities, infringing on users' confidentiality and unfettered discourse. Furthermore, the report reveals that Uganda's government has intermittently restricted citizens' internet access, citing national security concerns, when faced with potentially destabilizing online content

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<sup>18</sup> UCC. Post. Broadcasting and Telecommunications Market and Industry Report, July-September 2016: [http://ucc.co.ug/files/downloads/Market\\_&\\_Industry\\_Report\\_for\\_Q3\\_July-September\\_J2016.pdf](http://ucc.co.ug/files/downloads/Market_&_Industry_Report_for_Q3_July-September_J2016.pdf).

<sup>19</sup> Cyber Crime and Social-Economic Development in Uganda: A legal Perspective.

an example is the 2016 polls when the net was shut down across the entire country.<sup>20</sup>

Henceforth, this chapter will examine the legal safeguards for unfettered discourse focus in Uganda, focusing on existing legislation governing online exercise of this right. It will assess the efficacy of Ugandan laws in protecting this right, drawing on international developments in media law to inform the analysis.

### **Constitutional provisions on expressive liberty.**

Expressive liberty is enshrined in various Ugandan and international statutes, underscoring its importance.

The ICCPR safeguards unfettered discourse under Article 19 encompassing the freedom to access, receive and disseminate information and ideas across various media platforms. Furthermore, the Covenant obligates State parties to uphold and protect the enumerated rights.

Uganda's supreme law, under Article 29(1) (a), guarantees expressive liberty, encompassing press liberty and other media outlets. Moreover, Article 41(1) also ensures citizen's mandate to access data held by the State and other entities, albeit with limitations to safeguard security of the nation and personal privacy.

### **The rationale for unfettered discourse.**

Open expression, enshrined in the ICCPR and the Ugandan Constitution, is of fundamentally importance. Given the emergence of new technologies and social

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<sup>20</sup> State of Internet Freedoms in Uganda 2016: Chartering patterns in the strategies of African Governments' Use to Stifle Citizens' Digital Rights.

media platforms on the internet, it is crucial that this right be upheld, irrespective of the medium of expression.

According to Human Rights Watch, democracy is fronted as an outstanding reason for the protection of unbridled speech. The Report emphasizes that unfettered discourse is an indicator of a democratic state that accommodates the views of the citizens, including those that critique the sitting government<sup>21</sup>. The position was also emphasized in *Maneka Gandhi V Union of India*<sup>22</sup> where the court held that in a democratic society, individuals should be free to hold diverse thoughts, and not be forced to conform to a single viewpoint.

The right is therefore a channel through which ideas and debates are developed and provides an avenue for marginalized groups to express their views.

In the case of *AG V Clarke*<sup>23</sup> underscored the pivotal role of expressive liberty, highlighting it as the cornerstone that supports all other liberties.

The capacity of unbridled speech is essential for exposing injustices, underscoring the necessity of safeguarding this right. According to Stuart (1859), unfettered discourse is justified because it enables individuals to access diverse perspectives and values. These perspectives collectively highlight the significance of protecting expressive liberty.

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<sup>21</sup> Human Rights Watch Report, 2012.

<sup>22</sup> 1978 India SC.

<sup>23</sup> *AG V Clarke*

### **Limitations on Unfettered discourse.**

The ICCPR provides for such limitations under Article 19(3) on grounds of protection of individual reputations, preservation of social well-being and upholding moral standards. Such limitations must be prescribed by law and be necessary in a democratic society.

Parallel to this the Ugandan Constitution has included similar limitations on the enjoyment of civil liberties under Article 43.

The case of Charles Onyango Obbo v Attorney General elaborately sets out the parameters for the limitation of rights<sup>24</sup>. The Supreme Court of Uganda noted that safeguarding expressive liberty requires balancing against competing interests that may justify restrictions and that restrictions on civil liberties must be justified, serve a legitimate purpose, conform to democratic values, and be clearly stipulated by law.

### **The Ugandan statutory law on expressive liberty.**

Pursuant to the above analysis of the right to unfettered discourse, an examination will now be conducted to assess the effectiveness of legal provisions governing this right.

### **The Computer Misuse Act 2011(CMA).**

The CMA is the primary legislation governing cybercrime.

The CMA, inter alia, provides for offensive communication under. According to Section 25 of the Act, deliberately using electronic means to harass or sabotage

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<sup>24</sup> Constitutional Petition No.1 of 2000.

another person's tranquility or privacy without a legitimate communication, constitutes a misdemeanor offense.

According to Baker Balikujja<sup>25</sup>, the burden of proof set out under the above section is high as it requires proof of three essential elements; willful communication thus establishing intention of the speaker, repeatedly and with no legitimate purpose. A Ugandan academic, Dr. Stella Nyanzi was recently charged under Section 25 on offensive communication and Section 24 that deals with Cyber Harassment was also invoked among the charges against Dr. Stella Nyanzi. She was apprehended for allegedly engaging in online abuse and uttering offensive remarks directed at the President<sup>26</sup>.

The CMA's breadth has been contested in the case of *Uganda v Nyakahuma*.<sup>27</sup>, with critics arguing it is overly broad. The defendant was accused of defaming the President by publishing false accusations online. A key issue in the case whether online posting constituted a publication. The judge held that the CMA's broad scope encompassed all online posts.

This goes to show that there is need to harmonize existing laws and ensure that they are not in conflict with internationally set standards of necessity and proportionality as enshrined in the Siracusa Principles<sup>28</sup>

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<sup>25</sup> Presentation on Cyber Laws, held at Makerere School of Law on 05/05/2017

<sup>34</sup> <https://www.ifex.org/uganda/2017/05/16/stella-nyanzi-released/> accessed on 3/06/2017.

<sup>27</sup> HCT-00.CR-MC-0001-2013)

<sup>28</sup> Siracusa Principles on the Limitation and Derogation Provisions in the ICCPR

### **Anti-Pornography Act 2014.**

Pornography can be defined as any depiction, through various media, including publications, displays, films, or digital technology, of any individual engaging in actual or simulated overtly sexual acts, or any portrayal of human genitalia aimed at arousing sexual desire.

Known colloquially as the “mini skirt law,” the pornography law has been interpreted expansively, leading to a disturbing trend where, shortly after the law’s enactment, people attempted to strip women wearing short skirts. This appears to contradict the Siracusa Principles which states that laws should avoid excessively broad restrictions that compromise the essential liberties<sup>29</sup>.

Particular to the internet, the display of nude photos which are often times leaked on social media sites and circulated has continued to present challenge with regard to enforceability of this Act.

Section 14 of the Act specifically deals with Child pornography. Subsection 2 notably states that the definition of pornography (as stated above) shall apply in determining the commission of the offence. Further, it agreeably problematic that the same threshold is used while imposing liability for pornographic material which may be published under print media or broad cast online.

Furthermore, Section 17 of the Act hods Internet Service Providers accountable for facilitating the transmission or retrieval of pornographic material through their platforms.

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<sup>38</sup> Para 17 of Siracusa Principles. Sunday Times v UK.

This particular provision is seemingly problematic because it does not align itself with many international standards that are leaning towards shielding Internet Service Providers from liability through availing various defenses as are to be discussed in the next two chapters.

### **The Penal Code Act (Cap 128)**

The Act criminalizes defamation under Chapter 17 and includes the defenses of absolute privilege<sup>30</sup> and conditional privilege. Under Section 179 of the Act, libel occurs when an individual disseminates defamatory content about another with the intention of damaging their reputation

However, the developments in Defamation law in the era of the Internet especially in the EU have embraced new defenses that delineate defamation on the Internet such mere conduit, caching and hosting. These are to be discussed in the next Chapter in a bid to inform the way forward for Uganda in the digital age.

### **The electronic transactions Act 2011**

The Act addresses the liability limitations for service providers, it outlines a notice-and-takedown procedure. This provision represents a forward-thinking approach to content regulation.

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<sup>30</sup> Provided for Under Sections 179, 183 and 184 of the Penal Code Act of Uganda, Cap 120. The law was drafted in 1950 and does not capture many of the advancements in communication and transmission of defamatory content over the Internet today.

### **The Uganda Communications Act, 2013**

The legislation designates the UCC as the governing body responsible for supervising online information. It is vested with authority to execute multiple roles, encompassing industry oversight, policy development, surveillance, permit issuance, regulatory enforcement, and sanctioning entities that fail to comply. Notably, while the law stipulates the formation of a communications Tribunal to resolve industry disputes, its inception is still awaited<sup>31</sup>.

This law has also granted UCC vast, unrestricted powers, which have resulted in the misuse of power, as UCC has overseen many acts that violate the right to unfettered discourse.

### **The test of anonymous freedoms in Uganda**

The detention of social media users has led to widespread self-restraint among citizens and activists, with some opting to conceal their identities online for example TVO on social media, is notorious for sharing government-critical content. This anonymous account has also attacked individuals like Muwema with serious allegation whose identity remains concealed even after the request to the social media platform to reveal it.

Online expression and disclosure of anonymous users 'identities raise complex questions, particularly when human rights are at stake. Notably, jurisdictions like the US have established that individuals have the right to maintain online anonymity, provided it isn't used to infringe on others' liberties. The case of

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<sup>31</sup> Part X of the UCC Act.

**McIntyre V Ohio** underscored the importance of anonymous online postings as a means of self-expression, highlighting an author's autonomy in choosing whether to reveal their identities.<sup>32</sup> Furthermore, court noted states that prosecution of users pursuant to their choice of anonymity occasioned a chilling effect and essence compromised his right to privacy interlinked with freedom of expression.

### **The right to unfettered discourse and privacy**

The right to unfettered discourse is intricately tied to the right to privacy, as guaranteed under Article 27. This Article protects individuals from unwarranted searches of themselves, their homes, or possessions, and any infringement upon their personal privacy, including their correspondence, communications, or property.

Allegations against the government for intercepting phone calls without authorizations have emerged overtime and some of the Ministers have acknowledged this.<sup>33</sup> Other allegations are that of Gamma International selling spyware to the government<sup>34</sup>.

### **Conclusion**

The challenges faced in the implementation of cyber laws revolve around the enforcement of these laws cognizant that there are limited local precedents on such issues on the Ugandan sphere presents a challenge to the judiciary as well. The lack

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<sup>32</sup> (1995) 514 US 334.

<sup>33</sup> Privacy International (2015) For God and My President: State Surveillance In Uganda

<sup>34</sup> Privacy, Anonymity and Security: My case for Iree Wi-fi in the city, <http://aicartech.com/privacy-anonymitysecurity-case-free-wi-fi-city/>

of awareness by the public about their rights and the laws in place to cater for cyber transaction also in my opinion, presents as a set back to the enforceability of cyber laws.

From the above discussion, it is clear that the various legislations evidence an attempt to accommodate the right to unfettered discourse on the internet. Certainty and clarity of the laws is a work in progress for Uganda in order to achieve a harmonious legal system that upholds rights of individuals as a whole.

## CHAPTER FIVE.

### 5.0 THE LEGAL CONCEPTIONS OF THE RIGHT TO UNFETTERED DISCOURSE IN THE UNITED KINGDOM.

#### Introduction

This chapter addresses the status of the right to unfettered discourse and speech in the United Kingdom.

#### The history and status of expressive liberty in Europe

The advocacy of the right to unfettered discourse dates from the ancient Greek times<sup>35</sup> and the UDHR, a core declaration on civil liberties. Adopted in 1948, the UDHR's Article 19 guarantees that all individuals are endowed with the autonomy to espouse opinions and convey their thoughts uninhibitedly, which encompasses the prerogative to harbor convictions sans external coercion and to procure, absorb, and propagate information and ideas via diverse platforms, unfettered by geographical constraints.<sup>36</sup>

Also, the ICCPR is another covenant on the same, providing that all individuals possess an inalienable prerogative to articulate their perspectives and convictions unencumbered, subject to judicious, legislatively-sanctioned constraints that safeguard collective security, civic decorum, communal well-being, moral integrity, and the entitlements and good names of others.

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<sup>35</sup> The magna carta is also referred to as the Great Charter. It was drafted in 1215 and is the foundation of evolving principles of human rights today

<sup>36</sup> Art. 19 Universal Declaration of Human Rights of 10 December 1948, [www.un.org/en/documents/udhr](http://www.un.org/en/documents/udhr)

### **Prevailing EU legislations.**

The European Convention on Human Rights (ECHR), a landmark treaty governing European nations, provides analogous safeguards for human rights, the Conventions guarantees civil liberties, stipulating that individuals have the liberty to espouse opinions, access information, and disseminate ideas without undue influence from governmental bodies, transcending geographical boundaries. Furthermore, this provision does not preclude states from regulating licensing requirements for broadcast, television, or film enterprise.

When juxtaposing the ICCPR's safeguards for civil expression with those enshrined in the ECHR, Mason observes that the ECHR has embraced a more expansive view advocating for a proactive approach to information dissemination in the media landscape, encompassing unfettered access to information (A. Mason, 2000).

### **Treaty limits**

Similar to the ICCPR, the ECHR also acknowledges that the right to unfettered discourse is not an unbridled right. According to its Article 10, the exercise of this freedom may be subjected to certain stipulations, prerequisites, limitations, or sanctions that are codified in law and essential for maintain democratic values.

### **Online applicability of article 10**

Article 10 of the ECHR encompasses a wide array of communicative acts, including the transmission and dissemination of data, thoughts and viewpoints, via various conduits and for a. This provision has been expansively interpreted to compromise online liberties, notably the unfettered discourse such as social networking.

The civil liberties instruments affirm that the liberty to express, inform, and communicate should be upheld in both virtual and physical realms, and ought to not be curtailed beyond limitations outlined in Article 10 of the ECHR, merely because the mode of communication is digital<sup>37</sup>.

**The principle of national leeway.**

This principle allows states a degree of flexibility in interpreting civil liberties, acknowledging that cultural, historical, and societal differences may justify varying approaches. This principle was upheld in the of case of **Autronic v AG**.

This underscores the notion that moral standards for information restriction diverge significantly across nations, thereby exacerbating the complexities inherent to the internet's borderless nature, which operates beyond the purview of singular national

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<sup>37</sup> COM/2005/56 final.

## **Legal framework on expressive liberty in the United Kingdom (UK)**

Steppe emphasizes that the internet has emerged as a vital tool for citizens and activists. However, he cautions that this increased reliance on the internet has also heightened its vulnerability to exploitation (Steppe, 2014-2015).

The UK has over time, adopted various legislative frameworks in order to regulate internet use and provide for the parameters that legitimize the interference with unfettered discourse. With regard to online defamation, Bainbridge notes that the legislative mechanisms often seek to impose liability on either the website operator, social network service provider, Internet service Providers and the ‘author of the post.’ (Bainbridge, 2008)

The UK Human Rights Act 1998 implements the principles laid down in the ECHR including unfettered discourse.

The UK Defamation Act 2013 delineates the law relating to defamation in the UK today. Critics contend that this Act imperils core liberties. They argue that the legislation creates a loophole that enables corporations and individuals to intimidate critics into silence by threatening libel suits or seeking injunctive relief (Mackinnon, Hickon, & Bar, 2014).

In the *Oberschlick v Russia* case, the bench acknowledged that unfettered discourse extends beyond popular or well-received opinions, also safeguarding information and ideas that may be deemed provocative, unsettling, or objectionable by the state or segments of the public.<sup>38</sup> This same view was upheld by the European Court of Human Rights in its interpretation of expressive liberty.<sup>39</sup> .

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<sup>38</sup> (2011) EWHC 75 (QB)

<sup>39</sup> *Handyside V UK* 7 December 1976, Series A no. 173

Thus, the reliance on injunctions and arbitrary imposition of limitations on the right to unfettered discourse gravely threatens the freedom.

### **The EC rules on electronic commerce**

The directives were adopted in the year 2000 in a bid to provide legal certainty for business, consumers, online service providers, and contracts inter alia. The E-Commerce directives establish defenses for Intermediaries that shield them from liability for user generated content, subject to meeting certain qualifications set out therein<sup>40</sup>. The breadth and applicability of the defenses differ depending on the specific activity in question.<sup>41</sup> The directives have faced legal challenges due to critics' concerns over their ambiguities.

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<sup>40</sup> European Parliament and the Council of the European Union. 8 June 2000. Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').

<sup>41</sup> Articles 12, 13 and 14.

### **Online pornography**

Bainbridge points out that the internet has opened up unparalleled opportunities for individuals with aberrant sexual interests to access and consume large volumes of explicit material. Much of this content pushes beyond the limits of what is considered tolerable in many societies, even those with liberal attitudes. (Bainbridge, 2008).

### **The obscene publications Act 1959 of the United Kingdom**

The Obscene Publications Act 1959, renders an article obscene if its impact is likely to pervert or debase individuals who are probable to access it. It proscribes the dissemination or intended dissemination of obscene articles for pecuniary benefit, encompassing digital transmissions.

### **The protection of children's Act 1978 of United Kingdom.**

This Act proscribes the production, dissemination, or possession with intent to circulate indecent visual depictions or pseudo-depictions of juveniles. Furthermore, promulgating advertisements that imply distribution or display of such material is also a punishable offense.

In *R v Fellows*<sup>42</sup>, the defendant was found with explicit child images which he also disseminated online. The bench dismissed the defendant's contention that digital data did not constitute a photograph. Court reasoned that law makers could not have anticipated the storage and global transmission of digital images when the legislation was enacted.

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<sup>42</sup> (1997) 1 Cr App R 244.

### **Criminal justice Act 1988 of the United Kingdom**

This Act uniquely provides for possible defenses to liability with regard to pornographic material. This is unlike the Ugandan Anti-Pornography Act which is broad, hence the higher likelihood of violations.

Section 160(2) affords a defense for individuals charged with juvenile pornography if they can substantiate a justifiable rationale for possessing the image, ignorance of the content, having neither viewed nor inferred its nature, or unsolicited receipt of the material, which was not retained for an inordinate duration.

The above provisions of the various laws in the United Kingdom demonstrate an attempt by the legislators in United Kingdom to create a more precise and clearer law with regard to online pornography, compared to Uganda's overly broad Anti-Pornography Act, as discussed in the previous chapter.

### **Freedom of expression and privacy**

Lord Lester posits that privacy is an elemental human entitlement, underpinned by the concept that individuals necessitate a realm of self-determination, insulated from gratuitous interference by the state and extraneous entities.<sup>43</sup>

The European Court, in *Von Hannover V Germany*<sup>44</sup>, underscored the imperative of reconciling the dichotomy between expressive liberty and the right to seclusion. Court further decreed that limitations on expression or information, ostensibly aimed at

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<sup>43</sup> *Human Rights Law and Practice*, 2004.

<sup>44</sup> (2005)40 EHRR.

shielding someone's reputation, must possess a bona fide objective and palpable impact in protecting a legitimate concern.

The interplay between privacy and freedom of expression is evident in various of anonymous or pseudonym users. In agreement with Kaminski, anonymity has been recognized as a unique aspect of digital that may pose challenges in instances where an anonymous user posts illegal content (Kaminski, 2013).

States often require service providers and Social Networking Services to release of an individual's real identity in such instances and often occasion a breach of the right to seclusion due to the procedure and justifications that invite such disclosure.

In *Van Hulst V Netherlands*<sup>45</sup>, the committee discerned that any legislation purportedly infringing upon the right to seclusion must satisfy that a legitimate objective must be pursued, a reasonable nexus must exist between the measure and the objective, the right to seclusion must be impaired to the least extent possible, and a judicious equilibrium must be struck between the objective and the right.

### **Self-regulation**

Mackinnon adds that states in the EU have adopted self-regulation as an alternative to the traditional regulatory action.

In the UK, self-regulatory bodies corroborate with the government to determine which online content warrants blocking. This means that non-governmental bodies for the good and harmony of society can decide to self-regulate themselves as long as they do not go overboard in doing so.

The above analysis of internet laws in the EU and the approaches the states have adopted in handling online speech depicts a much more progressive approach in comparison with Uganda.

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<sup>45</sup> (2004) 12 IHRR 309.

## **CHAPTER SIX.**

### **6.0 LESSONS FOR UGANDA FROM THE UNITED KINGDOM.**

#### **Introduction**

This chapter is informed by the various approaches adopted from the jurisdictions of Europe as well as the experiences with regard to online freedom of expression and its regulation.

A comparative analysis shall be adopted in this chapter to inform lessons Uganda can draw therefrom in order to further the realization of the right to freedom of expression as a State.

#### **Lessons from the United Kingdom**

From the preceding chapters, with special emphasis on Chapter two, it can well be seen that the Ugandan case law on the subject of freedom of expression is extremely limited, compared to states in Europe .This extends even to many other African jurisdictions and up till the regional body of the African Charter on Human and Peoples' Rights.

This goes to show that the awareness of the right to freedom of expression and its online applicability is still lacking in Uganda hence the need for sensitization of the people about their rights, the extent to which the right can be exercised and most importantly, the available legal remedies in the face of violation of the right

#### **Statutory legislation**

The prominent law in Uganda as the Computer Misuse Act 2011 is too broad and deals with restrictions to freedom of expression in a<sup>37</sup> general and broad way. In my opinion,

an outstanding example is under Section 25 of the Act on offensive communication is broadly used and can give room for curtailing the right to freedom of expression. It also blurs the line between illegal and harmful communications on one hand, and such communication that is legal in the form of criticism or merely suspicious. Parallel to this, room is left for violation of principles of proportionality and necessity as set

out under the European Convention as well as the Siracusa Principles are likely to be by passed. McGonagle argues that states must delineate the distinctions between hate speeches for example, as illegal content, and offensive speech as whole. People do not have the right not to be offended in a democratic society, they only have a right not to be harmed or tortured. He further adds that statutory legislation need be in conformity with the limitation parameters set out in the Siracusa principles such as the requirement for the law to be clear and precise to enable the concerned subjects adjust their conduct. (McGonagle)

### **Pornography and obscenity**

Uganda has broadly addressed the subject of pornography accessed online by both adults and children. The Ugandan law that makes mention of online pornography exists in the Anti - Pornography Act 2014. The Act generally deals with both print media and the internet accessed by adults and children. This is particularly challenging because the laws that regulate print media are not applied in equal measure to the internet which is a broader form of communication. Additionally, the blanket limitation on such content does not address the subjective nature of what amounts to pornography. In my opinion, the broad provision of adult and child pornography resonates with the Justice Stewart's broad characterization of

pornography in the 1964 case of *Jacobellis V Ohio*<sup>46</sup>. He simply stated that he could not use words to describe pornography but ‘/ *know it when I see it*’. In light of Justice Stewart’s statement, Vogel notes that social media is transforming and the laws need be clear and accurate (Vogel, 2010)

Section 17 imposes liability on Internet Service Providers who permit pornography to be uploaded through its services. The United Kingdom on the other hand, has been more progressive towards the subject of regulation of online obscenity by enacting laws that are strictly specific to child pornography such as the Protection of Children Act as discussed in Chapter Three, among others. These laws are specific to internet pornography with respect to children. In my opinion this would be a better approach to deal with such limitations and are in line with the proportionality test and gives the adult users of internet a choice in access to content<sup>47</sup>.

### **Hate Speech law**

Hate Speech in Uganda is covered in abstract terms such as threatening violence .The Article 19 Toolkit notes that the definition of hate speech worldwide carries with it a lot of vagueness (Article 19, 2015). It advocates for availability of specific provisions on hate speech in National Constitutions and legislations in order to curtail abuse of right by censoring content produced by critics on grounds that it amounts to hate speech.

### **Internet service providers**

Uganda, on the other hand, has been credited for addressing the ‘subject of Internet Service Provider through the various legislations discussed under Chapter two. However, Ugandan law does not clearly address issues concerning liability of such ISPs

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<sup>46</sup> 1964 (No.11)378 US 184

<sup>47</sup> Government restriction should not be permitted if a less restrictive alternative would serve the same goal while respecting other values.

as compared to the laws such as the UK Defamation Act that deals directly with defamation and the concept of publisher versus distributor of such content as well as the available defences, as discussed under Chapter 3.

### **Filtering systems.**

In comparison with filtering systems that have been adopted in the EU, Uganda has not substantively embraced the concept of use of filters to restrict access to certain content by certain groups of people. The state still adopts an approach of direct regulation through laws. The aspect of state exerting pressure on online sites has well been evidenced through the 2016 media shut down during the election period. The option of filtering content deemed by the state to ‘threaten peace’ could have been adopted as opposed to completely shutting down the internet access which imposes a greater restriction on the right to freedom of expression and access to information. The proponents of filtering argue that it curbs the challenge of imposing a chilling effect in the rights, as was seen in Uganda during that time.

### **Self-Regulation.**

The previous chapters indicate that the EU has also embraced self-regulation as a complimentary means to handle online content.

EU in particular has adopted Co-regulation model that involves both the state and private companies such as ISPs working together in order to further the right to freedom of expression online.

### **Limitations on the right**

The Ugandan Constitution provides for the limitations on freedom of expression under Article 43 of the Constitution. In my opinion, the omission of the requirement that the limitation on the rights must be prescribed by law leaves a lot of room for infringement and violation of human rights especially by State authorities<sup>48</sup>.

On the contrary, the EU system for example under the European convention expressly caters that the limitation on the right must be prescribed by law. This requirement is of fundamental importance to the protection of human rights and specifically freedom of expression because it is the cornerstone of all other rights and an indicator of democracy in a State. (*Sunday Times v United Kingdom*, 1979-1980)

### **Role of the judiciary**

An analysis of the approach adopted by the EU reveals that the judiciary is more active basing on the case law that has been discussed in the previous chapters such as the *Delfi case*.<sup>49</sup> The role of the judiciary in enforcement of laws and protection of fundamental rights such as freedom of expression cannot be over emphasized. Ugandan jurisprudence on the whole is still lacking and there is need for judicial activism, in the wake of internet and the implications there in.

<sup>48</sup> Charles Onyango Obbo V AG.

<sup>49</sup> *Supra*, Note 43.

### **Jurisdictional challenges**

Jurisdiction challenges enforcement arises due to the complexities of applying differing national laws and regulations to online content that transcends borders, creating conflicts and inconsistencies in enforcement and interpretation. An example is **Yahoo v France**, the French court ordered Yahoo to block French users from accessing Nazi memorabilia auctions on its US website, raising questions about the applicability of French laws to US-based online content.

In wrapping up this chapter, the lessons learnt from other jurisdictions depict their respective human rights situation measured against the Ugandan situation and thus delineating some areas for reform, to be discussed in the concluding chapter.

## CHAPTER SEVEN.

### CONCLUSION AND RECOMMENDATIONS.

#### **7.0 Introduction**

This chapter seeks to offer a conclusion, while summarizing the discussion on online freedom of expression. Lastly, the recommendations for improvement of the right in Uganda shall sum up the dissertation. The recommendations are drawn mostly from the lessons and experience both in and out of Uganda.

#### **Conclusion**

The Internet is indeed a propellant of free speech and has thus greatly eased communication and the transmission of data across borders. Nonetheless, unfettered discourse in Uganda is still a challenge with regard to user generated content on political matters.

In Uganda, the government has employed both legislative and extra legislative measures to restrict online liberties. Various statutes have been enacted to constrain press liberties, often seemingly aimed at silencing critics of the administration. Non-statutory tactics, including social media shutdowns and directives for media personalities to cease appearing on specific programs, have been contested in courts, highlighting the tension between governmental control and digital rights.

Notably, there is an outstanding difference with regard to the enjoyment of the right in Uganda, measured against other states in Europe and the United States. The lessons derived therefrom depict the dire need for revision of the some of the laws that

regulate traditional media as they do not adequately accommodate the new trends and challenges present by the vast and borderless Internet.

The 2025 Kawempe by elections exposed the vulnerability of unfettered discourse, as evidenced by the assaults of journalists, purportedly on national security grounds. In my view, this measure constituted an excessively broad and disproportionate restrictions. Limitations on public discourse should be narrowly tailored to address genuine national security threats, rather than being based on speculative or perceived threats.

Parallel to this, the case of *Fred Muwema V Facebook*<sup>50</sup> and Ireland brought to light the increasing challenges on regulation of illegal and/or defamatory content by an anonymous user. However, the Irish court is yet to grant the Norwich Pharmacal order to reveal his identity. Although yet to succeed, the government has put up efforts to uncover the true identity of TVO, bears semblance with the United Kingdom search for *Wikileaks* founder, Julian Assange who was forced to seek refuge in the Ecuadorian Embassy premises in London<sup>51</sup>.

The tension between online freedom of expression and State has yet again presented itself with regard to the comments of Dr. Stella Nyanzi<sup>52</sup>. Her statements posted on her face book account against the President of Uganda, H.E Yoweri Kaguta Museveni and the first the lady, to whom she referred to as a pair of buttocks. The content posted has invited legal action that led to her arrest in April 2017. The State awaits the

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<sup>50</sup> (2016) IEHC519.

<sup>51</sup> 2016) IEHC519

<sup>52</sup> Academic at Makerere Institute of Social Research.

decision of the court as it addresses the charges of cyber harassment<sup>53</sup> and offensive communication<sup>54</sup> under the Computer Misuse Act.

In conclusion, the need for a uniform International instrument specifically addressing human rights on the internet would progressively provide for the increasing challenges that social media presents and are not aptly catered for in laws most aligned towards print and broadcast media.

### **Recommendations**

In view of international developments on unfettered discourse and the limitations contained in various International Instruments cited in this dissertation, Uganda should draw knowledge from such jurisprudence to further the comprehensive observance of public discourse.

The law makers, while enacting, revising and updating the laws relating to online freedom of expression, should adopt a human rights-based approach. They should bear in the mind the essentiality of individual human rights as opposed to the limitations. In line with the court in *Rev. Fr. Mtikila v AG*, it is indeed the fundamental rights that are fundamental and not the limitations<sup>55</sup>. Henceforth, in the age of social media evolution and the new doors it opens for free speech, along with the challenges it presents with regard to regulation. The law should not be looked at as black letter or in a positivist and rigid manner, instead a generous interpretation should be adopted to ensure full

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<sup>53</sup> Section 24 of Computer Misuse Act 2011.

<sup>54</sup> Section 25 of the Computer Misuse Act 2011.

<sup>55</sup> Civil Case No.5 of 1993(High Court of Tanzania).

benefit of the rights, rather than restriction of the rights there is thus need to streamline the basic principles governing human rights with specific regard to freedom of expression on the internet.

Uganda should reconsider legislation that restricts online liberties and instead enact forward-thinking laws that facilitate secure and unrestricted internet access, thereby promoting a more open digital environment.

The government ought to bolster investments in digital infrastructures and associated technologies to enhance accessibility of information and make internet services more affordable for Ugandan citizens.

Organizations ought to champion the protection of online liberties among government, internet service providers, and the general public through targeted sensitization campaigns on digital rights issues

There is also need for increased awareness and sensitization of the public on issues of Human Rights and Freedom of expression. Ugandans who are aware of their human rights are in better position to advocate for their rights and interests and to speak or take legal action in instances of human rights violations.

In light of the fact that many of the Internet Service Providers in Uganda are private Companies and foreign based, Uganda should adopt a co-regulation mechanism. In effect, the state is able to play a supervisory role over the operation and policies of private entities and address situations where human rights violations may occur with specific regard to their notice and take down mechanisms hence checking on monopolistic abuse of power.

Additionally, the State through regulatory bodies will be in better position to monitor the terms and conditions invoked by the private companies and other internet service providers to ensure that they meet International Human Rights standards. In effect, this would check the problem of Internet censorship disguised under Internet Regulation.

Content moderation frameworks enable users to flag disturbing online material, prompting the service providers to swiftly take down the offending content following receipt of a valid complaint.

The use of filters as a self-regulatory mechanism can go a long way at balancing instances where limitations on rights are too broad and disproportionate. Filters have been adopted in the US and Europe. For example, the Anti-Pornography Act presents as an overbroad limitation and the same goals can be achieved by encouraging filtering of content to protect children below 18 years who may access adult content on websites.

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