



ARTICLE 19

GLOBAL CAMPAIGN FOR FREE EXPRESSION

Freedom Subject to Licence

**Attempts to licence journalists in
Uganda, Zambia and other
Commonwealth African countries**

ARTICLE 19

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We don't want people to wake up and just become journalists when the role they play is vital in society. The issue of controlling the press is secondary to us.

Eriya Kategaya, Chairman of the Cabinet Sub-committee on the Press, Uganda,
The New Vision (Kampala), 21 April 1995.

It has been argued that what the compulsory licensing of journalists seeks to achieve is to protect a paid occupation and that it is not directed against the exercise of freedom of expression... This argument is based on a distinction between professional journalism and the exercise of freedom of expression that the court cannot accept... The practice of professional journalism cannot be differentiated from freedom of expression. On the contrary, both are obviously intertwined, for the professional journalist is not, nor can he be, anything but someone who has decided to exercise freedom of expression in a continuous, regular and paid manner.

Compulsory membership in an association prescribed by law for the practice of journalism,
Judgment of the Inter-American Court of Human Rights,
[1986] HRLJ, Vol.7, No. 1 at para 75.

The debates over the Police and Criminal Evidence Act [in the UK] raised the issue of principle as to whether journalists should claim *special* protection from the normal process of the law. Although such protection was initially sought by media organizations, *many of their members subsequently changed their minds when it became apparent that the special treatment awarded them in the Act would necessarily involve the courts in defining 'journalism' and in operating a special regime that would accord to practitioners favoured treatment by comparison with ordinary citizens.* The special status offered by the Act infringes the principle that journalism is not a profession, but an exercise by occupation of the citizen's right to freedom of expression. In retrospect, the media organizations (such as the Guild of British Newspaper Editors) who supported the Government's offer of 'special protection' for journalists fell into an obvious trap, and damaged their members interests. Prior to the 1984 statute, police had not been granted access to untransmitted material at common law. But once a *statutory route* for obtaining that material came into existence, albeit with 'special protections' the police naturally exploited it and courts naturally decided that the protection was not very special after all. [Italics added].

G.Robertson and A. Nicol, *Media Law*,
3rd ed., Penguin, 1992, p. 207.

Principle is indivisible, and we try to divide it at our peril. When we compromise our freedom because we think our immediate goals more important, we are likely to find that the power to exploit the compromise is not in our hands after all.

Ronald Dworkin, "A New Map of Censorship",
Index on Censorship 23, May/June 1994, 9-15.

We wish to reiterate the united and common stand of the Zambian media practitioners of our total rejection of this obnoxious bill and that there is nothing to

debate regarding the draft bill which must be consigned to the rubbish bin of history. This stand is non-negotiable; there is no debate about a bad law.

Robby Makayi, Chairman of the Media Liaison Committee,
Statement issued on 14 April; IFEX Alert (MISA), 16 April 1997.

What is the fancy about writing as an accredited journalist? That is not at all an attraction that any journalist will surrender his rights for.

Bright Mwape, Vice Chairman of the Zambia Independent Media Association,
The Post (Lusaka), 9 April 1997.

1 INTRODUCTION

On 16 July 1995, Uganda enacted one of the most restrictive laws on freedom of expression ever to be passed in a Commonwealth country. Since the passing in Uganda of the **Press and Journalist Statute, 1995**, five other Commonwealth African countries - Tanzania, Kenya, Zambia, Botswana and Swaziland - have attempted to introduce similar legislation.

Although a number of criminal laws used against journalists, particularly those permitting detention without trial, may be considered to be more repressive in general - as they violate not only the right to freedom expression but also the right to personal liberty and security which in turn creates a climate of self-censorship - the Press and Journalist Statute of Uganda, which effectively bans from the outset all citizens from “gathering, processing, publishing or disseminating information” for payment with the exception of a handful of “licensed journalists” - who themselves may be “suspended” under the Statute for “misconduct” by a government-appointed body - represents a far more effective means of repressing public expression.

The Press and Journalist Statute, 1995 establishes a Media Council charged with the licensing and discipline of “journalists”. Under the Statute any person who “is paid for the gathering, processing, publication or dissemination of information” is deemed to practice journalism and is guilty of an offence liable to imprisonment, unless that person is in the possession of a licence. In addition to the absurdly broad definition of a “journalist”, the Statute imposes highly restrictive educational qualifications as a prerequisite for eligibility for a licence. This is so to the extent that, out of a population of over 20 million, only around 70 Ugandans qualify as of right for a licence, with a further 105 having been “recommended” for a form of discretionary membership, which is reviewable on an annual basis. The Media Council, which oversees the licensing of journalists and whose members are appointed by the Minister of Information, is granted the additional power under the Statute to suspend “journalists” found to be in breach of a government-drafted “code of ethics”.

The response of the international community to the passing of the Ugandan Statute, and the drafting of the Bill which preceded it, was to say the least muted. The human rights situation in Uganda, since President Museveni came to power in January 1986 has, in many respects, improved dramatically. It now compares favourably with a number of countries in Africa. This has inevitably meant that

eyes have been focused elsewhere and partly explains the “hands-off” approach adopted by donors towards Uganda over the past 10 years.

It can be no coincidence that, following the successful enactment of the Ugandan Statute in 1995, at least five other Commonwealth African countries have attempted to introduce Media Council legislation strongly resembling that of the Press and Journalist Statute. Opposition voiced by the international community to Bills drafted in Tanzania, Kenya, Zambia, Botswana and, most recently, Swaziland has played a significant part in the shelving of those proposals.

Also fundamental in determining the fate of such Bills has been the reaction of the journalists and civil society groups within the country concerned. Chapters 2 and 3 of this report contrast the response leading up to the passing of the Press and Journalist Statute in Uganda, and to the total withdrawal of the Media Council Bill in Zambia. In Zambia, the rejection of the Bill by journalists was immediate, unequivocal, unrelenting and unanimous. The “non-negotiable” stand taken by Zambian journalists was, furthermore, supported by local human rights groups, law societies, trade unions and the Church as well as by members of the general public. In Uganda, opposition to draft legislation took a different form. The majority of Ugandan journalists did not call for total withdrawal of the Bill but elected instead to “negotiate” with the Government - primarily through representatives from the two main journalists’ associations - as to the content of the Bill. Unfortunately, as is further elaborated in Chapter 2, little improvement on the 1994 Bill was achieved by this process.

The comparison drawn in this report between the experience in Uganda and Zambia is not meant as a criticism of Ugandan journalists. It is acknowledged that journalists toiled hard to negotiate as good a deal as they believed possible at that time in Uganda. Rather, the case studies serve as an illustration of alternative approaches to be considered by journalists and civil society groups facing repressive legislation now or in the future.

Despite the opposition by the international community to later attempts by African governments to introduce laws similar to the Ugandan Press and Journalist Statute, the Ugandan Statute itself continues to be overlooked. This may be explained in part by the fact that the Statute has not yet been fully implemented. No person has yet been prosecuted under the Act for “practising journalism” without a licence nor has any “journalist” been disciplined by the government-appointed Media Council. Licences have, in fact, yet to be issued. Notwithstanding the present non-enforcement of the Press and Journalist Statute, the Ugandan Government has refused to repeal the legislation and has defended it in court,

describing a constitutional application brought by journalists - which alleged that the law was contrary to Uganda's Bill of Rights - as "frivolous and vexatious".

The only other Commonwealth country to have succeeded in introducing a law similar to the Ugandan Statute is Nigeria, which did so by Military Decree in 1992. It may be noted, however, that the Nigerian Press Council Decree compares favourably to its Ugandan counterpart in a number of respects.¹ Like the Ugandan Statute, the Nigerian Decree, promulgated in 1992, has yet to be fully implemented. Nevertheless, after five years of dormancy in respect of the provisions concerning registration, moves to license journalists and enforce fully the Nigerian Decree commenced in 1997.

It should not be overlooked that, as long as the Press and Journalist Statute remains on the Ugandan statute book, there is no guarantee that the NRM, or indeed any future government, will not resurrect this law. Such a move would be most likely to occur at a time when there is deterioration in the relationship between the state and the press. ARTICLE 19 believes that the international community should not wait until such an occurrence before calling on the Ugandan Government to repeal this statute.

A brief outline of attempts by other Commonwealth African countries to introduce laws akin to the Ugandan Statute, as well as the experience in Nigeria, is contained in Chapter 4 of this report. In Tanzania, a forgotten provision of the Newspaper Act of Zanzibar, 1988 was suddenly resurrected in 1997 amid the reporting of political unrest on the island. This provision sanctions the licensing of journalists filing stories from Zanzibar.² On the positive side, journalists in Tanzania (as a whole) thwarted an attempt by the Government in 1995 to introduce a statutory media council and successfully established an independent non-statutory body, which received and settled its first complaints lodged against the press in 1997.³

In January 1996, the Kenyan Government, embarrassed by revelations that it had drafted a Media Council Bill on the side, prior to recommendations being made by the "Task Force on Press Law" - which the Government had itself set up to examine the issue of media legislation - was forced to withdraw its "unpublished" Bill. After four and a half years, since it was inaugurated in 1993, the Task Force was finally instructed by the Attorney General in April 1998 to

¹ See section on Nigeria under Chapter 4.

² No minimum educational qualifications are, however, stipulated within the Newspaper Act of Zanzibar.

³ The Press in Zambia has likewise set-up non-statutory media councils (see Chapter 3).

submit its report “by the end of the month”. The Attorney General’s instruction came amid reports of a crackdown on “irresponsible publications”.

In Botswana, the Government, which has prided itself on its country’s reputation as a long-standing democracy, quickly caved into local and international pressure to abandon its attempt in 1997 to legislate a media council. In Swaziland, during that same year, however, the Media Council Bill of Swaziland was referred by Parliament to a select committee which recommended in April 1998, that “Government and Journalists” should “establish” a “self regulatory” media council. Worryingly, the situation in Swaziland has begun to resemble most closely that of Uganda prior to the passing of the Press and Journalist Statute. The Select Committee recommendations would seem to imply that a *statutory* Media Council may be set up.

A Media Council whose regulations are compulsorily drawn up partly by government cannot claim to be truly “self-regulatory”. This is more so the case where the regulations must be approved by Parliament - with possible amendments during the eleventh hour - and passed into law. The act of establishing a Media Council by law quite simply and undisputedly brings the body under the control of the state. Such a body cannot be regarded as self-regulatory and this remains the case even if the members of the Council themselves are seen as “independent”. Although the Attorney General of Kenya has been reported recently as saying that journalism should be “self-regulating”, it also remains to be seen, once the Task Force on Press Law has submitted its recommendations, whether the Kenyan Government will make a second attempt to legislate a media council.

ARTICLE 19 calls on the governments of Kenya and Swaziland to refrain from introducing “Media Councils” by statute, and to allow journalists in their respective countries to set up voluntary independent self-regulatory mechanisms - as has been achieved successfully in Tanzania and Zambia - to regulate their own profession.

The wider implications of a fully implemented Press and Journalist Statute are examined in Chapter 5 of this report. By severely restricting access to the practice of journalism via educational qualifications, the Statute will inevitably curtail rural newspapers and reporters. Not only will this restrict coverage of the conflicts in the north and west of Uganda, but also halt recent moves by the Ugandan press - which in common with the press of other African countries has traditionally suffered from an urban-elite bias - towards a more pluralistic, and financially-secure, independent

Press. Prior to the passing of the Press and Journalist Statute and despite a government-imposed advertising ban, the independent daily, *The Monitor* more than doubled its circulation by introducing an “upcountry section” for which rural Ugandans, paid on a stringer basis, were encouraged to write and send in reports about events and issues affecting their region. Given that around 90 per cent of Ugandans live in rural areas, and in the absence of a multiparty arrangement with severe restrictions placed on freedom of assembly and association, the popularity of the “upcountry section” - which over the last few years has increased from two to four pages - is not surprising. Once the registration provisions of the Press and Journalist Statute are fully implemented, most - if not all - of these “rural correspondents” will commit an offence liable to imprisonment if they continue to file stories.

In May 1997, the Uganda Journalists Safety Committee (UJSC) filed an application to the Constitutional Court of Uganda challenging the validity of the Press and Journalist Statute against the Constitution’s Bill of Rights. The application was struck out in December 1997 on a number of procedural technicalities before the substance of case could be examined. In reaching decisions on procedural matters in constitutional rights cases, the Constitutional Court relies on two sets of “enforcement rules” drawn up by the Chief Justice of Uganda: the **Rules of the Constitutional Court (Petitions for Declarations under article 137 of the Constitution) Directions 1996** for cases brought directly by way of petition and **The Interpretation of the Constitution (Procedure) Rules 1992 (Modification) Directions, 1996** for cases which have been referred to the Constitutional Court by another court.

ARTICLE 19 is of the opinion that many of the provisions of these “enforcement rules” are in themselves incompatible with the spirit and purpose of the Ugandan Constitution, as well as international standards on constitutional rights procedure.⁴ They create a procedural minefield deterring individuals from seeking the protection of the court where their fundamental rights are at stake.⁵ “A person who alleges that his fundamental rights are threatened should have *unhindered* access to the... court”.⁶ “The decision on such an application must...

⁴ One of the rules provides, for example, that no constitutional petition may be lodged more than 30 days after an alleged violation. Section 50(4) of the Uganda Constitution, 1995 stipulates that “*Parliament shall make laws for the enforcement of the rights and freedoms under this [Fundamental Rights] Chapter.*” Even if these enforcement rules were passed as a “law”, they would still be invalid to the extent of their inconsistency with the “Supreme law” of the Constitution.

⁵ Where Constitutional petitions have been thrown out on technicalities in Uganda, applicants have had not only to pay their own legal costs but also those of the State.

⁶ *Jaundoo v. Attorney General*, Judgment of the Privy Council, (1971) AC 972 (PC).

depend on the substance and merits of the application and not on a procedural technicality.”⁷ “The matter should proceed to trial on the merits unless it does not disclose a cause of action at all.”⁸

ARTICLE 19 calls on the Chief Justice of Uganda to urgently review the Rules of the Constitutional Court (Petitions for Declarations under article 137 of the Constitution) Directions 1996, and the Interpretation of the Constitution (Procedure) Rules 1992 (Modification) Directions, 1996, and to amend these rules so that they accord with the supreme law of the land by ensuring that fundamental rights can be effectively enforced.

The substantive arguments submitted in the UJSC case challenging the Press and Journalist Statute are reproduced in Chapter 6. The UJSC brief - for which ARTICLE 19 provided advice on international and comparative human rights law - was submitted prior to the Zambian High Court ruling of August 1997 which found that a statutory media council, if enacted, would be contrary to the right to freedom of expression and association (see Chapter 3). The Inter-American Court of Human Rights had reached a similar conclusion in 1985 in a case concerning the compulsory registration of journalists by law in Costa Rica. It is clear that the Press and Journalist statute violates a number of fundamental rights guaranteed under the Constitution, as well as under international conventions ratified by Uganda.

ARTICLE 19 calls on the Uganda Parliament to repeal without replacement the Press and Journalist Statute, 1995.

⁷ *Rev Longwe and Ors v. The Attorney General & Anor*, Judgment of the High Court of Malawi, Misc. Civil Appl. No. 11 of 1993, (*unreported*) at 6.

⁸ *Tinyefuza v. Attorney General*, Judgment of the Constitutional Court of Uganda, Constitutional Petition 1 of 1997, 25 April 1997, (*unreported*) per Manyindo, D.C.J. at 12. The Constitutional Court’s decision in *Tinyefuza v. Attorney General* was overturned by the Ugandan Supreme Court on appeal.

2 UGANDA

2.1 Early drafts

As early as 1986, the NRM government had been making pronouncements on the desirability of enacting new laws to regulate the Press. The first indication that the government was actively seeking to introduce specific legislation, however, came in October 1990. Closing a seminar on “The Press and the Law”, the then Minister of Education and Broadcasting, Mr Kintu-Musoke, announced to journalists, that the government was already in the process of drafting a Press Bill. The Minister noted that the present laws governing the press⁹ were ineffective and out of date. “In essence these are negative Acts seeking to find faults, rather than regulate, and enable the media to perform better”, he explained.¹⁰ Whilst expressing satisfaction that the Uganda Journalists Association (UJA) had resolved to create disciplinary machinery in respect of its members, he indicated that, in the absence of a law obliging all media workers to belong to UJA, the government would be unable to accept such voluntary mechanisms as effective.

The Media Press and Publications Bill, was published towards the end 1991.¹¹ The Bill provided for the establishment of a Press Council whose function it was to exercise control over the professional education and discipline of journalists and “to register all associations germane to mass media and all practising journalists”. Under the Bill, members of the Press Council were to be appointed by the Minister of Information and Broadcasting.¹²

The document provoked a fiery response from journalists. Their representative bodies, the Ugandan Journalist Association (UJA), and the Uganda Newspaper Editors and Publishers Association (UNEPA), had only recently been engaged in the formulation of recommendations to the Uganda Constitutional Commission on the need for more effective protection of the right to freedom of

⁹ Principally: the Newspaper and Publications Act; the Press Censorship and Correction Act; the Penal Code Amendment Act (1988) and the Cinematography Act.

¹⁰ *The New Vision*, 15 October 1990.

¹¹ “Press Bill unresolved”, *The New Vision*, 25 November 1993. In early 1991, the Ministry of Information had attempted, without legal backing, to set up a register of journalists. The initiative was soon aborted as few journalists were prepared voluntarily to associate themselves with the system.

¹² The Bill did provide, however, that one of the eleven members of the Council would be the Chairman of the Uganda Journalist Association.

expression and the Press.¹³ Not only did the Bill ignore these recommendations - in particular, that outdated colonial laws be reformed, and freedom of information and the protection of journalists' sources to be guaranteed under the law - but the Bill's provisions, if passed, would further undermine what the organisations emphasised was a basic principle of a free press, namely, independence from governmental control.

After two days deliberation at a specially convened seminar organised by UJA in November 1991, journalists confirmed their rejection of the Bill, branding it as "largely undemocratic."¹⁴ The Minister for Information and Broadcasting, Paul Etiang, seeking to "cool enraged journalists", emphasised that the proposed law was still at "zero draft" level¹⁵ and that the document had not yet been considered by cabinet and was no way near being tabled before the NRC.¹⁶ Notwithstanding his assurances, formal consultation with journalists had still not taken place, when, almost two years later, a revised and renamed Bill, the Mass Media and Journalist Bill 1993, emerged in October 1993.

In response to Mass Media and Journalist Bill 1993, which retained the most objectionable features of the 1991 Bill, the President of UJA, Mr James Namakajo, wrote a letter to President Museveni, on behalf of his members, requesting that the President personally scrutinise the document before it was tabled in Parliament. The letter voiced UJA's "unequivocal opposition to the enactment of a draconian press law" which "unduly vested wide discretionary powers into the hands of the executive". The licensing of journalists was identified as one of the Bill's "most frightening aspects".¹⁷ Fearing imminent tabling of the Bill, Namakajo speedily organised another two-day seminar, similar to the one held in November 1991, in order to reassess the concerns of journalists.

The UJA meeting, which was held on 12-13 November 1993 was clearly perceived by the Government as some sort of threat. Not only did the Minister of Information and Broadcasting, Paul Etiang, prohibit his ministry's employees from attending, but a directive was issued to the effect that the seminar should not be given media coverage by the monopoly state-owned radio and television. Despite the directives of the Minister, which the seminar participants observed to be

¹³ A submission was presented to the Constitutional Commission in June 1991, *The New Vision*, 22 June 1991.

¹⁴ *The Star*, 8 January 1993.

¹⁵ *The Star*, 19 February 1992.

¹⁶ "Press Bill unresolved", *The New Vision*, 25 November 1993.

¹⁷ Letter dated 8 October 1993; reported in *The Monitor*, 22 October 1993.

“arbitrary action which constituted an infringement on the rights of journalists to freely express their opinion”, over 100 journalists attended.¹⁸

At the seminar, journalists strongly rejected, on principle, any move to licence journalists. Regarding it as a measure to kill up-coming rural newspapers and curtail reports from up-country correspondents. They argued that, “a lot will go unreported because not all correspondents will be able to register themselves in order to write for a newspaper”. The deputy editor-in-chief of *The New Vision* newspaper, Mr James Tumusiime, summed up the general mood of the meeting in respect of registration in concluding that, “we should resist strongly the clause of registering journalists because this undermines the scope of the national coverage”.¹⁹

Just a few months after the seminar, however, James Namakajo, who had been the President of UJA for the previous six years, became seriously ill and it was the question of his succession which brought to the fore long-standing divisions within UJA.

2.2 A compromise Bill

James Namakajo died in London in June 1994. According to the *Daily Topic*:

Although he was shunned by the more elite journalists, he managed to curve a firm constituency in the broadcasters by affording them a voice in the UJA. His election and membership to UJA created a rift in Ugandan journalistic fraternity and efforts to forge a healing through seminars like the African Continental one in 1990 didn't yield much. It was only when government threatened to push through the draconian Press Bill (1991) that Namakajo got support of the journalists to resist what was viewed as a common enemy. Short of a common enemy like government, it is a cat fight... His faxed message [from London] to UJA Assembly in April in which he encouraged them to fight for press freedom was a demonstration of the combative spirit in him for the profession of journalism.²⁰

¹⁸ “Press Bill unresolved”, *The New Vision*, 25 November 1993.

¹⁹ *Ibid.*

²⁰ *Daily Topic*, 5 July 1994.

At that meeting in April 1994, the General Assembly of UJA convened to determine a new leadership. At this point in time, it was again feared that the Bill (which, with minor changes, had now been renamed the Mass Media and Journalists Bill, 1994) was about to be tabled in the NRC. The main concern on journalists' minds, therefore, was to appoint a leadership capable of acting effectively in challenging the Bill. In an article published in *The Monitor* newspaper, its editor, Mr Charles Oyango-Obbo, gave a rare insight into how the General Assembly meeting of UJA sparked the beginning of compromise:

The younger journalists, many of them graduates of the new Makerere University journalism programme, did not want any law to control the press. They wanted an executive that would fight against the Bill with bare knuckles and go down doing battle... Some of the older and pragmatic members of the UJA thought a media law was inevitable. This, because there were sections of the public who thought the media had gone out of hand; and it was not a winning argument because all the other professions were subject to statutory control anyway. The best deal this group thought, was to elect a middle-of-the-road executive which would not confront the government over the Bill. They hoped this approach would lead to a compromise... ²¹

But, as had been the case on previous occasions, the so-called "more elite journalists" or "pragmatists"²² found themselves out-numbered on the night. A motion that all business, including the scheduled elections, be postponed in favour of setting-up an interim Committee to concentrate on contesting the Bill was put to a vote and received over 75 percent support from the members present. According to Charles Oyango-Obbo:

None of the candidates had a plan for dealing with this new situation. The Pragmatists-turned-deal makers went to work again. They realised that only the candidacy of Kajoba²³ was alive. The rest were hopeless. Kajoba was approached and told that if he agreed to promote the candidacy of

²¹ "When UJA's 'eagles' landed", Ear to the Ground by Charles Onyango-Obbo, *The Monitor*, 19 April 1994.

²² According to Charles Onyango-Obbo, this faction mainly comprised newspaper editors; *Ibid.*

²³ Amos Kajoba, editor of the *People* newspaper who, in the words of Charles Onyango-Obbo, had "become very popular because he asks President Yoweri Museveni the tough questions at press conferences"; *Ibid.*

moderates on the committee, then he would get the chairmanship. A list was made of the likely line up. Kajoba went about selling it to his forces... The Eagles, as the young militants now called themselves... got their candidate, *but the pragmatists had tied Kajoba's and his committee's hands by committing them to drafting an alternative bill as opposed to a rejection of any media law at all.* [Emphasis added]²⁴

The newly-elected Standing Committee, under the chairmanship of Mr Amos Kajoba, immediately set about the task of drafting an *alternative* bill. On April 22 their draft was adopted by the executive of UNEPA and UJA who resolved that copies of the signed alternative Bill be sent to members of the legislature, lawyers and “other personalities” in the country.²⁵

The “alternative Bill”²⁶ contained many compromises. Significantly, it did not question, on principle, the setting-up by statute of a non-voluntary body to regulate the media. The compromise adopted under the alternative Bill was to insist that UJA be transformed into a statutory body and be assigned the majority of the functions granted to the Media Council under the 1994 Bill. These functions included the setting of educational and ethical standards and the enrolment of journalists.²⁷ Furthermore, it was accepted that the role of adjudicating on alleged breaches of professional standards and disciplining journalists found in breach of these standards could be carried out by a separate body known as the “Media Council”. The compromise strategy was to insist on a composition and appointment procedure which would guarantee independence of the Council’s membership and chairmanship.²⁸

Although the alternative Bill rejected the power granted under the 1994 Bill which permitted the Media Council to suspend a journalist accused of professional misconduct *prior* to any hearing before the Council, it was agreed that a journalist

²⁴ *Ibid.*

²⁵ “UJA draws up alternative Bill”, *The New Vision*, 23 April 1994.

²⁶ The “alternative Bill” was in fact a series of recommendations and was not drafted as a legal document in a form which could be passed by Parliament.

²⁷ It was also recommended that UJA’s Code of Conduct be made a schedule to the Bill.

²⁸ In the year leading up to the passing of the Bill in May 1995, a number of drafts of an alternative Bill were put forward by UJA and UNEPA. The exact representative composition of the Media Council, and power to determine those representatives, advocated varied over this period. Under the 1994 Bill, the Minister of Information had been given the power to appoint all of the proposed 11 members of the Council comprising the Director of Information, two academics, one representative each from UJA and UNEPA, four “distinguished persons”, a publisher and a representative of the electronic media. As if to resolve any doubts, the Bill made clear that only one Council member was first to be selected by the body represented: “a publisher *elected by publishers*”. See s. 25, Mass Media and Journalists Bill 1994, (Bills Supplement No. 3, 25 February 1994).

found guilty could, prior to an appeal to the High Court being determined, be suspended from practising his profession. In addition, the power to strike a journalist off the practising roll was accepted in principle, but subject to the proviso that “the same journalist appears before the Council say, three times over a period of some years.”²⁹ Most significantly, although the renewal of licences on an annual basis was firmly rejected, the licensing of journalists *per se* was not challenged on principle.

It should be noted that the alternative Bill did take a strong stand on certain issues. Firstly, it rejected completely the provisions of the 1994 Bill which proposed to subject news media organisations to specific registration.³⁰ Secondly, a provision of the 1994 Bill criminalising publication of a “classified matter”, as determined from time to time by the Minister, was likewise rejected. In addition, the alternative Bill strongly advocated that provisions guaranteeing freedom of information and the protection of journalists’ sources be inserted into the Bill.³¹

2.3 Journalists as spectators

Representatives of UNEPA and UJA met the Minister of Information, Paul Etiang, on 26 April and presented him with their alternative recommendations for a media Bill.³² On 31 May, in a closed session, the Minister met the NRM cabinet sub-committee on the press. According to the government-owned *New Vision*, their sources had revealed that some of the journalists’ proposals had been accepted by the Minister during that meeting, in particular, the setting-up of UJA by an Act of Parliament.³³ The following day, however, *The New Vision* published a “clarification” by the Minister who “denied having discussed anything to do with the establishment of the Uganda Journalists Association by Act of Parliament”.³⁴

The issue of UJA becoming a statutory body now rose high on the agenda of demands. At a General Assembly meeting of UJA in August 1994, journalists resolved to reject the Mass Media and Journalists Bill 1994 until all the

²⁹ The alternative Bill also suggested that an additional provision be added that “newspapers be compelled by the Council to carry... replies”, which, as the memorandum on the alternative Bill recognised, “was not in the minister’s bill.” It should be noted here that the constitutionality of compelled replies, under international and comparative law, hinges on whether the body compelling publication is voluntarily-joined and free from governmental interference. See Chapter 6.

³⁰ i.e., other than the normal registration requirements of a business enterprise.

³¹ “Journalists on the 1994 Media Bill”, *The New Vision*, 22 April 1994.

³² “Etiang meets Press”, *The New Vision*, 27 April 1994.

³³ “UJA proposals for Bill”, *The New Vision*, 1 June 1994.

³⁴ “Etiang clarifies on Bill”, *The New Vision*, 2 June 1994.

recommendations in the alternative Bill had been accepted and incorporated.³⁵ Particular emphasis was laid on the proposal that Government first table a separate bill to recognise journalism as a “profession.”

Whether this represented an abandonment of the principle against registration or simply a lack of understanding of the dangerous implications of such a move,³⁶ there seemed to be growing resentment that, by dragging its feet in respect of this demand, the government was in fact denying “journalism” the recognition and honour it deserved, and which had already been accorded to other “professions”.

On 17 September the executives of the UNEPA and UJA met to discuss progress on the Bill. The two organisations concluded that the amendments suggested in the alternative Bill had not been given due consideration. In a two-page press release they expressed their disappointment at the government’s unwillingness to implement any of the proposals they had recommended. Reiterating the pragmatist approach, it was stated: “journalists are not opposed to the legislation... however, the majority of the provisions severely limit press freedom.”³⁷ It was further noted, in support of the proposal that UJA become a statutory body, that the failure of UJA to impose discipline on its members resulted mainly from the fact that the journalists’ body had no legal basis for punishing errant journalists.³⁸

In an interview with *The Monitor* newspaper, one NRC member, and former journalist, Basoga Nsaju, who himself had moved 36 amendments to the Bill in the NRC, spoke out against the failure to consult and take into account the concerns of journalists in respect of the Bill:

The Minister [of Information, Paul Etiang] claims he has made consultations with journalists and other people interested, which I think, is not true. The last time there was an attempt to consult journalists, I happened to be there in the Sectoral Committee on Social Affairs. The journalists were not allowed to talk. They simply sat as spectators and that is the interpretation of “consultation” according to the Minister. I don’t believe that was consultation at all, because they were not given an opportunity to explain what they had provided for in [their] alternative Bill.

³⁵ “Journalists reject amended Bill”, *The New Vision*, 2 August 1994.

³⁶ i.e. The need to define and inevitably exclude individuals *by law* from practising as journalists.

³⁷ “Journalists reject Paul Etiang’s Bill”, *Daily Topic*, 19 September 1994.

³⁸ “Press rejects Bill”, *The New Vision*, 19 September 1994.

I think that consultation means dialogue and discussion in an open forum that has the capacity to take decisions.... And I think the Sectoral Committee has that capacity to tell the Minister that this is wrong or even to redraft the whole bill. But since the journalists were not allowed to give their version, I don't think there was any consultation at all. I think the Minister is telling a lie.³⁹

According to Patrick Kiggundu, who acted as legal advisor to UJA and UNEPA in respect of the Bill, the alternative Bill constituted "the raw material" for Basoga Nsadhu's 36 amendments.⁴⁰ There were indeed many similarities between the alternative Bill and Nsadhu's amendments.⁴¹ Nsadhu himself made clear that the setting up of UJA as a statutory body was his "biggest argument". He did, however, admit that such a move would obviously require a definition of who is a "journalist" and that the definitions which had so far been put forward by UNEPA and UJA⁴² would in fact exclude a large number of persons which he personally believed should not be excluded from practising journalism.⁴³

2.4 NRC calls for "major surgery"

³⁹ "Minister lied on Press Bill", *The Monitor*, 7-10 October 1994. Minutes of one such meeting of the Sectoral Committee held on 5 May 1994, headed *Record of the Meeting between NRC Members of the Standing Committee on Social Services, the Minister of Information and Senior Staff of the Ministry and Journalists*, record that the Chairman of the Sectoral Committee, Bwanika Bbale, communicated to the floor that "Members of the Press are in attendance as observers and are not expected to communicate in the discussions".

⁴⁰ "Scribes smile at last", by Patrick Kiggundu, *The New Vision*, 4 November 1994.

⁴¹ A couple of Basoga Nsadhu's amendments could not, however, have been considered to be favourable to the Press. He advocated, for example, that the maximum period of suspension of a journalist by the Disciplinary Committee be increased from six to twelve months. Even more disturbingly, he proposed that the Committee be granted a power to permanently exclude journalists "for persistently slanting professional standards" (Proposed amendments no. 28 and 29). Neither of these amendments were subsequently passed. The power to have journalists struck off the register had been provided for in the 1994 Bill but disappeared in the 1995 draft. The maximum period of suspension of six months provided for in the 1995 Bill (and 1994 Bill) passed unamended.

⁴² According to a press release issued by the organisations in September 1994: "The Journalists... defined Journalists as (a) Duly qualified person in the field of Journalism and Mass Communication from a recognised institution with the diploma being the minimum qualification; (b) Experienced Journalists who spends most of their time in gathering and dissemination of news who shall also be required to have formal training." See *Daily Topic*, 19 September 1994. Following the rejection of the 1994 Bill in the NRC, the proposed definition was altered to: "persons who: (a) spend most of their working time to the gathering and dissemination of news; or (b) duly qualified in the field of journalism and mass communication as shall be established from time to time by the association; or (c) writers of distinction as shall be recognised by the association." See "Journalists' alternative Bill is material for media law", *The New Vision*, 6 December 1994.

⁴³ "Minister lied on Press Bill", *The Monitor*, 7 October 1994.

The National Resistance Council had been expected to go into recess at the beginning of November 1994, ending its business with a debate on the national budget. In an abrupt move, just weeks prior to the expected adjournment, the cabinet directed that the Mass Media and Journalist Bill 1994 be tabled, immediately following the budgetary debate, for its second reading. *The Monitor* observed that, “the reason for this unusual cabinet decision has not been established. It comes in the wake of the arrest of *Monitor* Editor-in-Chief Wafula Oguttu on 6 October and overnight detention over a July story which alleged that Yoweri Museveni had criticised three of his ministers’ performance.” The newspaper further noted, “recently the independent press has come under unusual hostility from the official media, suggesting that there might be attempts underway to prepare the ground for the passage of the Media Bill.”⁴⁴

The Mass Media and Journalist Bill 1994 was read to a packed house for the second time on 1 November 1994, but met with widespread opposition from Council Members. Amid “hard stamping of feet” and “applause from the back-benchers”, various members criticised the report prepared by the Sectoral Committee on Social Affairs as being “superficial” and “lacking in balance”.⁴⁵ The Minister for Information was additionally criticised for his failure to consult with concerned parties, and the Bill roundly rejected for giving the Minister “too much powers.” Council member, Professor Adoko Nekyon, for example, pointed out that, “where there was no multiparty system, freedom of the press was very important to balanced views”. He said the citizens were the best censors of the media, and the government should not press for a draconian law.⁴⁶ Professor Kabwegyere agreed that the Bill was “too strong” and concluded that the Minister had misjudged Ugandans in the field of journalism.⁴⁷

A number of the criticisms voiced by Council members centred on issues other than the lack of consultation and the sweeping powers granted to the Minister under the Bill. Concerns were raised, for example, over the lack of any provision to control foreign journalists or to censor the foreign media “that has penetrated society, like BBC, CNN, VOA and many others”.⁴⁸ Although a number of members expressed concern that the lack of a “code of conduct” within the Bill would make difficult the task of disciplining journalists objectively, there appeared

⁴⁴ “Cabinet orders debate on press bill”, *The Monitor*, 21 October 1994.

⁴⁵ See “Press Bill meets wide opposition in NRC”, *Daily Topic*, 2 November 1994; and “NRC rejects Press Bill”, *The New Vision*, 3 November 1994.

⁴⁶ “NRC rejects Press Bill”, *The New Vision*, 3 November 1994.

⁴⁷ *Ibid.*

⁴⁸ “Press Bill meets wide opposition in NRC”, *Daily Topic*, 2 November 1994.

to be no objection in principle to statutory regulation of the Press, or to the licensing of journalists.

A motion referring the Bill to a special committee to consult all those concerned and carry out “major surgery” received “wild cheers from [Council] members”⁴⁹ and a seven-man Select Committee was set up which commenced work the following day. Over the next few weeks the committee received submissions and interviewed a number of journalists, politicians and members of the public in Kampala.

2.5 Select Committee hearings

In making recommendations to the Select Committee following the 1994 Bill’s failure in the NRC, there was one significant change in UNEPA’s position. The association proposed that “the [Media] Council should at all times take up issues with the publishing editor and not with concerned journalists”. Furthermore, that the Media Council should only have the powers to: “demand corrections, including apologies, retraction or impose fines on offending news media and that “under no circumstances” should the Bill provide for the banning of news media or “journalists.”⁵⁰ Although two individuals from UNEPA’s executive, Amos Kajoba and William Pike⁵¹, argued that UJA and not the Media Council should be responsible for any disciplining of journalists,⁵² UNEPA’s stated position, as outlined in their memorandum to the Select Committee, agreed to the Media Council carrying out this function.⁵³ *The New Vision’s* corporate secretary, and “legal advisor to the journalists”,⁵⁴ Patrick Kiggundu, also appearing before the Select Committee, advised the committee to attempt to define who is a journalist. According to *The New Vision*, he supported the idea of registering journalists⁵⁵ but

⁴⁹ “NRC rejects Press Bill”, *The New Vision*, 3 November 1994.

⁵⁰ “Memorandum of Uganda Newspaper Editors and Publishers Association to the NRC Select Committee on the Mass Media and Journalists Bill”, November 1994. Proposals for the abolition of the offence of criminal libel, and amendments to the laws of sedition and civil libel, were also specifically added to the list of recommendations. See also “UNEPA memo on bill presented”, *The New Vision*, 1 December 1994.

⁵¹ Editor-in-Chief of *The New Vision*.

⁵² “Press Freedom Vital - UNEPA”, *The New Vision*, 19 November 1994.

⁵³ “Memorandum of Uganda Newspaper Editors and Publishers Association to the NRC Select Committee on the Mass Media and Journalists Bill”, November 1994.

⁵⁴ “Revised Bill endorsed”, *The New Vision*, 2 December 1994.

⁵⁵ *Ibid.* It is not clear whether the lawyer was expressing his personal legal opinion on this point, or the views of his clients (or both).

strongly opposed the power granted to the Media Council to have journalists suspended or struck off the register.

One journalist invited to give evidence, James Tumusiime, advocated the shelving of the Bill. Expressing the view that “politicians should first get disciplined before disciplining journalists since they (politicians) create what appears in the press”, the Deputy Editor-in-Chief of *The New Vision* called for the media Bill to be scrapped.⁵⁶ Tumusiime argued that the effect of introducing the proposed legislation would be to restrict talent and frustrate the local press, which, he explained, would be unable to meet all the standards imposed by the Bill in view of limited resources. In his opinion there was no real need for any new legislation to govern the media. It would be very difficult to devise membership of the Media Council acceptable to all, which was not politically inclined, he said, and at least until the profession, which was still insecure and evolving, reached a stage whereby they were ready to discipline themselves, any disciplining should be left to an independent court of law.⁵⁷ In a memorandum to the Select Committee, the Uganda Journalists’ Safety Committee⁵⁸ argued *inter alia* that any new law should be held in abeyance as the enactment of a new Constitution, with guarantees relating to freedom of expression, was soon to be finalised.⁵⁹

The Select Committee made a number of visits “up-country” to the towns of Busia, Mbale, Lira and Mbarara with the stated goal of collecting the views of *wananchi* (the People) and those involved in the work of gathering and disseminating information in those areas,⁶⁰ before finalising its draft in March 1995.⁶¹

2.6 The final Act

⁵⁶ “Media Bill ruins talent”, *The New Vision*, 26 November 1994.

⁵⁷ *Ibid.*

⁵⁸ A non-governmental organisation based in Kampala which fights for the rights of Ugandan journalists.

⁵⁹ “Revised Bill endorsed”, *The New Vision*, 2 December 1994.

⁶⁰ “Media Committee goes upcountry”, *The New Vision*, 3 December 1994.

⁶¹ Following the publication of the redrafted Bill, the head of the cabinet sub-committee on the Press, Eriya Kategaya, informed the Select Committee that the government had changed its original position and wanted the matter to be held in abeyance until the Bill was split into three separate ones, stating that the Bill was “trying to achieve too many things at the same time.” The Committee and the Government finally agreed to split the Media Bill into two, to provide for a separate Bill for the electronic media. See “Press Bill stopped”, *The New Vision*, 10 April 1995. The registration and discipline of journalists (both print and broadcasting), however, remained within the purview of the current Bill under consideration, which was soon to become the Press and Journalists Statute, 1995.

In commending the redrafted Bill to the House on 11 May 1995, the Chairman of the Select Committee, Reverend Ongora Atwai Yeko, observed that the Minister for Information had had his powers reduced tremendously, that the provision for the Censorship Board had been deleted, and that the position for the Registrar of newspapers had been scrapped.⁶² Overall, it is very difficult to conclude that the new draft Bill was any real improvement on the 1994 Bill. In reality, the “tremendously reduced” powers of the Minister remained tremendous. Although the redrafted Bill had scrapped the Minister’s power to specify “government classified material”, the publication of which would constitute a criminal offence under the 1994 Bill,⁶³ the Minister retained the power to select and appoint the majority of Media Council members (9 out of 13, as compared with 10 out of 11 under the 1994 Bill).⁶⁴ Furthermore, the Minister retained the sweeping powers of amendment which had been granted under the 1994 Bill, plus an *additional* power was granted to amend the provisions of a newly-inserted “Code of Conduct”, the contravention of which was to be the basis on which disciplinary action against a journalist could be taken.⁶⁵

Whereas the office of “Registrar of newspapers” had been scrapped under the redrafted Bill, the requirement that the name and address of the newspaper, its editor’s name and address, and “other particulars as may be prescribed by the [Media] Council [or the Minister]” be registered with the Media Council, retained this objectionable feature (albeit reducing the possible jail term for non-registration from one year to three months).⁶⁶ Similarly, although the provisions for a Censorship Board had been deleted under the redrafted Bill, the power to censor films, videos and plays was merely transferred to the Media Council.⁶⁷ Furthermore, a power to ban *printed publications*, which was not contained under the 1994 Bill, was granted to the courts.⁶⁸

⁶² “Debate on media opens in NRC”, *The New Vision*, 12 May 1995.

⁶³ See s. 45, Mass Media and Journalists Bill, 1994.

⁶⁴ Although the power granted to the Minister under 36(2) of the 1994 Bill to appoint members of the Disciplinary Committee from Media Council members had been changed so that Media Council members would elect four of their number to join the Secretary and Chairman of the Media Council as members of the Disciplinary Committee, the non-independence of the Media Council itself rendered independence of the Disciplinary Committee an impossibility. See Chapter 6.

⁶⁵ For a detailed survey of the Minister’s powers under the 1995 Statute and their constitutionality see Chapter 6.

⁶⁶ See sections 6 and 47(2)(d) of the Press and Journalist Statute, 1995.

⁶⁷ Compare sections 12(1) and (2) of the Mass Media and Journalists Bill 1994 with sections 10(e) and 11(2) of the Press and Journalist Statute, 1995.

⁶⁸ See section 40(1) of the Press and Journalist Statute, 1995 which provides: “Whenever criminal proceedings have been instituted for an offence against the freedom of the press, the Court may, on application to it for confiscation, order that the material involved in the offence be seized or issue a ban on the publication.” The words “offence against the freedom of the press” are not defined. See Chapter 6.

On the positive side, the new Bill removed the power to strike journalists off the roll indefinitely, although it retained the power to suspend a journalist for up to six months as a disciplinary action. In addition, a provision that “A journalist shall not be compelled to disclose the source of his information” was added. This was limited, however, by the words “except... on an order of a court of law” and, in effect, highly limited by the restrictive definition of who could now lawfully practise as a journalist. Similarly, a provision was added stating that “A person may have access to official information subject to the provisions of any law in force relating to national security, secrecy or confidentiality of information”. Yet, the very laws mentioned, as currently in force, contain provisions which, in themselves, constitute the greatest obstacle to freedom of information in Uganda.

Perhaps the most significant change in the new Bill was the establishment of a body named the National Institute of Journalists of Uganda (NIJU). The decision-making powers of this body were to vest in a “General Assembly” which was to comprise “journalists” enrolled as “full” members of NIJU. Only persons who hold a University degree in journalism or mass communication, or who have practised for at least a year *and* hold a university degree plus a qualification in journalism or mass communication, were made eligible to become full members and vote.

NIJU was given no power under the redrafted Bill to discipline its members.⁶⁹ Nor was NIJU given the power to set the standards by which its members would be disciplined.⁷⁰ The real significance of the creation of a National Institute of Journalists was that, although technically it had been given no power to licence journalists (“registration” being the function of the Media Council), “enrolment” as a member of NIJU⁷¹ was made the primary prerequisite for “registration” and, therefore, eligibility for a practising certificate. Without a practising certificate, the Bill made it an offence to be “paid for the gathering, processing, publication OR dissemination of information”.⁷² In effect, therefore, NIJU was made part of a two-tier licensing system. As noted above, the redrafted Bill had already set very restrictive qualifications for enrolment as a “full member”

⁶⁹ Which was to be the preserve of the Disciplinary Committee of the Media Council.

⁷⁰ These were laid down in a “Code of Conduct” scheduled to the Bill, the provisions of which were made amendable (other than Parliament) by the Minister of Information only. The vague wording of the Press and Journalist Statute does not make it absolutely clear, however, that a contravention of the Code of Conduct is the only basis on which journalists may be “dealt with”; see Chapter 6.

⁷¹ Either “full” or “associate” or “honorary” membership.

⁷² See s. 28(3), (4) and (5) of the Press and Journalist Statute, 1995.

of NIJU.⁷³ The qualifications for “associate membership”, however, were left open, and the General Assembly of NIJU granted the power to set the criteria.

In this respect, the provisions of the redrafted Bill might well appear *preferable* to the 1994 Bill in that a group of “qualified journalists” (i.e., the General Assembly of NIJU) had been assigned the task of setting qualifications - at least in respect of associate membership. Nevertheless, even if NIJU had been given full control over who could “practise journalism” in Uganda, it should be noted that under the Ugandan Constitution *no* body or person has the right to set qualifications or criteria which restrict any other person from “gathering, processing, publication or dissemination of information”. The right to freedom of expression, which incorporates all these functions, belongs to “every person”.⁷⁴

Whilst debate on the Bill was still in progress, the Uganda Journalists’ Safety Committee (UJSC) sent a memorandum to members of the NRC which warned that the educational qualifications being prescribed under the Bill would exclude the vast majority of practising journalists and lead to the collapse of most newspapers in Uganda. In the prevailing climate of compromise, the UJSC proposed that there should be a grace period of five years in order to give journalists who were currently practising and did not meet the prescribed educational standards the opportunity to update their qualifications. It recommended that a special programme be established at Makerere University for this purpose.⁷⁵

The prescription of university qualifications for the lawful practice of “journalism” under the Bill was the only real issue which attracted serious debate in the NRC. Here again, however, it was not the question of licensing journalists *per se* that was in dispute, but the question as to *who* should determine what qualifications should be required in order to be licensed. A number of council members supported an amendment that membership of NIJU should be determined entirely by NIJU, and that NIJU be given the power to alter the required qualifications, from time to time, as required. Other members insisted on minimum university qualifications being prescribed under the statute itself. According to *The New Vision*, “the ‘Aye’ for both options were almost equal”⁷⁶. Notwithstanding the debate, the NRC finally passed the Bill on 24 May without amendment on this

⁷³ The General Assembly of NIJU had no power to alter these provisions but merely the power to set *additional* qualifications. See s. 17(3) of the Press and Journalist Statute, 1995.

⁷⁴ Section 29(1) of the Ugandan Constitution, 1995.

⁷⁵ Memorandum of 14 May 1995, see “Debate on Media opens in NRC”, *The New Vision*, 18 May 1995.

⁷⁶ “Scribes to have degrees”, *The New Vision*, 19 May 1995.

issue.⁷⁷ The Press and Journalist Statute 1995, a statute which denied all but a handful of “qualified journalists” the unqualified “right to publish”, was assented to by President Yoweri Museveni on 16 July 1995.

⁷⁷ “Press Bill passed”, *The New Vision*, 25 May 1995.

3 ZAMBIA

3.1 The 1995 announcement

When, in October 1991, President Chiluba's Movement for Multi-party Democracy (MMD) swept to power, on the back of the Zambian people's fervour for democratic change, the MMD committed itself to a programme of reform. Part of that package involved "the protection of fundamental rights and freedoms... the promotion of justice and equality among all people without distinction... and upholding democracy based on a multiparty system with effective checks and balances."⁷⁸ During the run-up to the elections the MMD repeatedly denounced the tight control which President Kenneth Kaunda had exercised over the Zambian Press. Yet, just two months after winning the elections, the Deputy Minister of Information and Broadcasting announced, on 31 December 1991, that the MMD government intended to establish, by law, a Press Council to regulate the conduct of journalists.⁷⁹ The UNIP government under President Kaunda had attempted to introduce a Press Council in 1980, but the draft Bill, which provoked much controversy, was never presented to Parliament.⁸⁰ Amid an outcry from journalists accusing the newly formed government of reneging on its election promises, the MMD's proposal for a Press Council was swiftly abandoned.

The MMD's election manifesto contained, in fact, contradictory statements with respect to freedom of expression and the Press. Whereas the manifesto stated that: "The MMD believes that freedom of expression and the right to information are basic human rights", it also provided that "All *bona fide* journalists, both local and foreign, will be accredited to perform their duties without hindrance" and that "in case of conflicts occurring within the mass media, a Press Council composed of professional journalists, lawyers and other professional representatives will be established to receive and resolve such conflicts."⁸¹

⁷⁸ Chisepo J.J. Mphasisha, "Retreat from Democracy in Post One-Party Zambia", *Journal of Commonwealth & Comparative Politics*, Vol. 34, No. 2 (July 1996), p.67; The MMD Manifesto, Article 2(1).

⁷⁹ *Ibid*, p. 72.

⁸⁰ The full text of the Press Council of Zambia Bill, 1980 is reproduced in Francis P. Kasoma, *The Press in Zambia: The development, Role and Control of National Newspapers in Zambia 1906-1983*, Multimedia Publications (Lusaka) pp. 218-224.

⁸¹ *Who Rules the Airwaves? Broadcasting in Africa*, ARTICLE 19 / Index on Censorship, (February 1995), p.115; *Press Freedom in Zambia*, ZIMA, (September 1996), p. 11.

In October 1992, following a three day seminar on “Democracy and the Media” organised by the Minister of Information and Broadcasting Services, Dipak Patel, a Media Reform Committee (MRC) was established to draft proposals for reform. After exhaustive consultations and debate, the MRC finally submitted its recommendation in September 1993. In addition to proposals for the reform of archaic laws affecting press freedom; the enactment of constitutional provisions to provide greater protection; the privatisation of government media; and the removal of taxes specifically aimed at the Press, the MRC recommended that “media ethics and practice should be the subject of *self-regulation* by journalists’ associations and other media groups *with no statutory powers*”.⁸²

Despite these recommendations, Patel’s successor as Information Minister, Keli Walubita, announced on 17 June 1995 that the cabinet had given him 60 days to table legislation establishing a body to regulate the media. The Minister maintained that “PAZA [the Press Association of Zambia] is toothless and cannot even punish journalists who bring the integrity of the profession into disrepute”. His announcement followed the publication of a story in *The Post* newspaper, which alleged that President Chiluba had a Zairean mistress.⁸³ PAZA immediately filed a petition for judicial review in the High Court to determine the validity of the government’s decision to create a “Media Association.” It argued that as a body representative of journalists, and as an institution which would be affected by the decision, it should have been consulted on the issue prior to any decision being made, and further that such a decision had been made in bad faith and would not be in furtherance of the democratic ideals enshrined in the Constitution, such as freedom of expression and association. PAZA was granted leave on 7 July 1995 and any further action by the Government to establish a media body was stayed pending further orders by the court.⁸⁴

3.2 The 1997 Bill

⁸² Emphasis added. “Zambia: Media Freedom and the 1996 Elections”, *Censorship News*, Issue 45, ARTICLE 19, (November 1996), p. 6-7.

⁸³ “Journalists detained and bail denied; government to table legislation on regulating media,” IFEX Alert (MISA), 20 June 1995. Two journalists were later arrested on 19 June over the story.

⁸⁴ John Sangwa, “Zambia”, *Media Law and Practice in Southern Africa*, No. 7, ARTICLE 19 / Freedom of Expression Institute / Media Institute of Southern Africa, (February 1998), p. 8.

On 17 January 1997, despite the fact that the decision in PAZA's judicial review case had not been handed down,⁸⁵ nor the stay of execution ordered by the High Court lifted, President Chiluba stunned journalists by announcing to Parliament that his government would start drafting a bill to legislate a Media Council of Zambia (MCZ), with a view to stemming "irresponsible" and "unpatriotic" reporting. "It is a notorious fact," he said, "that the nation and indeed the Press itself has been brought into disrepute by a section of the media that has chosen to betray the country by distributing false information about Zambia."⁸⁶

In a press statement issued the same day, the Chairperson of the Zambia Independent Media Association (ZIMA),⁸⁷ David Simpson, stressed that there was no acceptable substitute to self-regulation. "A media council should not be legislated, but formulated and operated by media workers who understand the operations of the media" he said, adding that, ZIMA was in the process of drafting the constitution for an Independent Media Council (IMC) for its members.⁸⁸ The Deputy Minister of Information and Broadcasting, Ernest Mwansa, described ZIMA's criticism of the bill, yet to be drafted, as "premature".⁸⁹ He also seemed to indicate that he expected journalists to have differing views on the subject. "One might just find that the thing one is scared of is actually in one's favour," he said, "I have found that it is a small group of people who are prepared to sell the country".⁹⁰ ZIMA Chairman David Simpson responded in no uncertain terms, that his association was not criticising whatever might be the precise provisions of the undrafted bill, but that ZIMA would be opposed, on principle, to *any* provisions seeking to set up a statutory Media Council.⁹¹

On 20 February, Information Minister David Mpamba announced in Parliament that the drafting of the Media Council Bill had been completed. He

⁸⁵ The case itself had been heard on 28 June 1996, but the Court reserved judgment and the ruling was not handed down until 22 August 1997; see section 3.7 below.

⁸⁶ "Government announces plans to form media council," IFEX Alert (MISA), 17 January 1997.

⁸⁷ ZIMA generally restricts its membership to media workers employed by the independent media (which comprises mainly *The Post* and *Chronicle* newspapers but includes four other independent organisations and a number of freelance journalists). According to RSF, non-members from the private sector currently include "two weeklies funded by private capital but whose editorial line is close to the government - *The Weekly Express* and *The Sun*; and Radio Phoenix - a privately owned FM station in Lusaka"; *Zambia: A hard-hitting press subjected to harassment*, Reporters sans frontières, May 1997. Those employed by the State-run media (approx. 90% of all media workers) may join PAZA, which is open to all journalists.

⁸⁸ "ZIMA warns govt", *The Post*, 20 January 1997.

⁸⁹ "False news purveyors to be exposed", *The Times of Zambia*, 7 February 1997; "ZIMA still opposed to a media council", *The Post*, 10 February 1997.

⁹⁰ "Government minister defends legislation to form media council", IFEX Alert (MISA), 11 February 1997.

⁹¹ "ZIMA still opposed to media council", *The Post*, 10 February 1997.

refused to comment further, stating, “at the moment I don’t want to be drawn into the discussion because it will soon be presented to the House”.⁹² Meanwhile, ZIMA members approved the text of the constitution for an Independent Media Council (IMC) at an extraordinary general meeting held the following day, on 21 February. The meeting established a nine-member Council - drawn mainly from the legal profession, the clergy and the media - with the aim of providing a voluntary, self-regulatory mechanism through which complaints against the independent media could be investigated, and appropriate measures taken.⁹³

The Media Council Bill of Zambia, which is strikingly similar to the Press and Journalist Statute of Uganda, was published on 7 April. The Bill provides for the licensing and discipline of journalists by a Media Council, the members of which are to be appointed by the Minister of Information. Under the Bill, journalists are required to apply annually for a licence (“accreditation”) and pay an annual fee to be specified by the Council. A “Zambian resident” will qualify for accreditation, if that person has attained the age of eighteen years and (1) “holds a Bachelor of Arts degree in Mass Communication obtained at a recognised university or other equivalent qualifications approved by the Council;” or (2) “has completed at least two years of a professional course in journalism from a university or learning institution recognised by the Council” or (3) “has been recognised by the Council for writing articles etc. for recognised media institutions, for a period of time, recognised by the Council.” In addition, the registrar of the Council may “carry out any investigation, or require such other information” as he may consider necessary.

The Bill makes it an offence liable to three months imprisonment or an unspecified fine or both to give false information regarding any name, qualification or other matter required by the registrar. A journalist who “conducts himself or herself in a manner contrary to the profession” or “engages in an occupation which is inconsistent with the profession” or is “found guilty of an offence under the Act,” may be suspended or expelled from the register of journalists. It is an offence, liable to three months imprisonment or an unspecified fine or both, for any person who is, for any reason, not “accredited” to practise journalism.

3.3 The Joint Statement

⁹² “Media Council Bill drafted”, *The Post*, 21 February 1997.

⁹³ “Media Council established”, *The Post*, 25 February 1997.

In a joint statement issued on 7 April, the same day the Media Council Bill of Zambia was published, the Bill was unanimously rejected by Zambia's main media organisations: PAZA; ZIMA; the Zambian Union of Journalists (ZUJ); the Media Women's Association (ZAMWA); the Media Resource Centre (MRC); and the Zambian Chapter of the Commonwealth Press Union (CPU). In their protest statement, the six bodies declared their united opposition to the imposition of a media council or any attempt to control the media by legislative means, "whether or not such legislation is driven by the media itself". They recalled that "press freedom and freedom of expression was not... a privilege to be handed down at the grace of any power but... a fundamental constitutional right of all people" and rejected the licensing of journalists. Journalism, they said, could not be equated and controlled in the same manner as professions such as law and medicine. "While one can not be another person's lawyer... as a matter of right, or carry out surgical operation on another man as a matter of right, one has a constitutional right to express ones opinion without requiring a license from anyone", they explained. Finally, the statement drew attention to the High Court order obtained by PAZA in 1995 to stay execution of the government's intention to legislate a media council: "This order has not been lifted. We therefore view the current action to be in bad faith and contemptuous of the High Court of Zambia."⁹⁴

In separate interviews on launching the statement, the leaders of the six bodies reaffirmed their united stand against the Bill. PAZA president Ridgeway Liwena said "for the first time, all of us representatives of journalists in the country were able to meet and come out with one voice - the voice of total rejection of this piece of legislation". He called on media heads both in the private and public media to "view this Bill not for personal selfishness but from a perspective of what effect it has on the livelihood of journalists, including media heads". ZIMA's Vice Chairman, Bright Mwape, asked: "What is fancy about writing as an accredited journalist? That is not at all an attraction that any journalist will surrender his rights for", while the Editor of the independent *Post* newspaper, Fred M'membe, stated that he was glad that the state-owned media had "seen the government's stupidity and called it stupid" and had not allowed themselves to be "blinded by ambition". In his opinion, the Bill was not targeted at the state-controlled media. "The target is *The Post* and *The Chronicle* and probably Father Umberto Davoli and his *Incengelo* magazine and radio", he said.⁹⁵

⁹⁴ For the full-text of the joint statement see "Alarm over Zambia media clampdown", *Electronic Mail & Guardian*, 15 April 1997.

⁹⁵ "Media Council Bill denounced", *The Post*, 9 April 1997.

The Executive Director of the Media Resource Centre (MRC), Robby Makayi, said that the Bill sought to “criminalise Press freedom” and rejected the definition of a journalist as “it would create discriminatory attitudes in the enjoyment of the right to free speech and expression”.⁹⁶ The Editor of *The Chronicle* newspaper, Lweendo Hamusankwa, stressed that, “to practice as a journalist does not require one to go through formal training and register with any council”, while CPU-Zambia section chairman, Kondwani Chirambo, insisted that “Everyone is free to use that medium as long as he or she has communication skills.” The ZUJ President, Edwin Musaika, noted that the Bill would also interfere with the right to receive information. “Journalists are mere conduits and purveyors of ideas and information to the public,” he said, “when you restrict them, that will be an infringement of the right to information of the people of Zambia.”⁹⁷

A number of non-journalist bodies added their voice to those condemning the Bill. In a joint statement, the Chairman of the Law Association of Zambia, George Kunda, and the association’s honorary secretary, Nigel Mutuna, stated that the proposed Media Council Bill constituted a serious derogation from Press freedom and freedom of expression enshrined in the Zambian Constitution. “If journalists are controlled in the manner envisaged, freedom of expression generally will be severely curtailed in Zambia for both journalists and the people of Zambia” they reasoned.⁹⁸ Similarly the Executive Director of the human rights group AFRONET, Ngande Mwanajiti, observed that the Bill sought to take away constitutional freedoms enjoyed by all Zambians. He urged journalists to remain united, assuring them that human rights bodies in the country would support them.

On 8 April, the day after the joint statement by journalists was released, the Information Minister, David Mpamba, the Deputy Minister, Ernest Mwansa, and the Permanent Secretary of the Ministry of Information, Laura Harrison, outlined the government’s response to what Ms Harrison described as the “hysterical outburst” of the previous day. Mr Mpamba indicated that journalists would be consulted prior to the Bill being passed, stating that “we will only submit it to the Ministry of Legal Affairs with the input of stake holders”. At the same time, the Minister made it known that he regarded the stance adopted by journalists working in the state-controlled media as reprehensible. “Why are those in government

⁹⁶ “Media bodies petition Bill”, *The Times of Zambia*, 10 April 1997.

⁹⁷ “Media Council Bill denounced”, *The Post*, 9 April 1997.

⁹⁸ “Media Bill not final, says minister”, *The Times of Zambia*, 9 April 1997.

media attacking us,” he questioned, “You cannot work for the government and attack government.”⁹⁹

On 9 April, the MRC Executive Director, Mr Makayi, charged that the Ministry of Information was launching a propaganda campaign to create the illusion that journalists were not united. “It is not surprising that government wishes to continue perpetrating the myth of disunity in the media for its own interests. Indeed it is their wish that we should be disunited so that we can be exploited and controlled,” he said.¹⁰⁰ PAZA Executive Secretary John Musukuma categorically denied allegations by the Ministry of Information that PAZA - which represented, in general, media workers from the public sector - had accepted the Bill, its contents and the proposed method of seeking opinions on the Bill; and, further, allegations that PAZA had made an input into the draft Bill. He said that the Ministry of Information was deliberately trying to divide media organisations and journalists in Zambia in order to create an environment for the government to impose a statutory Media Council.¹⁰¹

3.4 The formation of the MLC and the 12 April demonstration

On 10 April, journalists of the six media organisations which had issued the Joint Statement met in Lusaka to appoint an ad hoc committee, the Media Liaison Committee (MLC), to co-ordinate opposition to the Media Council Bill. The newly appointed Chairman, Robby Makayi, pledged that the MLC would continue to fight the “obnoxious law” until it was withdrawn. “We are fighting for the survival of journalism in Zambia and democracy,” he said. “We call upon all journalists to remain united and rally behind this cause. We also call on all Zambians and other democratic forces to join this just struggle.” Makayi also said that the MLC would ensure that the Bill is brought to the attention of the donor community. “It should be realised,” he pointed out, “that this is an issue of good governance”.¹⁰²

On 12 April, over 200 journalists, joined by members of the public and representatives of non-governmental organisations, demonstrated in Lusaka against the government’s plans to legislate a media council. Chanting anti-censorship

⁹⁹ *Zambia, The Reality Amidst Contradictions: Human Rights Since the 1996 Elections*, Human Rights Watch, Vol.9, No. 3(A), July 1997, p. 26.

¹⁰⁰ “Media bodies petition Bill”, *The Times of Zambia*, 10 April 1997.

¹⁰¹ “Media unites against Bill”, *The Post*, 11 April 1997.

¹⁰² “Media unites against Bill”, *The Post*, 11 April 1997; “Lusaka marches against Media Bill”, *The Post*, 15 April 1997.

slogans and carrying placards with messages such as “its your right to write” and “government says - get a licence to express your opinion!”, the protesters marched over 10 kilometres to the Supreme Court building, outside which they were addressed by the MLC Chairman, Robby Makayi.

“We must all stand up in unity to see that this Bill does not become law,” Makayi advised. He announced that a “peoples’ petition” would be distributed throughout Zambia to be signed by members of the public in support of the Bill’s withdrawal. He also informed the crowd that the MLC had initiated proceedings against the government for contempt of the High Court stay of execution, which had been obtained by PAZA in 1995. Meanwhile, a collateral demonstration planned for the Copperbelt town of Kitwe could not proceed as police withheld a permit for the march. The protesters who had assembled in Kitwe’s main square were, however, later addressed by ZUJ’s General Secretary, Humphrey Kajimalanga, who called on the Government to withdraw the Bill.¹⁰³

The Zambian demonstrations were supported by Namibian journalists, who picketed the Zambian High Commission in Windhoek as a show of solidarity with their Zambian counterparts.¹⁰⁴ The Commonwealth Press Union (CPU) and the International Press Institute (IPI) also sent solidarity messages to the Zambian Press. The IPI Press Freedom Advisor, Michael Kudlak, maintained “there should be no restriction on the free entry to the field of journalism or over its practice.”¹⁰⁵ Earlier, the Johannesburg-based Freedom of Expression Institute (FXI) had sent a submission to the South African department of Foreign Affairs, outlining the deteriorating situation in Zambia in respect of press freedom, which strongly condemned the Zambian Bill.¹⁰⁶ On 3 March, the Bill had been roundly criticised by three media experts appearing via satellite from the United States on the Zambian Television discussion programme, “Worldnet”.¹⁰⁷

In a statement from Brussels dated 11 April, the largest international journalists’ organisation, the International Federation of Journalists (IFJ), added its voice to concerns raised over the Bill. The IFJ statement pointed out that the government should not be involved in the accreditation or disciplining of

¹⁰³ “Zambian Journalists Demonstrate Over Media Council”, *PANA News Agency*, 12 April 1997; “Urgent appeal from MISA as government pushes through legislation for statutory media council; Zambian journalists demonstrate”, *IFEX Alert (MISA)*, 14 April 1997; “Lusaka marches against Media Bill”, *The Post*, 15 April 1997. Commonwealth Broadcasting Association, 12 April 1997.

¹⁰⁴ “Lusaka marches against Media Bill”, *The Post*, 15 April 1997.

¹⁰⁵ “Media Bill denounced”, *The Post*, 9 April 1997.

¹⁰⁶ “FXI makes submission on press freedom in Zambia to the South African Department of Foreign Affairs”, *IFEX Alert (MISA)*, 24 February 1997.

¹⁰⁷ “Govt’s media council plans criticised”, *The Post*, 5 March 1997.

journalists, and that accreditation should not be a requirement to practise as a journalist. The statement also said that media councils, even if independently appointed, should not have the authority to deprive a journalist of his or her liberty; “if like any other citizen, a journalist commits a crime, he should be prosecuted under the criminal law,” it said. Finally, the IFJ urged the Zambian authorities to desist from supporting legislation intended to control access to and exercise over the profession. “The Bill by creating very restrictive criteria for the granting of accreditation and by placing accreditation in the hands of a body which has no codes or rules by which to guide its decisions, other than those it chooses to adopt, ensures the closing down of the profession of journalists to all but the favoured few,” the statement concluded.¹⁰⁸

3.5 Total withdrawal demanded

On 15 April, just three days after the Lusaka march, Information Minister, David Mpamba, withdrew the Media Council of Zambia Bill to allow for “further consultation” in view of the “considerable debate and emotion among practitioners and the general public” which the Bill had generated since its publication barely a week before.¹⁰⁹

Despite this announcement, journalists refused to capitulate. In a statement issued on 15 April, the MLC spurned the government’s promise of consultation, and demanded the complete withdrawal of the Bill. “We will not legitimise this objectionable Bill by engaging in dialogue with government,” the statement read in part,¹¹⁰ “we wish to reiterate the united and common stand of the Zambian media practitioners of our total rejection of this obnoxious bill and that there is nothing to debate regarding the draft bill which must be consigned to the rubbish bin of history. This stand is non-negotiable; there is no debate about a bad law.”¹¹¹ The statement described the decision to withdraw the Bill as “a tactical move to pacify the donors shortly before the forthcoming consultative group meeting scheduled for London later this month when Zambia's good governance record once again

¹⁰⁸ “Comments on the Media Council of Zambia Bill 1997”, International Federation of Journalists, 11 April 1997.

¹⁰⁹ “Government temporarily withdraws plans to create media council”, IFEX Alert (MISA), 16 April 1997.

¹¹⁰ “Media Bill withdrawn”, *The Times of Zambia*, 16 April 1997.

¹¹¹ “Government temporarily withdraws plans to create media council”, IFEX Alert (MISA), 16 April 1997.

comes under scrutiny,” noting that a similar tactic had been used to “hoodwink” donors prior to the passing of the 1996 Constitutional Amendment Bill.¹¹²

Non-journalists’ bodies too remained firm in their stand against the Bill. The Law Association of Zambia, the Christian Council of Zambia, the Zambia Independent Monitoring Team, the Secondary School Teachers Union, and the human rights NGO AFRONET all made statements calling for the immediate and total withdrawal of the Bill.¹¹³ The Foundation for Democratic Process (FODEP) appealed to the MMD government to be “democratic enough not only to *listen* to the overwhelming rejection of the Bill, but also... to discard the whole idea.” [Italics added]. Instead, the FODEP President, Alfred Chanda, suggested, the government should work towards the reform of pre-existing ex-colonial laws which impinged on press freedom and other human rights.¹¹⁴

3.6 Donor pressure

On 16 April in a verbal exchange with the US Ambassador, which was reported in the *Times of Zambia*, the Minister without Portfolio, Michael Sata, confirmed that the government had no intention of scrapping the Bill. “The Media Council issue is not over yet,” he said. “Government merely want it to be fully debated... we believe journalists must have a legal framework.” Ambassador Arlene Render, however, made clear that the United States was “totally opposed to any kind of legislation for the media.” “It’s up to people to make a choice on what they read,” she insisted.¹¹⁵

Diplomatic pressure had already been partly responsible for the “temporary withdrawal” of the Bill. In his announcement of 15 April, Information Minister David Mpamba admitted that the Zambian government had “made an undertaking to donors” that the Bill would be “subjected to public debate.”¹¹⁶ He also stated that “It is a matter of profound regret that some diplomats accredited to Zambia have taken it upon themselves to issue very crude instructions to the government of

¹¹² The Constitution of Zambia (Amendment) Bill, 1996 was passed without referendum despite introducing discriminatory provisions into the Constitution such as a declaration that Zambia is a “Christian nation”, and the barring, on the basis of one’s parent’s nationality, Zambian citizens (most notably Kenneth Kaunda) from contesting elections.

¹¹³ “Media Bill withdrawn”, *The Times of Zambia*, 16 April 1997; “Scrap Bill insists U.S.”, *The Times of Zambia*, 17 April 1997; “Press Bill withdrawal cheers many”, *The Times of Zambia*, 18 April 1997.

¹¹⁴ “FODEP advises govt to retreat on media bill”, *The Post*, April 15, 1997.

¹¹⁵ “Scrap Bill insists U.S.”, *The Times of Zambia*, 17 April 1997.

¹¹⁶ “Zambia pulls media bill - for now”, *Electronic Mail & Guardian*, 18 April 1997.

the Republic of Zambia.”¹¹⁷ A number of diplomatic missions had expressed concern over the draft media Bill. The Swedish Ambassador warned in late March, for example, that enactment of such a Bill would stifle the media in Zambia. “As one of the major donors, we welcome the establishment of a permanent Human Rights Commission and the new Anti-Corruption Commission team”, she said, “but we are definitely opposed to the Media Council Bill”. Reminding the Zambian government that, “good governance is one of the conditions attached to aid”, the Ambassador advised it to “just put it [the Bill] in a drawer and forget about it”.¹¹⁸

On 25 April, in his opening statement to donors at a meeting in London, the Minister for Finance and Economic Development, Ronald Penza, again confirmed that the Zambian government’s withdrawal of the Media Council Bill was merely to allow for further consultation. He did nevertheless state in his closing remarks that, “if the media were to develop themselves an institutional framework for self regulation... under no circumstance would government regulate the media itself.”¹¹⁹

Despite this assurance, on 10 July - following a meeting by journalists working in the state owned media on 6 July which resolved to set up an voluntary, self-regulatory, non-statutory media council¹²⁰ - Information Minister David Mpamba insisted: “they must bring their document to my ministry so that it can go to Parliament for ratification.” Journalists again refused to compromise, asserting that the minister’s conception of a self-regulatory media driven body was mistaken. “Our document does not need to go to Parliament because it will be non-statutory and must not be criminalised... it does not need credence from government or any other body,” the MLC maintained.¹²¹ It appeared that, despite the minister’s insistence on a *statutory* media council, the government had now shifted its position from one of offering consultation to journalists on a government-drafted Bill, to legislating, with possible amendments, a document drafted by journalists.

Meanwhile, in Paris, Zambia was again the subject of a Consultative Group meeting of donors. In a press release of 10 July, ZIMA urged donors to “seek assurances from the government that it will uphold the constitutional rights of

¹¹⁷ *Zambia, The Reality Amidst Contradictions: Human Rights Since the 1996 Elections*, Human Rights Watch, Vol.9, No. 3(A), July 1997, p. 26.

¹¹⁸ *Ibid*, p. 65.

¹¹⁹ Government of the Republic of Zambia, Report of the Proceedings of the Meeting with Donors, held in London on 25 April 1997 (Lusaka: Government of the Republic of Zambia, 9 May 1997) cited in *Zambia, The Reality Amidst Contradictions: Human Rights Since the 1996 Elections*, Human Rights Watch, Vol.9, No. 3(A), July 1997, p.27.

¹²⁰ “Zambian Journalists Draft Press Regulations”, *PANA News Agency*, 6 July 1997.

¹²¹ “Media needs an Act of parliament, insists information minister,” *The Post*, 15 July 1997.

freedom of the press and will stop the unnecessary harassment of journalists, both from the private and public media,” emphasising, in particular, that the government had not publicly declared that it had abandoned its intentions to legislate a media council to control the press. ZIMA joined the international human rights organisations Amnesty International, ARTICLE 19, Human Rights Watch (HRW) and Reporters Sans Frontières (RSF) in condemning the Zambian government’s refusal to abandon the proposed media legislation.¹²²

Dismissing the observations of the human rights groups, the Minister for Finance and Economic Development, Ronald Penza, maintained that Zambia’s human rights record was second to none. He also failed to give a categorical answer when later pressed by RSF following the meeting to give an undertaking to donors that the project to create a statutory media council had been scrapped. The minister said, “Journalists in Zambia are powerful and they need to be regulated”, but also added, “But journalists have to regulate themselves.”¹²³ And on 18 August, addressing a workshop on press law and ethics, the Deputy Information Minister, Ernest Mwansa, insisted “Government is not talking about *itself* taking over the role of regulating the media,” but at the same time reiterated its intention to enact an Act of Parliament to ensure regulation is “workable”.¹²⁴ [Italics added]

3.7 The High Court ruling

On 22 August, the High Court handed down its ruling in the case filed on behalf of PAZA members in 1995. In *Francis Peter Kasoma v. The Attorney General*,¹²⁵ the applicant, the (then) president of PAZA - and a professor of media studies (who clearly had no personal concerns as to qualifying as an “accredited journalist”) argued through his lawyer, John Sangwa,¹²⁶ that the Government’s decision to legislate a media association was invalid. The application was brought by way of judicial review. The current judicial interpretation of the Constitution in Zambia holds that only enacted and not proposed legislation may be challenged *directly* under the fundamental rights chapter of the Constitution. Judicial review is the

¹²² “Zima Seeks Donors Pressure On Zambia”, *The Post*, 11 July 1997.

¹²³ “Journalists need to be regulated, says Penza”, *The Post*, 14 July 1997.

¹²⁴ “Move with times, scribes urged”, *Times of Zambia*, 19 August 1997.

¹²⁵ High Court of Zambia, 95/HP/29/59. For a more detailed discussion of the *Kasoma* ruling, see Njonjo Mue, “Zambian High Court Saves Journalists from Compulsory Registration”, *Southern African Media Law Briefing*, Vol. 2, No. 3, ARTICLE 19 / Freedom of Expression Institute / Media Institute of Southern Africa, September 1997.

¹²⁶ A Zambian lawyer specialising in both media and constitutional law.

process whereby a court may examine an administrative decision to determine whether the relevant person or body, in making that decision, acted reasonably,¹²⁷ with procedural fairness and within the scope of its lawful powers. If these three conditions are not met, a decision may be quashed by the court. In *Kasoma*, it was argued that the government's decision was procedurally unfair as PAZA members, although interested parties, had not been given an opportunity to be heard prior to the decision being made.¹²⁸ The court accepted this contention, holding that:

The effect of the creation of the Media Council, would be that the Press Association of Zambia would cease to exist, and if it were to continue to exist, it would be in a mortally weak position. As for the individual members of the Press Association of Zambia, the creation of the Media Association of Zambia would undermine their professional standing. Those who would fail to meet whatever standards, which may be set, would lose their right to work as journalists, a threat and possibility they have never faced until the decision was made, thereby depriving them of a right of livelihood they previously enjoyed. According to the evidence available before the court there is no doubt that the creation of the Media Council of Zambia or any other regulatory body will have an impact on the interests and rights of the members of the Press Association of Zambia and affect the Association itself. *The principles of procedural fairness demand that the Applicants be given adequate notice of the impending decision and be heard or allowed to make representation on its own behalf to defend its interest. This was never done in this case and I so find.*¹²⁹

Cleverly, the fundamental rights chapter of the Constitution was also invoked *indirectly* by counsel for the Applicant in arguing that the power to make this type of decision derived from the Constitution itself, and that the particular decision in question went beyond the scope of those lawful powers because it was “not in furtherance of the general objectives and purposes of the Constitution”. The High Court agreed:

¹²⁷ A decision is ‘unreasonable’, in this sense, if: “the court considers it to be a decision that no reasonable body could take. It is not what the court thinks is reasonable, which is a different thing altogether”, *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 KB 223.

¹²⁸ The right of a person, who may be directly affected by an administrative decision, to be heard prior to that decision being made is a basic principle of “natural justice” under common law jurisdictions.

Article 44 of the Constitution... vested in the President executive functions of government, which include the formulation and implementation of government policies, the formulation of legislation and, of relevance to this case, the authority to decide on the creation of the Media Council of Zambia. Some of the said functions are delegated to Ministers appointed from among Members of Parliament, by the President. *Exercise of these powers is not unfettered. They must be exercised within the framework of the Constitution and in furtherance of the ideals embodied therein...* The decision to create the Media Council of Zambia is no doubt going to have an impact on the freedom of the journalists to freely assemble and associate with other persons or among themselves to form or belong to any association for the protection of their interests, as they have done, by creating the Press Association of Zambia. This would also have an impact on freedom of expression in that failure of one to affiliate himself to the Media Council of Zambia, or in the event of breach of any moral code determined by the council would entail one losing his status as a journalist, and with it the denial of the opportunity to express and communicate his ideas through the media. In the light of the above it cannot be seriously argued that the creation of the Media Association *or any other regulatory body by the Government* would be in furtherance of the ideals embodied in the Constitution, viz-a-viz freedom of expression and association [guaranteed under Articles 20 and 21]. Consequently, I find that the decision to create the Media Association is not in furtherance of the objectives or purposes embodied in the Constitution.¹³⁰

For the foregoing reasons, the High Court quashed the government's 1995 decision to legislate a Media Council. Although the court additionally ordered: "should the government... decide to bring back the Bill... that the Applicants be consulted on the matter," the ruling clearly indicated that *any* decision by the government to introduce legislation involving the compulsory licensing or the de-registration of journalists, would be beyond the powers granted to the government under the Constitution - whether or not consultation took place. The ruling also implied that if such legislation were to be passed by Parliament, it would not pass constitutional

¹²⁹ *Francis Peter Kasoma v. The Attorney General*, High Court of Zambia, 95/HP/29/59, (unreported) at 18.

¹³⁰ *Ibid.* at 19 and 21. Emphasis added.

scrutiny by the court if directly challenged against the fundamental rights provisions relating to freedom of expression and association.

The government's failure to lodge, within the specified time limit, an appeal against the High Court ruling, signalled the end of 1995/1997 attempt to license journalists. Symbolically, on 17 January 1998, the same day that the Media Ethics and Complaints Commission (MECC) was inaugurated as a voluntary non-statutory self-regulatory body for journalists from the public media,¹³¹ and a year to the day after President Frederick Chiluba declared the government's intention to draft the 1997 Media Council Bill, journalists announced that the MLC¹³² would cease to exist.

¹³¹ "Zambian Journalists Launch Professional Watchdog body", PANA, 18 July 1998; "Scribes crucial meet on", *The Times of Zambia*, 16 July 1997.

¹³² The MLC had been formed specifically to fight the introduction of a statutory media council (see above).

4 OTHER COMMONWEALTH AFRICAN COUNTRIES

4.1 Nigeria

In December 1992, on the eve of the 1993 elections which were supposed to return Nigeria to civilian rule, military ruler General Ibrahim Babangida signed into law the Nigerian Press Council Decree. The 1992 Decree provided for the establishment of a Press Council charged with the discipline and licensing of journalists. The Decree repealed and replaced a similar decree, the Nigerian Media Council Decree of 1988, which was never fully implemented as journalists refused to co-operate with the system.¹³³

The 1992 Decree is very similar to the Ugandan Press and Journalist Statute but compares favourably in two main respects. Firstly, the majority of the members on the Nigerian Press Council - 12 out of its 17 members - are first elected or nominated by independent unions, associations or other bodies as provided. Under the Ugandan statute, only three of the 13 members are first nominated by independent bodies, the rest being directly appointed by the Minister of Information. Furthermore, the Information Minister of Nigeria is not granted the wide powers of intervention in the running of the council conferred on his counterpart under the Ugandan statute. To this extent, the Nigerian Press Council can be said to be relatively independent. Secondly, although the Nigerian decree, in common with the Ugandan statute, sets restrictive qualifications to become eligible for registration and makes the practice of journalism without registration a criminal offence liable to imprisonment, the Nigerian Press Council itself has no power to suspend a journalist for misconduct.

In the above respects, the Nigerian Decree of 1992 is also an improvement on the Nigerian Media Council Decree of 1988, under which only nine of the 18 members were first nominated, and under which the council had been given the power to suspend or strike journalists off the register. In a country where the role of the press as a “watchdog” of government currently operates under an effective state of siege to the extent that it has become widely referred to as “guerrilla journalism”,¹³⁴ the relative independence of the Nigerian Press Council as a means

¹³³ Richard Carver, *Truth From Below: The Emergent Press in Africa*, ARTICLE 19, October 1991, p.25, 52 and 55.

¹³⁴ “Guerrilla journalism” describes the situation whereby journalists feel compelled to operate underground, frequently changing printers. As Kola Ilori, editor of the critical weekly *Tell*, recently

of adjudicating on “media excesses” has inevitably been seen as preferable by journalists to other forms of restrictions on the press, such as arbitrary detention, which violates not only freedom of expression and the press but also the right to personal liberty and security. In its report of 1993, the Nigerian Union of Journalists (NUJ) explained:

The inauguration of the Nigeria Press Council on December 29, 1992 and the subsequent promulgation of Decree No 58 of 1992 to back it, gave journalists great hope. It was felt that intimidation of journalists will be minimised and so would detention without trial and pre-emptive closure of press houses and seizure of copies of publications. However, all these glorious hopes were dashed in the year under review. Government simply ignored the council and rather intensified its arbitrariness and harsh treatment of the press.¹³⁵

The intimidation and detention of journalists has, in fact, increased over the last few years since the NUJ report was published. The Press Council Decree has not played a part in this repression. There are a panoply of decrees and laws in force in Nigeria which may be used against the press.¹³⁶ Some relate specifically to the media, such as the Offensive Publication (Proscription) Decree, the National Broadcasting Commission Decree and the laws relating to “seditious publications” and “official secrets”. Less specifically, the State Security (Detention of Persons) Decree, No. 2 of 1984 - which allows for the indefinite and incommunicado detention without charge or trial of any person deemed to threaten the economy or the State - and the Treason and Other Offences (Special Military Tribunal) Decree, are among the “catch-all” decrees available which have kept journalists in prison.¹³⁷

Before his sudden death on 8 June 1998, it was widely expected that the then head of the Nigerian military government, General Sani Abacha, would be sole candidate in elections - then scheduled for August 1998 - to succeed himself

commented, "That we come out every week is the result of sheer ingenuity... We have had to perfect a fleet-footed art of mobile production. It taxes your brain, it taxes your blood, it taxes your body, but it is the only way to survive"; "Nigeria's Persecuted Press Fights Back Underground", *New York Times*, 15 April 1998.

¹³⁵ *Violation of Press Freedom in Nigeria*, The Press Freedom Committee, Nigerian Union of Journalists (1993), p. 1-2.

¹³⁶ For a comprehensive survey of Nigerian laws and decrees which are aimed, or may be used, against the Press, see *Unshackling the Nigerian Media: An Agenda for Reform*, ARTICLE 19 & Media Right0s Agenda, July 1997, pp. 28-36.

¹³⁷ *Ibid.*

as civilian president. The new military administration of General Abdulsalam Abubakar seems determine to clean up Nigeria's poor image and has released some of the journalists incarcerated under Abacha. It is not yet clear whether or how Abubakar intends to continue with Abacha's "transition to democracy," but one thing is clear: whoever heads the next "civilian government", any continued arrest and detention without trial of persons expressing opposing views or criticism of the government can only serve to undermine any legitimacy gained from a "democratic" transition. In this context, the use of less overt methods to stifle freedom of expression should not be overlooked. A far more systematic means of containing criticism - than by chilling expression by the threat of arbitrary detention - may be achieved via the restrictive licensing of newspapers, the licensing of journalists, and the restrictive "licensing" of distribution.

On 24 January 1997, the Information Minister, Walter Ofonagoro, announced that the Nigerian government would begin to enforce Newspaper Decree, No. 43 which, although promulgated in 1993, had yet to be fully implemented.¹³⁸ The decree provides for the establishment of a Newspaper Registration Board, comprising members appointed by the President, to oversee the licensing of newspapers. Licences are to be reviewed annually and renewed at the Board's discretion; "if the Board is satisfied with the performance of the newspaper during the preceding year". Any person who owns, publishes or prints a newspaper which is not registered is guilty of an offence and liable to imprisonment for up to seven years or a fine of Naira 250,000 (approx US \$3,000) or to both. The Decree further stipulates that applicants must pay a steep pre-registration fee of Naira 250,000 (approx US \$3,000) for each publication, in addition to a non-refundable fee of Naira 100,000 (approx US \$1,200).

In October 1994, the African Commission of Human and Peoples' Rights declared admissible a communication lodged by the Nigerian non-governmental organisation, Media Rights Agenda (MRA), which alleged that the Newspaper Decree No. 43 violates Articles 7 and 9 of the African Charter guaranteeing the right to a fair hearing and freedom of expression respectively.¹³⁹ The Nigerian High Court at Lagos had, in 1993, struck down the Decree as unconstitutional but

¹³⁸ "Nigerian government to set up press court and enforce Decree 43," IFEX Alert (CPJ), 28 January 1997; "Much Ado About Press Court," *Post Express*, 15 February 1997; "No, again, No: Nigerian Press Organisation rejects media commission and press court", *Newswatch* (Lagos), 23 June 1997.

¹³⁹ "Rights Commission Defers Ruling on Group's Complaints Against FG", *Post Express*, 21 January 1998.

the military government overrode the decision, revalidating the decree under the Constitution (Suspension and Modification) Decree, No. 107 of 1993.¹⁴⁰

In January 1997, on announcing that Decree No. 43 was soon to be enforced, the Information Minister also implied that the licensing of journalists under the Nigerian Press Council Decree would soon be implemented. He did so by divulging that an amendment to the Press Council Decree would soon be promulgated to provide for the establishment of a “Press Court”. The function of the Press Court, the minister revealed, would be to try “journalists” and to treat with dispatch cases of libel, invasion of privacy and malicious publication.¹⁴¹

As is the case under the Ugandan statute, the Nigerian decree makes registration a two-tier process. A journalist must first register with the Nigerian Union of Journalists (NUJ) subject to the necessary qualifications, as prescribed under the decree, as may be varied by the council from time to time. The applicant must then satisfy the council “in addition to evidence of qualifications” that *inter alia* “he is of good character”, “he has a general professional orientation”, and “he has good knowledge of the politics and socio-economic affairs of his society acquired from an approved institution”. Although the NUJ has registered journalists, the provisions of the decree relating to “satisfying the council” have not been implemented and no person has so far been prosecuted for practising journalism without being registered.

Ominously, on 21 April 1997, the acting National Secretary of the NUJ, Mr Mohammad Kali, announced that his organisation would soon issue licences to the 4,000 journalists on the NUJ register, urging those who had not yet registered to do so.¹⁴² The following day, the Deputy National President, Malam Sani Potiskum stated that the NUJ would demand the closure of any private or government-owned organisation which failed to adhere to the provisions relating to educational qualifications when recruiting journalists, adding that, “we shall seek the assistance of the law enforcement agencies”. Mr Potiskum indicated that the decree was likely to take effect within the year and warned that once registration under the Press Council Decree had been fully implemented, “no one will just employ somebody to practise journalism simply because the person has a flair for writing”.¹⁴³

¹⁴⁰ *Unshackling the Nigerian Media: An Agenda for Reform*, ARTICLE 19 & Media Rights Agenda, July 1997, p. 32.

¹⁴¹ “Nigerian government to set up press court and enforce Decree 43,” IFEX Alert (CPJ), 28 January 1997; “Much Ado About Press Court,” *Post Express*, 15 February 1997.

¹⁴² “Press Council Soon to Licence Journalists,” *Post Express*, 22 April 1997

¹⁴³ *Ibid.*

Many independent journalists had regarded the Press Council Decree as a “potential trojan horse” of the government.¹⁴⁴ The announcement of a special Press Court illustrates the danger of accepting laws which single out the press for special treatment. Once such laws are passed they can easily be amended or restrictively applied or interpreted. An analogy may be drawn, in this respect, with an experience of the press in the United Kingdom where:

...debates over the Police and Criminal Evidence Act raised the issue of principle as to whether journalists should claim special protection from the normal process of the law. Although such protection was initially sought by media organizations, many of their members subsequently changed their minds when it became apparent that the special treatment awarded them in the Act would necessarily involve the courts in defining “journalism” and in operating a special regime that would accord to practitioners favoured treatment by comparison with ordinary citizens. The special status offered by the Act infringes the principle that journalism is not a profession, but an exercise by occupation of the citizen’s right to freedom of expression. In retrospect, the media organizations (such as the Guild of British Newspaper Editors) who supported the Government’s offer of “special protection” for journalists fell into an obvious trap, and damaged their members interests. Prior to the 1984 statute, police had not been granted access to untransmitted material at common law. But once a *statutory route* for obtaining that material came into existence, albeit with “special protections” the police naturally exploited it and courts naturally decided that the protection was not very special after all.¹⁴⁵

The Nigerian Union of Journalists was among a number of Nigerian Press Associations and academics to oppose the idea of a Press Court in its entirety, viewing it as a grave threat to freedom of the press.¹⁴⁶ With reference to the Press Court, and the Media Registration Board under Decree 43, a professor of law at Lagos State University, C. A. Ogan, expressed surprise that the government could be contemplating the creation of institutions that “do nothing but attempt to gag the Press and hamper the flow of information at the threshold of the 21st century and at

¹⁴⁴ *Unshackling the Nigerian Media: An Agenda for Reform*, ARTICLE 19 & Media Rights Agenda, July 1997, p. 31.

¹⁴⁵ Emphasis added; G. Robertson and A. Nicol, *Media Law*, 3rd ed., Penguin, 1992, p. 207.

¹⁴⁶ “Much Ado About Press Court,” *Post Express*, 15 February 1997.

a time when information dissemination has become the greatest wealth of many nations".¹⁴⁷

The President of the Newspapers Proprietors Association of Nigeria (NPAN), Alhaji Ismaila Isa Funtua, warned of yet another threat to the dissemination of information: a body known as the National Mass Media Commission (NMMC), the establishment of which had been recommended by the National Constitutional Convention and was subsequently provided for in the (still to be finalised) draft of the "1995" Constitution. According to Mr Funtua, if the legal provisions relating to the NMMC are not abandoned, it will become illegal for newspapers and magazines to circulate effectively outside the State in which their headquarters are located: "if you want to circulate outside the State you have to turn your organisation into a public company", he noted, adding, "how many people want to put money in a newspaper".¹⁴⁸ *The Post Express* newspaper, commenting on the potential effect of the draft NMMC provisions, stated:

In an era when the advancement of technology has enhanced the free flow of information virtually reducing the entire world to a global village, newspaper readers in Nigeria will become restricted to purchasing local papers published within defined geographical locations.¹⁴⁹

4.2 Tanzania

In March 1993, the Tanzanian government published the Media Professions Regulation Bill aimed at establishing a government-appointed Media Council charged with the licensing and discipline of journalists. Similar to the Nigerian decree, the Bill made certain educational qualifications a prerequisite for practising journalism and made it an offence liable to imprisonment to practise journalism without being registered.

The Bill was shelved following a storm of protest from media workers and the public but resurfaced in February 1995. In re-introducing the Bill, the acting Principal Secretary of Information and Broadcasting, Bwire Musalika, attributed the outcry over the Bill in 1993 to a "misconception on behalf of journalists". This misconception, according to Mr Musalika, was that the draft Bill was final and that

¹⁴⁷ *Ibid.*

¹⁴⁸ "Proposed Mass Media Commission Worries NPAN", *Post Express*, 19 May 1997.

¹⁴⁹ *Ibid.*

journalists would not be consulted prior to the Bill being presented to Parliament. He sought to reassure Tanzanians that discussion on the draft would be “open to everyone”.¹⁵⁰

Interpreting this second attempt to introduce a Media Council Bill as a means of ensuring state control of the press during the run-up to the October 1995 elections, journalists voiced their total rejection of any statutory regulation of the press and immediately set about drafting a constitution for a voluntary, independent, non-statutory body. The Media Council of Tanzania (MCT) constitution was adopted by a General Convention on 28 June 1995.¹⁵¹ By this time, it had become clear the government had abandoned its intention to table its controversial Bill. The CCM Secretary for Information and Broadcasting, Elikunda Mtango, warned, nevertheless, that the council’s creation did not preclude the government’s “applying the laws of this country” as it chose to interpret them.¹⁵²

On 13 December 1996, the Zanzibar Information Services (ZIS) announced that it would commence licensing journalists operating from Zanzibar, setting 28 February as the deadline for applications.¹⁵³ It was pointed out by ZIS Deputy Director, Rafii Makame, that the authority to license journalists in Zanzibar was already prescribed under the 1988 Newspaper Act of Zanzibar. The United Republic of Tanzania is a federation of the former territories of Tanganyika and the neighbouring Islands of Zanzibar and Pemba, which formed a union on 26 April 1964. Zanzibar retains a large degree of self-government including its own Parliament, which may pass legislation independent of mainland Tanzania.

It has been the Zanzibari authorities, and not the Union Government of Tanzania, which have instituted the recent crackdown on journalists amid the reporting of unrest on the island. Since the October 1995 elections, the ruling Chama Cha Mapinduzi party (CCM) in Zanzibar has been locked in a dispute with the main opposition party, the Civic United Front (CUF), over the election results.¹⁵⁴ On 24 January 1996, Zanzibar’s Minister of Information, Youth and Culture, Isa Mohamed Isa, had announced on state-controlled radio that the independent Kiswahili newspaper *Majira* was banned from the island because of its “seditious” and “malicious” reporting, critical of the President of Zanzibar,

¹⁵⁰ “Media council act back on the government’s agenda”, IFEX Alert (MISA), 20 February 1995.

¹⁵¹ On 23 September 1997, the Ethics Committee of the MCT settled its first complaint, filed a month earlier. By the beginning of April 1998, the MCT had settled at least six additional complaints.

¹⁵² “Tanzania” in *Year in Review: 1996*, Committee to Protect Journalists.

¹⁵³ “Tanzania” in *So This is Democracy: State of the media in Southern Africa 1996*, Media Institute of Southern Africa, p. 51; “Zanzibar authorities threaten to arrest unlicensed journalists”, IFEX Alert (MISA), 13 March 1997.

¹⁵⁴ “Zanzibar government bans “Majira” newspaper”, IFEX Alert (MISA), 5 February 1996.

Salim Amour.¹⁵⁵ Two days later, Salim Said Salim, a freelance reporter who had been reporting from Zanzibar for *Majira*, was banned from working on the Island. Justifying the latter ban on state radio, the Zanzibar Information Minister said that the journalist's articles were likely to "incite the Island to chaos".¹⁵⁶ The ban on Salim was lifted on 9 July following a stream of protests from local and international organisations. The ban on *Majira*, however, is still to be lifted.¹⁵⁷ In October 1997, the Zanzibar Parliament increased the possible penalty for "circulating illegal or banned publications" (such as *Majira*) from six months to three years. It also increased the possible penalty for criminal libel from two to five years.¹⁵⁸

Under the new licensing rules, journalists operating in Zanzibar must apply for a licence annually at a fee of around US \$12. Those practising without a licence are liable to a fine of TShs 500,000 (approx. US \$1,000) or imprisonment for five years.¹⁵⁹ In March 1997, MISA-Tanzania reported that the Zanzibar authorities had threatened to order the arrest of journalists practising without a licence. Zanzibar's Chief Information Officer, Idrissa Haji, was quoted in the government-controlled *Daily News* as saying that 43 licences had been issued but that the information department was aware of more than 50 journalists who had yet to obtain one.¹⁶⁰

Although there appears to be no cases where applications for a licence have been declined,¹⁶¹ a small number of journalists have refused to apply. Salim Said Salim told ARTICLE 19 that he will not apply and pay for a licence in order to do something which is guaranteed, as of right, under the Constitution. "The Union Constitution says that every Tanzanian has the right to receive and give information", he insisted, "I'm operating without it [the licence]. They keep on harassing me but I just don't give a damn about it." Salim said that although no charges had been brought against him or any other journalist for operating without a licence, he had been detained on more than one occasion for questioning by the police. He noted, however, that after protests in 1997 from journalists from the

¹⁵⁵ *Ibid.*

¹⁵⁶ "Zanzibar Information Ministry bans journalist Salim Said Salim from writing", IFEX Alert (MISA), 8 February 1996.

¹⁵⁷ "Zanzibar authorities lift ban against journalist; paper remains banned", IFEX Alert (MISA), 17 July 1997.

¹⁵⁸ "When Zanzibar Govt Isolates Itself!", *Express Online Weekly Newspaper*, Issue No 35, 23-29 October 1997.

¹⁵⁹ "Zanzibar authorities threaten to arrest unlicensed journalists", IFEX Alert (MISA), 13 March 1997.

¹⁶⁰ *Ibid.*

¹⁶¹ No minimum criteria, educational or otherwise, are prescribed under the Act for eligibility for a licence.

mainland, as well as international journalists' associations, the harassment had eased. Meanwhile the crackdown on journalists and newspapers in Zanzibar has compromised Tanzania's image as a country which - under the presidency of Benjamin Mkapa, a former journalist - has generally respected press freedom.

4.3 Kenya

In November 1993, a 19-member task force was appointed by the Attorney General of Kenya, Amos Wako, to review and make recommendations on laws relating to the Press. Two years later, in December 1995, the "Task Force on Press Law" had still not presented their findings, when news that the government had drafted a Press Council Bill which would soon to be tabled in Parliament was reported in the Kenyan press. On 15 January 1996, the Attorney General denied that such a Bill had been "published" explaining that the government had instituted a Task Force on Press Law to study the need for press legislation and that the Task Force had yet to complete its work. "It is only after the Task Force has made its views (known) to the government that a draft can be prepared for consideration and approval of the Cabinet," he said.¹⁶² Copies of the "The Press Council of Kenya Bill, 1995"¹⁶³ had, however, already been leaked to the press and the Bill was furiously condemned by journalists and constitutional lawyers.

Eight international journalists associations - The Commonwealth Press Union, the Inter American Press Association, the International Association of Broadcasting, the International Federation of Newspaper Publishers (FIEJ), the International Federation of the Periodical Press (FIPP), the International Press Institute (IPI), the North American National Broadcasters Association and the WPFC - wrote a joint letter to President Moi expressing concern over the draft legislation. "If adopted, such legislation would not only spell the effective end of press freedom in Kenya, even though the draft purports to 'promote and ensure' press freedom in Kenya, it would also severely damage the reputation of Kenya in the world", the letter read in part.¹⁶⁴

Following the now familiar pattern of other Commonwealth African countries, the government described the outcry over the draft legislation as "premature" maintaining that the Press Council of Kenya Bill - together with the

¹⁶² "Media Hue and Cry", *The Weekly Review*, 19 January 1996.

¹⁶³ The full-text of the Press Council of Kenya Bill, 1995 is reproduced in *The Nairobi Law Monthly*, No. 60, January 1996.

Kenya Mass Media Commission Bill, which had also been “published” - were merely intended as “working documents”.¹⁶⁵ By 26 January, however, President Moi felt compelled to formally shelve the controversial bills in the face of mounting opposition from the international community. Written requests were at the same time made by the Kenyan authorities to foreign diplomats, calling for recommendations on press laws that would be appropriate to Kenya.¹⁶⁶ Journalists, meanwhile, expressed fears that the shelving of the legislation was merely a “tactical retreat” and that the bill could be whisked into Parliament at a later date when the need to appease donors was less pressing.¹⁶⁷

By the beginning of 1998, following the December 1997 elections, the government-appointed Task Force had still not completed its work. On 7 April, the Attorney General, Amos Wako, announced at a workshop on media laws in Nairobi, that the Task Force on Press Law was to have its final report submitted by the end of the month.¹⁶⁸ The timing of the Attorney General’s announcement which set finally a deadline close to four and a half years after the Task Force commenced its work, was not specifically explained. It may be observed, however, that the Attorney General’s announcement came barely a week after President Moi was reported as having told the Attorney General to instruct the Police Commissioner to crack down on “irresponsible publications”.¹⁶⁹

4.4 Botswana

On 8 July, 1996, Botswana lawyer, Patrick Gunda applied to the Botswana Telecommunication Corporation (BTC) for a licence to establish a Radio Station, which he later registered under the name of *Radio GAGA*. There are currently two radio stations in Botswana, both of which are government-controlled. In a letter dated 5 August, the BTC claimed that it did not have the authority to issue broadcasting licences. This was despite the fact that such powers were clearly granted to the BTC under the Botswana Telecommunication Corporation Act.

¹⁶⁴ “Concerns over draft press laws”, IFEX Alert (WPFC), 22 December 1995.

¹⁶⁵ “Kenya” in *Year in Review: 1996*, Committee to Protect Journalists (1996); “Kenya” in *Reporters sans frontières Report, 1997*.

¹⁶⁶ “Authorities shelve draft press laws; request recommendations”, IFEX Alert (CPJ), 5 February 1996.

¹⁶⁷ “Kanu’s Blueprint for Re-establishment of Dictatorship”, *The Nairobi Law Monthly*, No. 60, January 1996; “Kenya: The Press - Not yet Free”, *African Topics*, 16, (Jan/Feb 1997).

¹⁶⁸ “Task force report dates set”, *The Nation*, 8 April 1998.

¹⁶⁹ “Moi orders crackdown on *The Star*”, IFEX Alert (NDIMA), 2 April 1998.

Towards the end of 1996, *Radio GAGA* took the BTC to court for its failure to consider *Radio GAGA*'s application for a broadcasting licence. The High Court of Botswana ruled that BTC did have the authority to issue licences and ordered that it make a decision on *Radio GAGA*'s application.

Early in 1997, both Mmegi Publishing Trust - owners of the critical independent newspaper *Mmegi* - who had also applied for a broadcasting licence, and *Radio GAGA*, were informed by the BTC that "the process of licensing your operation ... has reached an advanced stage."¹⁷⁰ A few days later, however, the government established the Botswana Telecommunications Authority (BTA), transferring the power to grant licences to the new authority. *Radio GAGA* and *Mmegi* were told by the BTA that they must reapply. According to the BTA Head, Moses Lekaukau, a fresh application was necessary because the BTA was "a different body with different policies and principles" to the BTC.¹⁷¹ By the middle of 1997 a large number of applications for broadcasting licences had been received but no broad guidelines existed to assess applications. It was against this background that the formulation of a Mass Media Communications Bill commenced. But, as will be seen, the bill was expanded to cover the introduction of regulatory controls on newspapers and journalists.

In the two years leading up to the publication of the Mass Media Communications Bill, the relationship between the press and the state had deteriorated. Journalists had been pressured to reveal their sources and arrested and charged under various laws including the Alarming Publications Act, the National Security Act, and the Corruption and Economic Crimes Act, as well as criminal libel laws.¹⁷² A 10 per cent newspaper sales tax had, furthermore, been introduced from 1 March 1996. This was a significant blow to independent newspapers, already compelled to pay taxes on newsprint, printing equipment and other printing requisites.¹⁷³

On World Press Freedom Day, 3 May 1997, the Presidential Affairs Permanent Secretary, Phillip Matsetse, declared that the government was in the final stages of drafting a media Bill, disclosing that the Bill would not only set up a

¹⁷⁰ "Scramble for the airwaves", *The Botswana Gazette*, 5 November 1997.

¹⁷¹ *Ibid.*

¹⁷² See e.g., "Botswana" in *So This is Democracy: State of the media in Southern Africa 1996*, Media Institute of Southern Africa, pp. 3-8; "Concern for Press Freedom in Botswana", Canadian Committee to Protect Journalists, 1996; "Botswana" in *Reporters sans frontières Report, 1997*.

¹⁷³ "Government introduces sales tax on newspaper sales; media legislation proposed", IFEX Alert (MISA), 13 March 1996.

National Broadcasting Board to oversee the licensing of Radio Stations but also provide for the registration of newspapers and the establishment a Press Council.¹⁷⁴

The draft Bill was made public on 28 May, and made provision for the establishment of a Press Council, the Executive Committee of which was given the power to discipline journalists and impose fines, subject to a “code of practice” which was to be drawn up by the Executive Committee. Five of the eleven members of the Committee were to be appointed directly by the Minister of Information. The Director of Information was given the power to licence journalists i.e., issue “press cards” to resident journalists, and “accredit” foreign journalists, who cover “any occurrence” or “official event” in Botswana.

On 21 June, MISA-Botswana held an emergency conference to solicit the views of media practitioners and other interested parties, and to formulate a “position paper” on the draft media bill.¹⁷⁵ The position paper largely rejected the bill and called on the government to delay its tabling - which was expected on 9 July - until the contents of the bill could be fully scrutinised and debated by stakeholders. The government had, meanwhile, received numerous international protests and agreed to meet a delegation from MISA-Botswana on 25 June. It was decided at this meeting that consultation with the media would take place prior to the tabling of the Bill.¹⁷⁶ At a follow-up meeting on 3 July, the government agreed to defer the tabling of the Bill, and a task force, made up of representatives from the private media and the government, was set-up to review the proposed legislation.¹⁷⁷

At the 25 June meeting, the MISA-Botswana delegation pointed out, in respect of the restrictive licensing of journalists, that the issuing of press cards to resident journalists and the accreditation of foreign journalists, was “impractical, unwarranted and a serious potential threat to freedom of expression and the flow of information”. The delegation further noted that, under the proposed legislation, it was left to the minister to define who a “journalist” was and that this was

¹⁷⁴ “Botswana editors fight back against media bill”, *Electronic Mail & Guardian*, 10 July 1997; “To His Excellency President Sir Ketumile Masire, Office of the President”, Letter of protest, *Reporters sans frontières*, 25 June 1997.

¹⁷⁵ “Media calls on authorities to defer the tabling before Parliament of Mass Media Communications Draft Bill”, IFEX Alert (MISA), 23 June 1997.

¹⁷⁶ “Government meets with media to discuss proposed media legislation”, IFEX Alert (MISA), 30 June 1997.

¹⁷⁷ “Government backs away from controversial media legislation”, IFEX Alert (MISA), 9 July 1997.

“notwithstanding the fact that in the emerging global information age, the collection and dissemination of information is becoming a mass activity”.¹⁷⁸

The Botswana Centre for Human rights (Ditshwanelo) issued an 11-page “discussion document” together with a press statement on the proposed bill. On the issue of licensing, Ditshwanelo noted that: “The principle of freedom of expression carries no prerequisite of who stands behind the opinion” and that it was a sign of an “eroding democracy” where any group or interest in the society is allowed to monopolise the flow of information. Rather, the press statement advised, “the proper focus should be on increasing opportunities whereby people can express themselves.” “Botswana,” Ditshwanelo recommended, “should strengthen its commitment to community-based media ensuring that the people are given the means to produce their own publications”.¹⁷⁹

On 15 November, at a workshop called by MISA-Botswana to update media workers and human rights activists on the progress of the Task Force which had been set up to review the bill, it was announced that the sections of Mass Media Communications Bill 1997 relating to the licensing and discipline of journalists and the registration of newspapers, had been scrapped without replacement.

4.5 Swaziland

The constitutional history of Swaziland, which differs in certain respects from other Commonwealth countries discussed in this report. On independence from Britain in 1968, Swaziland became a constitutional monarchy with a parliament comprising members elected on party tickets or nominated by the King. In April 1973, however, King Sobhuza II annulled the 1968 Constitution, including its Bill of Rights, which guaranteed freedom of expression, and dissolved Parliament, effectively banning all political parties. Although Parliament was revived in 1978, the ban on political parties remained in force. 55 of the 65 seats in the Swazi House of Assembly are decided through “no party” elections. The remaining 10 members are appointed by the King, who also retains the power to appoint the Prime Minister and Cabinet.

¹⁷⁸ “Draft points for discussion between Media Institute of Southern Africa (MISA) Botswana Chapter delegation and the Hon. Minister of Presidential Affairs and Public Administration, Mr. Ponatshego Kedikilwe, held at the Office of the President, 25 June 1997”.

¹⁷⁹ “Press Statement: Ditshwanelo Opposes Human Rights Violations in Proposed Media Bill”, 11 July 1997; “Ditshwanelo Discussion Document on the Proposed Mass Media Communications Bill”, 11 July 1997.

>From the early 1990s, pro-democracy groups in Swaziland, in particular trade unions, have been demonstrating for constitutional reforms, including the repeal of the 1973 Royal Decree which suspended the Constitution. In July 1996, after an eight-day strike, which threatened to cripple the economy, King Mswati III established a Constitutional Review Commission (CRC) to draft a new constitution.¹⁸⁰ Despite this development, pro-democracy groups have continued to stage demonstrations, viewing the constitutional review process headed by the CRC, whose members are appointed directly by the King, as unrepresentative, slow and lacking in transparency. It is against this background, that the media has come under increasing attack in recent years for covering demonstrations or any other activities by pro-democracy groups, or for publishing any information which reflects negatively on the monarchy.

Radio and television stations in Swaziland are tightly controlled by the government and a number of instances of direct interference have been documented by the Media Institute of Southern Africa (MISA). On 23 June 1996, for example, MISA-Swaziland reported that the acting Prime Minister, Dr. Sishayi Nxumalo and the Minister of Information, Prince Khuzulwandle, accompanied by heavily armed police, visited Swaziland's radio and television newsrooms and removed news items from the running lists scheduled for that evening's bulletins. News stories removed concerned a clash between the police and striking teachers.¹⁸¹ On 13 February 1997, the Swazi cabinet reportedly ordered a ban on coverage by state-controlled radio of a nation-wide strike.¹⁸² On 21 April 1997, following government criticism of Swazi Television for covering the 12 April demonstration called by the Swaziland Democratic Alliance, the government issued a statement announcing that it was in the process of designing an "editorial policy" for all state-controlled media to prevent them from being "hijacked and controlled by certain pressure groups."¹⁸³ In August 1997, sources at Swaziland Television alleged that they had been ordered by the Prime Minister to hand over, for examination, video footage which reported plans by Swaziland's trade unions to hold a meeting.¹⁸⁴ And on 15 October 1997, government-controlled Swaziland

¹⁸⁰ "The struggle for democracy in Swaziland continues," *Electronic Mail & Guardian*, 7 February 1997.

¹⁸¹ "Prime Minister visits broadcasters; reportedly censors news", *IFEX Alert (MISA)*, 28 June 1996.

¹⁸² "Cabinet allegedly orders ban on state media coverage of national strike", *IFEX Alert (MISA)*, 13 February 1997.

¹⁸³ "Government to design editorial policy for state-controlled media in wake of their coverage of opposition demonstrations", *IFEX Alert (MISA)*, 2 May 1997.

¹⁸⁴ "Government pressures public broadcaster to hand over footage", *IFEX Alert (MISA)*, 22 August 1997.

Television announced that it would stop re-transmissions of South African Broadcasting Corporation (SABC) broadcasts. According to MISA, the decision, which was later retracted following public protest and refusal by technical staff at Swazi TV to implement the ban, came in the wake of a mass labour strike in Swaziland, and the SABC had provided full coverage of strikes in Swaziland in the past.¹⁸⁵

Currently, there are only two newspapers published in Swaziland: the state-controlled *The Swazi Observer*, and the independent *The Times of Swaziland* (*The Times*). On 7 August 1996, and again on 12 May 1997, *The Times of Swaziland* reported that there were moves to close it down after articles concerning the King's purchase of a local hotel, and unpaid rates owed on that property, respectively were published.¹⁸⁶ In October 1995, some senators had already called for the introduction of a press council following the publication in *The Times* of an article critical of the King.¹⁸⁷ After the May 1997 article, the government-owned *Swazi Observer* wrote that the recent calls for the closure of *The Times* by senators "may not be a solution in addressing the unfortunate state of the Fourth Estate, the media, in Swaziland" but emphasised that "pseudo journalists" who have "no idea of their professional and ethical responsibilities" should not be allowed to continue to "insult and bring our sovereign into public ridicule".¹⁸⁸

On 14 May 1997, the government ordered a withdrawal of advertising from *The Times*, an action which the Prime Minister, Dr Sibusiso Dlamini, later described as merely a "cost-benefit review exercise" to find out whether government gets value for money from advertising in a particular media.¹⁸⁹ Meanwhile, the editor of *The Times*, Mashumi Twala, told MISA that he stood by the story which reported the King's unpaid rates, and would not retract it, as it was based on facts obtained from court records.¹⁹⁰

Later that year, on 15 September, during a conference on Media Constitutional Review, the Minister of Information and Broadcasting, Muntu

¹⁸⁵ "Authorities suspend plans to halt re-transmission of South African Broadcasting Corporation signals", IFEX Alert (MISA), 21 October 1997.

¹⁸⁶ "Newspaper group says monarchy wants it closed", IFEX Alert (MISA), 18 September 1996; "State threatens to close The Times of Swaziland", IFEX Alert (MISA), 13 May 1997;

¹⁸⁷ "Senators call for bill to ban press from criticizing monarch", IFEX Alert (MISA), 27 October 1995.

¹⁸⁸ "We must not sit by while the gutter press ridicule our King!", *Swazi Observer*, 14 May 1997.

¹⁸⁹ "Government has not taken a decision to close The Times", *Swazi Observer*, 21 May 1997.

¹⁹⁰ "Government reportedly orders halt to state advertising in "Times of Swaziland", IFEX Alert (MISA), 20 May 1997; "Swazi clamp on adverts for Times", *Electronic Mail & Guardian*, 20 May 1997.

Mswane, confirmed that the government was drafting a media bill.¹⁹¹ Journalists immediately questioned the timing of the proposed bill, asserting that the starting point for any media reform should be a democratic constitution with a Bill of Rights with guarantees on freedom of expression and the press.¹⁹² They expressed strong opposition to any form of statutory regulation, advocating instead a voluntary self-regulatory mechanism for the media. Resolutions formulated at the end of the conference, called on the government “to stop forthwith” drafting the Bill.¹⁹³

The Media Council Bill, 1997 was made public on 3 October¹⁹⁴ providing for the establishment of a government-appointed Media Council charged with the discipline of journalists, with the power to de-register journalists in breach of a government-drafted code of ethics. The bill provides also for the licensing of journalists subject to minimum educational qualifications and makes practising journalism without a licence an offence liable to imprisonment or a fine.

The bill provoked strident opposition from journalists and the public. On 7 October, Swazi journalists staged their first demonstration in protest against the bill. This was followed by a two-day nation-wide strike, on 13 and 14 October, organised by the Swaziland Federation of Trade Unions (SFTU), during which the Media Council Bill, together with the discredited constitutional review process and the low remuneration for teachers, were the focus of protest.¹⁹⁵ SFTU Secretary General Jan Sithole called on the government to scrap the bill asserting that a free press was a “voice for the voiceless” and a “non-negotiable” right.¹⁹⁶ And journalists revealed that they were preparing to mount a legal challenge in the Swaziland courts. On 22 November, two days before the Bill was due to be tabled, journalists marched to the Prime Minister’s offices, delivering a petition which urged Members of Parliament to reject the Bill.¹⁹⁷ Meanwhile, MISA-Swaziland held a “consultative forum” on the Media Council Bill attended by journalists as

¹⁹¹ “Government reveals plans for media legislation; journalists accuse government of not being consulted”, IFEX Alert (MISA), 17 September 1997.

¹⁹² *Ibid.* It may be observed that the initial announcements concerning the drafting of Media Council Bills in Uganda and Zambia also occurred at a time when Constitutional review commissions were formulating recommendations for new constitutions.

¹⁹³ “Roundtable calls for more transparency in current constitutional review so that press freedom and freedom of expression are better protected”, Press Release, (MISA), 25 September 1997.

¹⁹⁴ “Government approves bill to regulate media”, IFEX Alert (MISA), 7 October 1997; “Trade unions want government to scrap legislation to regulate media”, IFEX Alert (MISA), 17 October 1997.

¹⁹⁵ “Trade unions want government to scrap legislation to regulate media”, IFEX Alert (MISA), 17 October 1997.

¹⁹⁶ *Ibid.*

¹⁹⁷ “Parliament questions merit of media council bill”, IFEX Alert (MISA), 26 November 1997; “No govt response to SNAJ petition”, *Swazi Observer*, 29 January 1998.

well as representatives of civil society groups and international human rights organisations. Resolutions passed by the forum opposed the creation of a statutory media council and further resolved that “MISA-Swaziland, in consultation with all stake-holders, undertakes, as a matter of urgency, to explore the formulation and realisation of a code of ethics for journalists, and the establishment of an independent mechanism for its implementation.”¹⁹⁸

The Bill was tabled on 24 November 1997. During the debate, MPs reportedly questioned the need for such a Bill, as well as its conformity with Swaziland’s obligations under international human rights treaties. Concerns were also expressed over the lack of consultation before the Bill was drafted.¹⁹⁹ On 26 November, Parliament referred the bill to a select committee which was mandated to examine the concerns raised by stakeholders and to report back on its findings and recommendations. The five-member Select Committee commenced its sittings on 8 December 1997. Because of an overwhelming response, the deadline set for submissions was extended to 14 January 1998, after which time the Select Committee started compiling its report.²⁰⁰

In its report, made public on 15 April 1998, the Select Committee made the following recommendations:

1. That the bill be deferred so that government and stakeholders should jointly draft a Communications and Media Policy within three months from the time the report is adopted and approved by the House.
2. That government and journalists should establish a self-regulatory media council within four months from the time the report is adopted and approved by the House.
3. That government should revisit and update the libel and defamation laws within six months from the time the report is adopted and approved by the House.
4. That government should widely consult before a Bill is drafted.²⁰¹

While deferment of the bill is to be welcomed, the recommendations of the Select Committee are vague in certain vital respects. Whereas the submission of

¹⁹⁸ “MISA-Swaziland passes resolution government media bill”, IFEX Alert (MISA), 1 December 1997.

¹⁹⁹ “Parliament questions merit of media council bill”, IFEX Alert (MISA), 26 November 1997.

²⁰⁰ “Parly Committee invites media stakeholders”, *Swazi Observer*, 8 January 1998; “Deadline for Media Bill submissions is Wednesday”, *Swazi Observer*, 12 January 1998.

²⁰¹ “The Swaziland Media Council Bill”, 1997 Select Committee Report.

stakeholders, as summarised in the Select Committee Report was that “the bill be suspended for six months, whilst stakeholders come up with a self-regulatory media council”, the committee recommended that “*government* and journalists should establish a self regulatory media council.” It is therefore unclear whether the committee is recommending that a *statutory* media council be set up.

A media council whose “regulations” are compulsorily drawn up partly by government cannot claim to be truly self-regulatory. This is more so the case where the regulations must be approved by Parliament - with possible amendments during the eleventh hour - and passed into law. The act of establishing a media council by law, quite simply and undisputedly brings the body under the control of the State and can neither be self-regulatory - even if the members of the council can themselves be regarded as independent - nor indeed, voluntary. It carries with it the dangerous consequences of having to define and license “journalists”.

In addition, the Select Committee report recommends that “government should widely consult before a bill is drafted”. It is unclear whether this recommendation further implies that a media council may be established by law given that the words “a bill” could be taken, in this context, to mean either “any bill” or “a bill to establish a “self-regulatory” media council”. If such an interpretation is correct and a media council is to be established by law, journalists are, in effect, offered little more than “consultation”. They will be unable to *jointly* “establish” a *statutory* council, as they will have no power to vote on any amendments to the draft regulations when they are passed by Parliament, nor indeed, on any future amendments.

5 IMPLEMENTATION OF THE UGANDAN STATUTE

5.1 “Fishmongers” and “Photojournalists” need not apply

Undoubtedly, the most alarming feature of the Press and Journalists Statute of Uganda is that it purports²⁰² to deny all but a handful of qualified “journalists”, the right to freedom of expression without interference. This right clearly comprises the right to gather, process, publish and disseminate information without interference, regardless of whether any payment is received. Under section 28 of the statute, however, any person who is “paid for the gathering, processing, publication OR dissemination of information”²⁰³ is “deemed to practise journalism”, and is guilty of an offence unless that person is in the possession of a valid “practising certificate”. Under the section 16(2) of the statute, a person is only entitled²⁰⁴ to a practising certificate if: “(a) he is a holder of a university degree in journalism or mass communication: or (b) he is a holder of a university degree plus a qualification in journalism or mass communication; and has practised journalism for at least one year.” The effect of these provisions is to deny virtually the entire Ugandan population their right to publish.²⁰⁵

Even those individuals who considered themselves to be journalists, before the passing of the Bill, did not fare well under the act. Out of approximately 250 members of UJA, fewer than one-third possessed the necessary qualifications to be granted full membership. It is therefore not surprising that, after the Bill was passed, many journalists spoke out against the perceived need for journalists to possess university qualifications. What is surprising is that such views were not stridently voiced in the press prior to the passing of the Bill. According to the editor of *The Monitor*, Charles Onyango-Obbo:

²⁰² This part of the law is clearly contrary to the right to freedom of expression and association guaranteed under the Constitution and, therefore, should be invalid *ab initio*.

²⁰³ On the unconstitutional broadness of this definition, see Chapter 6.

²⁰⁴ Practising certificates may also be granted to “journalists” who qualify as “associate members” of the National Institute of Journalists of Uganda (NIJU), but the qualifications for “associate membership” are set at the discretion of the “full members” (i.e., the General Assembly) of NIJU and may be changed at any time.

²⁰⁵ This was unanimous conclusion of the Inter-American Court of Human Rights which held, in the *Compulsory membership in an association prescribed by law for the practice of journalism case*, that qualifications as a prerequisite for the lawful practise of “journalism” constituted a clear violation of the right to freedom of expression; See Chapter 6.

During the debate on the bill, a few dedicated journalists hardly slept. They burnt a lot of man hours lobbying parliamentarians, and drafting, redrafting, and repackaging alternative and compromise versions of the bill they preferred.... However, immediately after the bill was passed all the journalists who had kept mum and not contributed to the shaping of the bill when it was in debate woke up with fury from their slumber, and denounced the new law in the most vigorous language. It was a farce, because, if they had cared so much, what they saw as the disagreeable provisions would probably not have been written into the bill if it had been confronted with the opposition that poured after the deal was closed.²⁰⁶

It would seem that, rightly or wrongly, the majority of journalists, other than those involved in the Uganda Journalists Safety Committee, and a few individuals, such as James Tumusiime,²⁰⁷ had left it to the executives of UJA and UNEPA to state the general position of journalists on the Bill. This was, furthermore, in spite of the fact that UJA's and UNEPA's definition of a "journalist", which implied the need for qualifications, had been widely publicised prior to the passing of the Bill.²⁰⁸ At a meeting of East African journalists in Nairobi, in November 1997, Amos Kajoba expressed the view that:

Most of the journalists in Uganda take issues that affect them for granted. At the time of debating the electronic media bill by Parliament [for example], none of the media people even those involved in the electronic media said a word, yet it contains many unfavourable articles... The press is [also] yet to learn to educate and mobilise the public to understand and appreciate the cause of a free press, that freedom of expression, speech and press is freedom for all.²⁰⁹

After the Bill was passed, the *New Vision* published a story on "the first in depth academic survey into journalism".²¹⁰ The survey's findings indicated that only 48 per cent of news journalists in Britain were graduates (of any discipline) and that

²⁰⁶ "Minister Etyang makes good move this time", *The Monitor*, 20 November 1995.

²⁰⁷ See Chapter 2.

²⁰⁸ See Chapter 2, footnote 41.

²⁰⁹ Amos Kajoba, *The State of the Media in Uganda, its growth, constraints, strengths and future trends*, Paper delivered at a workshop on Media Laws and Regulatory Systems, Nairobi, 24-27 November 1997.

²¹⁰ The survey was carried out by the London College of Printing in 1995; "Journalism not profession after all", *The New Vision*, 17 January 1996.

only 22 per cent thought that a degree was “desirable” for journalism. Furthermore, although 51 per cent of the representative journalists sampled regarded journalism as a “profession”, 67 per cent agreed that journalism could not be organised along the lines of medicine or law. Immediately after the passing of the Bill, the *New Vision* had canvassed the view of a wide range of media workers. In an article entitled “This law is bad”,²¹¹ the majority of journalists quoted thought that the imposition of educational requirements by law for the practice of journalism was both arbitrary and discriminatory. The *New Vision*’s Associate editor, David Ssepuya, thought that the Government’s attempt to legislate quality was “ridiculous”. “It all depends on who does the job better, degree or no degree,” he said. A practising graduate with post-graduate training in journalism, “who strongly requested not to be named”, was reported as saying “quality is not acquired in a university but is a combination of talent, experience and training.” “The whole provision is a sham,” he or she concluded. John Kakande, senior journalist at the *New Vision*, agreed, giving an illustration of the arbitrary nature of the law:

We have people like Drake Ssekeba of *Ngabo* newspaper. He has not got a university degree but is an authority in the journalistic profession. Everyone in the trade knows this. He has on many occasions been invited by Makerere University to give lectures in the Mass Communication Department. Now where do you place such men...?²¹²

In Kakande’s opinion it was for individual papers to set their own qualifications and that “as the industry grows, so will the qualifications improve.”

A number of journalists appeared, however, to be very pleased with the statute. Justifications for the restrictive qualifications imposed under the statute were invariably based on the perception that, by making journalism the exclusive preserve of graduates, honour and respectability would attach to the profession. “I cannot avoid a feeling of deep regret after reading the rumblings of some colleagues,” one journalist stated:

How could a sober society of professionals oppose a move to give them honour, credibility and respectability...? Whether we should maintain... mechanical people [such as photojournalists] who merely know when to

²¹¹ “This law is bad”, *The New Vision*, 31 May 1996.

²¹² *Ibid.*

press a camera button to take a picture as part of the distinguished members of the profession, is a matter that, in my view, deserves no further debate... The NRC, whatever those opposed to the move will say, has for the first time in the history of this country, given scribes recognition and dignity.²¹³

Writing in the *New Vision*, another journalist declared:

Gone are the days when journalists in Uganda were denied professional honour. Many people used to [pour] scorn of journalism, regarding scribes as mere school dropouts. Even President Museveni, who regards himself an intellectual, [at] one time branded them fish-mongers. Not any more. With the Press and Journalists Statute becoming law... journalism is destined to attain a professional outlook.²¹⁴

In terms of the Press and Journalist Statute 1995, there are now only two training institutions in Uganda offering recognised qualifications in journalism. It is only since 1988 that Makerere University has been offering a three-year Bachelor of Arts degree in Mass Communications. Places are extremely limited with an intake of around 30 students per year. Furthermore, the fees for the course, at approximately \$700 per term in 1997/8, are very high when compared with the average wage in Uganda.²¹⁵ ARTICLE 19 is aware of at least one journalist (in this case an editor of a newspaper) who left his position to commence the degree course, following the passing of the Press and Journalist Statute, but was unable to complete because of high fees.

Until recently, the School of Journalism at the Uganda Management Institute had been offering diplomas in journalism after nine months. The course, however, has been discontinued, with the last intake having completed their studies in June 1998. The only other institution offering qualifications in journalism in Uganda is the Uganda School of Business and Media Studies which awards a diploma after three years. It must be borne in mind that a *diploma* is only of use to persons who obtain a university degree in another discipline and, moreover, have already “practised journalism for at least one year” prior to the coming into force of the statute. In other words, any person who has not practised journalism for at

²¹³ Epajjar Ojulu, “NRC Press Bill gives scribes dignity”, *Sunday Vision*, 4 June 1995.

²¹⁴ Kelvin Kizito Kiyingi, “Journalism not profession after all”, *The New Vision*, 17 January 1996.

²¹⁵ This figure does not include other expenses such as the cost of books and accommodation for those travelling or relocating from upcountry residences.

least one year prior to 28 July 1995, must obtain a university degree in journalism or mass communication either from Makerere or outside Uganda in order to qualify as a full member of NIJU and be reasonably assured of being granted a practising certificate.²¹⁶

5.2 The inauguration of the Media Council and the IEC

The Media Council, and the interim Executive Committee of NIJU, were inaugurated by the Minister of Information, Paul Etiang, on 23 November 1995. Despite s 42(2) of the Press and Journalist Statute which stipulates that “No person shall be appointed [to the interim Executive Committee]... unless he is eligible for full membership of the Institute”, the Minister appointed the ex-Minister of Labour and Social Welfare, Mr Ateker Ejalu, who did not possess a degree in any discipline including journalism, as President of the interim Executive Committee.²¹⁷

The interim Executive Committee (IEC) started the process of enrolling journalists at the end of February 1996.²¹⁸ In accordance with the statute, the IEC was to enrol the “first members” of NIJU and carry out “the necessary initial organisation for the establishment of the Institute” before convening the first general meeting of NIJU. At the first general meeting (full) members were to vote for an “elected Executive Committee” to replace the IEC. Section 44(2) of the Press and Journalist Statute provides that “The first general meeting shall be convened not later than twelve months from the commencement of this statute” (ie 12 months from 28 July 1995). However, it was not until the end of August 1996 that the IEC finished reviewing applications for membership.²¹⁹

In mid August 1996, the IEC announced that over 170 journalists had been registered with NIJU.²²⁰ According to sources at the Secretariat of NIJU, 67 journalists had been categorised as full members out of the initial 318 applications submitted for registration, while 105 were recommended for associate

²¹⁶ It should also be noted that the General Assembly of NIJU may make bye-laws specifying *additional* requirements for full membership. See sections 15(2)(e) and 17 (3) of the Press and Journalist Statute, 1995.

²¹⁷ *The Monitor*, 22 November 1995.

²¹⁸ “NIJU starts registering scribes”, *The Monitor*, 1 March 1996.

²¹⁹ “NIJU Membership”, *The New Vision*, 24 August 1996. The legal effect of the failure to call general meeting before the deadline set by the Statute is unclear.

²²⁰ “NIJU registers over 170 journalists”, *The New Vision*, August 16, 1996.

membership.²²¹ A list of these members was published by NIJU in the *New Vision* on 24 August, stating that “anyone wishing to lodge complaint about their applications or against those shortlisted... should do so within 14 days.”²²² Since that time - ostensibly because of a lack of funds - no further action has been taken by the IEC and it would appear that the government is not prepared to carry the process further, at this stage, by providing the necessary funds.

The Media Council has remained largely dormant since its inauguration in November 1995. Although the Media Council announced, in a press release dated 17 July 1997, that it was beginning to do its job,²²³ a member of the Council, Mr Robert Kafuko Ntuyo, conceded in November 1997, that:

Although [the media] council has been in existence for two years, we cannot boast of having accomplished much in terms of handling disciplinary matters between the media per se and the public. The functions of this council have been hampered by lack of funds... no financial provision of any kind to enable the council to raise funds was included [in the statute] apart from levying certification and license fees and accreditation fees. ²²⁴

Section 45 of the Press and Journalist Statute provides that: “A person who is practising journalism immediately prior the commencement of this statute may continue to practise journalism until he is duly enrolled as a journalist in accordance with the provisions of this statute.” It would seem, therefore, that it is only once the Media Council has completed the initial registration process (and presumably issued practising certificates), that the prosecution of persons under section 28 of the Act - for the “gathering, processing, publication or dissemination of information” for payment without a practising certificate - could be entertained.

The non-implementation of the most worrying aspects of the Press and Journalist Statute - in particular the restrictive licensing of “journalists” and the disciplining of journalists by a non-independent body - explains why Uganda has so far managed to escape widespread international condemnation over the statute. However, as Mr Ntuyo explained in November 1997, proposals to amend the Press and Journalists Statute to include financial provisions have been passed over to the

²²¹ *Ibid.* Out of this number, according to the Secretariat, 25 applications were not considered because they were “incomplete”.

²²² “NIJU Membership”, *The New Vision*, 24 August 1996.

²²³ “Museveni leads charge on press,” *Electronic Mail & Guardian*, 30 July 1997.

²²⁴ Robert Kafuko Ntuyo, “Creation of a Media Council”, Paper delivered at a workshop on Media Laws and Regulatory Systems, Nairobi, 24-27 November 1997.

minister responsible for Information for onward transmission to Parliament.²²⁵ Meanwhile the Media Council has:

...put in place a machinery to register journalists and mass media organizations and for accreditation of foreign journalists and mass media organizations. The... committee to handle disciplinary matters is already in place and the council has already invited complaints' lodgement which are yet to be received...²²⁶ *The council expects to be fully operational next year [1998] to put into effect the legal provisions which set it up.*²²⁷

The government has, however, yet to respond to the Media Council's proposals for funding.

5.3 Journalists Up-country

Ugandan journalists most at risk by any legislation capable of controlling the content or authorship of newspaper reports and articles, are those reporting ongoing internal military conflicts in Uganda (i.e., the Northern, West Nile and, more recently, Kasese conflicts). In February 1987, President Museveni had warned, "I am putting journalists on notice that if they malign the good name of the National Resistance Army they will be locked up under the detention laws."²²⁸ In the opinion of one Ugandan academic, this statement signalled the end of the "honeymoon period" which had existed between the Press and the NRM since the latter assumed power a year earlier.²²⁹ The Penal Code (Amendment) Statute, allowing prosecution of anyone publishing information hostile of the armed forces,

²²⁵ *Ibid.*

²²⁶ A complaint was in fact received towards the end of 1997 from Church officials calling for the ban of so-called "leisure" magazines in Uganda. These magazines are not "pornographic" publications in the sense generally understood under the law, but contain articles along the lines of "women's magazines" such as *Cosmopolitan*. The complaint was not entertained as the Media Council has no power under the Press and Journalist Statute to censor printed publications, but merely the power to censor films, videos and plays (see sections 10(e) and 11(2) of the Press and Journalist Statute, 1995); Interview with Wafula Oguttu, member of the Media Council, April 1998.

²²⁷ Robert Kafuko Ntuyo, "Creation of a Media Council", Paper delivered at a workshop on Media Laws and Regulatory Systems, Nairobi, 24-27 November 1997.

²²⁸ Richard Carver, *Truth From Below: The Emergent Press in Africa*, ARTICLE 19, October 1991, p. 64.

²²⁹ According to Gariyo, "from that time onwards the press was back to its familiar terrain, the struggle to survive"; Zie Gariyo, *The Media, Constitutionalism and Democracy in Uganda*, Centre for Basic Research Publication, Kampala, August 1993, p. 38.

followed in July 1988²³⁰ and “had a very scaring effect on the journalists”, according to Amos Kajoba. This was “so much so that many inhumane acts by the Army did and continue to pass unreported first hand in the local press for fear of being victimised on the basis of the law”, Kajoba revealed.²³¹

In their “1996 Report on the Media Situation in Uganda”, the Uganda Journalists Safety Committee (UJSC) recorded that during 1996: “Government officials, particularly RDC’s [Resistance Defence Committees] were reported to have persistently harassed up-country journalists”. On 8 December 1996, President Museveni’s advisor on Media and Public Relations, Mr Nagenda, issued a statement condemning journalists who have been “mis-reporting” in the North and Kasese. He accused some newspapers of persistently mis-reporting the war in these areas.²³² On 15 January 1997, the Chairman of the UJSC, Mohammed Katende, wrote a letter to the Minister of Information, the Minister of Internal Affairs and the Minister of State for Defence, expressing concern at the continuing number of complaints the UJSC were receiving from journalists operating in northern Uganda and Kasese, and outlining allegations of “intimidation and harassment”. In a letter dated 15 March, the Minister of Internal Affairs, Major Tom Butime, gave no indication that he intended to look further into the matters raised. “I think the two words harassment and intimidation are being over-used,” the Minister stated in the letter, proceeding to give a definition of the respective words. In response to specific allegations in the UJSC letter of the “harassment and intimidation” of named journalists,²³³ the Minister wrote:

All the above cannot be referred to as journalists in the real sense of the word. They are mere APPRENTICES [upper case in original]. Where did my good friend John Nzinjah study journalism, I know him as a simple programme assistant for Lukonzo in Radio Uganda. The other young man called Musoga in Mbarara is overwhelmed by hallucinations of fundamentalism of some religion. He is hunting shadows around a tree and he will not catch any. He is kind of lost. The rest have no idea about national responsibility, they write to please and to be paid. *If things were to*

²³⁰ Richard Carver, *Truth From Below: The Emergent Press in Africa*, ARTICLE 19, October 1991, p. 64.

²³¹ Amos Kajoba, “The State of the Media in Uganda, its growth, constraints, strengths and future trends, Paper delivered at a workshop on Media Laws and Regulatory Systems, Nairobi, 24-27 November 1997.

²³² *The Monitor*, 8 December 1996.

²³³ See appendices for the full transcript of the UJSC’s letter of January 15, and the Minister of Internal Affairs reply of 15 March 1997.

go bad they would write from Nairobi [Emphasis added]... I think the misunderstanding or harassment you are bothered with is ephemeral. Uganda journalists should interest themselves in very high academic qualifications in all fields.²³⁴

It may be observed that Mr John Nzinjah's name appears under the list of "associate membership" published by NIJU in August 1996. It can only be speculated as to why the minister found the issue of university qualifications relevant in replying to a letter requesting that the minister use his authority to help ensure the security of journalists reporting in war zones. Nevertheless, such a reply might be regarded as disturbing, particularly in light of the Press and Journalist Statute, many vague provisions of which have yet to be fully implemented. The UJSC has already received complaints from journalists reporting the conflict in the North of Uganda of being detained and questioned in respect of their "qualifications" to practice journalism.²³⁵ In June 1997, President Museveni, apparently angered over media coverage of the conflict in western Uganda, gave a personal warning to the media: "I did not fight for all these years to be spoiled by *amateurs* trying to write. You have no chance to damage this country."²³⁶

5.4 Circulation Up-country

The emergence of a pluralistic and participatory press has been identified as essential to the development and maintenance of a democratic society, and further, to economic development.²³⁷ The Press and Journalist Statute, by limiting opportunities for non-urban or "up-country" citizens to participate directly as "journalists", will inevitably limit access by urban-readers to up-country news and views, and exacerbate an urban-elite bias within newspapers which has been largely responsible for comparatively low circulation in rural areas.

²³⁴ Letter to Uganda Journalists Safety Committee from Mr T. R. Butime, Minister of Internal Affairs, 15 March 1997.

²³⁵ ARTICLE 19 interview with UJSC officials, November 1997.

²³⁶ Emphasis added. "President warns media", IFEX Alert (NDIMA), 30 June 1997.

²³⁷ See, for example, *Declaration of Windhoek on Promoting an Independent and Pluralistic African Press*, reproduced in Richard Carver, *Truth From Below: The Emergent Press in Africa*, ARTICLE 19, October 1991, p.80-4.

There are currently around 30 publications in Uganda, including four dailies, one tri-weekly²³⁸ and eleven weeklies.²³⁹ Of the four daily newspapers, the government-owned *The New Vision* and the independent *The Monitor*²⁴⁰ are both published in English and have a circulation of around 30,000 each. The government-owned *Bukkede*, which publishes in Luganda, has a circulation of around 6,000.²⁴¹ With a population of more than 19 million people, these figures indicate that a large number of Ugandans do not regularly read newspapers. There can be two underlying explanations for this: (1) potential readers do not wish to buy the newspaper in question or (2) the newspaper in question is not on sale in their area. In reality these two factors are not unrelated. The high cost of newspaper production coupled with high distribution costs makes for high cover prices on newspapers. High cover prices make purchasing newspapers less attractive to potential readers, particularly outside urban areas where per capita incomes and literacy levels tend to be lower. This would explain why, in Uganda, the majority of newspapers are sold in urban areas despite the fact that less than ten per cent²⁴² of the population lives in urban areas. This in turn has meant that the content of Ugandan newspapers has tended to cater almost exclusively for the urban-elite.

In order to increase circulation, newspapers must either adjust the content of their paper to attract new readers and/or reduce the cover price. Again these two factors are related as increased circulation due to the altering of content would make possible a reduction in the cover price. In terms of reducing cover prices by other means, newspapers have little leeway. Just as newspapers can have little control over literacy rates and per capita incomes in rural areas - high taxes on newsprint and other necessary inputs, as well as poor roads and high transport costs, are factors that only the government can tackle directly.

One of the greatest impediments to the development of an independent and pluralistic press in Africa has been an acute shortage of advertising revenue, which is the mainstay of modern newspaper businesses elsewhere. Whereas advertising contributes around 80 per cent of newspaper revenue in Western countries, the

²³⁸ *The Crusader* commenced publication as a weekly in December 1995 becoming a tri-weekly in 1996.

²³⁹ Amos Kajoba, "The State of the Media in Uganda, its growth, constraints, strengths and future trends", Paper delivered at a workshop on Media Laws and Regulatory Systems, Nairobi, 24-27 November 1997.

²⁴⁰ *The Monitor* increased its frequency from three times a week to daily in November 1996.

²⁴¹ *The Njuba Times*, an independent bilingual daily newspaper publishing in English and Luganda commenced publication in 1997. During that same year, principally due to the increasing cost of printing, the independent Luganda daily, *Ngabo*, ceased publication.

²⁴² Professor Mahmood Mamdani, "Why Museveni does democracy his way", *Electronic Mail & Guardian*, 23 June 1997.

figure is only around 20 per cent in most parts of Africa.²⁴³ In the case of independent newspapers, this situation is often compounded by the discriminatory allocation of advertising from, and bulk subscriptions taken up by, government departments and parastatals in favour of government-owned newspapers.

In 1993, when government advertising provided 70-80 per cent of the total advertising revenue in Uganda,²⁴⁴ the NRM government slapped a government advertising ban on the leading independent newspaper *The Monitor*. During this ban, which lasted four years and saw a number of private newspapers fold, *The Monitor* not only survived but, by altering the content of the newspaper to attract not only urban but also “up-country” readers, managed to expand its business.²⁴⁵ How exactly this was achieved is important to note in assessing the probable effect of the Press and Journalist Statute on the growth of an independent and pluralist Press in Uganda.

The tactic of allocating advertising revenue to the detriment of independent newspapers is nothing new in Commonwealth Africa. In the late 1970s, for example, the Kenyan government instructed parastatal organisations not to advertise in the *Weekly Review* newspaper. Similarly, in 1990, President Kaunda of Zambia ordered all government institutions not to advertise in the *National Mirror*.²⁴⁶ So-called “economic censorship” has continued to be used as a weapon against independent African newspapers and there are a number of recent examples. On 5 August 1996, the Lesotho government issued a circular prohibiting its ministries, departments, institutions and parastatals from placing advertisements in the independent weekly *Mo-Afrika*.²⁴⁷ On 14 May 1997, a verbal directive by the government of Swaziland ordered that parastatal organisations “immediately cease dealings” with the independent *Times of Swaziland*.²⁴⁸ Most recently, in March

²⁴³ David Ouma Balikowa, “Media Marketing: an essential part of a free press for Africa”, *Media, Culture & Society*, Vol. 17 (1995), p. 609.

²⁴⁴ “Govt advertising ban on Monitor lifted”, *The Monitor*, 26 April 1997; Charles Onyango-Obbo, “On the short and long leash - the East African press”, *Nieman Reports*, Spring 1996.

²⁴⁵ David Ouma Balikowa, “Media Marketing: an essential part of a free press for Africa”, *Media, Culture & Society*, Vol. 17 (1995).

²⁴⁶ Richard Carver, *Truth From Below: The Emergent Press in Africa*, ARTICLE 19, October 1991, p.28; R. C. Moore, *The Political Reality of Freedom of the Press in Zambia*, 1991, Multimedia Publications, Zambia, p. 66 and 74.

²⁴⁷ “Cabinet orders withdrawal of advertising from ‘Mo-Afrika’ over the newspaper’s ‘negative stance’ toward the government”, IFEX Alert (MISA), 21 August 1996.

²⁴⁸ “Government reportedly orders halt to state advertising in ‘Times of Swaziland’”, IFEX Alert (MISA), 20 May 1997; “Government has not taken a decision to close the Times”, *Swazi Observer*, 21 May 1997.

1998, the government of Malawi ordered all its ministries and statutory corporations to stop advertising with the *Daily Times* and the *Malawi News*.²⁴⁹

The view that government, like any other institution, has “a right to choice in terms of advertising”²⁵⁰ is misplaced. As the *New Vision* newspaper of Malawi, following the recent advertising ban there, pointed out: “government seems not to know that the money used to pay for adverts is from people’s taxes.”²⁵¹ The unconstitutionality of such bans is yet to be petitioned before African courts. Indian courts have held, however, that:

Government spends a considerable portion of the funds in its hands in paying for government advertisements. The purpose of issuing advertisements is to educate the public about the activities of the government, to promote its policies, and in cases where the government or government companies are carrying on business or trade to advertise its wares. It is not expected of the government to exercise this power in order to favour one set of newspapers or to show its displeasure against another section of the press. It should not use the power over such large funds in its hands to muzzle the press or as a weapon to punish newspapers which criticise its policies and actions.²⁵²

In addition, government bans invariably create a “chilling effect” on private businesses placing advertisements in independent newspapers. As the editor of an independent Senegalese newspaper has noted:

The nature of the state in Africa is such that, whatever situation you are in, you still have some sort of links, and you are to some extent dependent on the state, so that you constantly fear retaliation. Even foreign business organisations have the same attitude, because, in Africa, the state is the single largest contractor.²⁵³

²⁴⁹ “Malawi pulls state advertising out of opposition press”, *Electronic Mail & Guardian*, 3 March 1998.

²⁵⁰ Letter of the Government Secretary of Lesotho to MISA, 21 August 1996; Cabinet orders withdrawal of advertising from “Mo-Afrika” over the newspaper’s “negative stance” toward the government, IFEX Alert (MISA), 21 August 1996.

²⁵¹ “Malawi pulls state advertising out of opposition press”, *Electronic Mail & Guardian*, 3 March 1998.

²⁵² *Ushodaya Publications Pvt Ltd v. Government of Andhra Pradesh*, AIR [1981] AP 109 at 117.

This “chilling effect” also tends to extend to all non-government newspapers, whether or not they are the subject of a particular ban. The Malawi *Independent*, had “no reason to doubt that the decision not to advertise with the two papers [by the Malawi government early this year] would also affect other papers which do not sing government praises”.²⁵⁴ This would seem to have been the case in Uganda where the ban on *The Monitor* newspaper “saw several other private papers fold under the weight of running costs which would otherwise have been taken care of by advertising income”.²⁵⁵

The advertising ban on *The Monitor* effected in July 1993 was not lifted until 25 April 1997. Despite the fact that this caused the paper to lose almost 50 per cent of its advertising revenue, the paper went from strength to strength. It did so by attracting new up-country readers. So much so that the ratio between the paper’s circulation in the capital city and that of the countryside, which in 1993 was 70:30, achieved a 50:50 balance.²⁵⁶ In an article published in *Media, Culture & Society*, David Ouma Balikowa, explains that:

The Monitor brought about this change in circulation by taking into account the readership needs of the rural countryside. *The approach was to allow rural people - teachers, school dropouts and all those who could write - to send in articles about people and events in the local areas.* The editing was done in such a way that the articles retained a lot of their originality, especially the style, sense of humour and the detailed identification of people and places. The response was overwhelming. Within a short period *The Monitor* could hardly find space for all the up-country articles popular for their dramatic breaking of stories in the rural countryside. The regional and district news pages radically increased from one to three pages. The strategy killed three birds with one stone. First, the circulation in the countryside went up. Because of strong roots all Ugandans have in the countryside, and the rare sense of humour in the stories, readership in the city also shot up. Second, the paper grew in size and this diversity enhanced its marketability. Its authority on political matters was further consolidated. Third, circulation went up but with minimal increase in overhead costs since

²⁵³ Mamadou Oumar Ndiaye, Editor-in Chief of *Sud Hebdo*, cited in Kwame Karikari, “Africa: the press and democracy”, *Race & Class*, 34, 3 (1993), p. 56.

²⁵⁴ “Malawi pulls state advertising out of opposition press”, *Electronic Mail & Guardian*, 3 March 1998.

²⁵⁵ “The Monitor View: A ban ends, but the shame lives on”, *The Monitor*, 27 April 1997.

the stories were paid for on a stringer basis. Within a period of two years, the Monitor achieved the rare feat in Africa, when its circulation jumped from 10,000 to around 35,000. It also turned into a bi-weekly and [in 1994] became a tri-weekly. [Emphasis added].²⁵⁷

Such a “rare feat” was clearly possible because Ugandan readers welcomed the change in the paper’s content. Indeed since its inception, the “upcountry section” has doubled from two to four pages. In the light of this, can it be said that it is right for the Ugandan government to legislate, on behalf of the Ugandan population, so that these “up-country correspondents” can no longer “gather, process, publish or disseminate information” for payment?²⁵⁸ Why should these correspondents, for fear of criminal prosecution, only be permitted to publish without financial reward, particularly when their efforts are clearly generating much income? These are questions which highlight the absurdity of attempting to license “journalists”. Under the Ugandan Constitution even the poor and uneducated are guaranteed the right to freely express their opinion. If people wish to receive and pay for this information that too is their right. Any defamatory statements or threat to public order can be dealt with under existing laws *if* and when they occur. A society which puts a prior restraint on all but a highly-educated minority from expressing freely their views can not claim to be democratic.

Nor can a press where the participation of the vast majority of the population is criminalised be regarded as “free”. As media analyst Peter Kasoma has noted, African governments have tended “to proclaim that the media within their borders are free just because of the numerical presence of a number of financially weak independent newspapers which hardly circulate beyond the borders of the towns in which they are published.”²⁵⁹ In Uganda, according to another media analyst:

The NRM [government] sometimes contends that under its regime, the Uganda press has been the freest in Africa. The evidence, they contend, is in

²⁵⁶ David Ouma Balikowa, “Media Marketing: an essential part of a free press for Africa”, *Media, Culture & Society*, Vol. 17 (1995), p. 612.

²⁵⁷ *Ibid.* p. 611-612. *The Monitor* became a daily on 4 November 1996.

²⁵⁸ It would be impossible for a newspaper to cover upcountry news to the same extent using only journalists from the limited pool of those recommended for enrolment under the Press and Journalist Statute. The 1998 income tax act, which imposes previously exempted taxes on travel expenses, has made reporting from outside the capital even more difficult for newspapers.

²⁵⁹ Francis P. Kasoma, “Independent media and Africa’s change to democracy”, *Media, Culture & Society*, Vol. 17 (1995), p. 550.

the numerous publications on the streets. The NRM knows that these numerous publications do not circulate beyond certain areas and that both their significance as a forum for public debate and influence on matters of national importance remains limited.²⁶⁰

But as the European Court of Human Rights has recognised, a free press “cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor”.²⁶¹ In the words of Ugandan journalist Amos Kajoba:

What is important is... that there must prevail pluralism, that mass media pluralism must be defended and protected at all costs against any tendency towards any form of monopoly of mass communication, against any tendency to shut out views that are different from the views of those in authority or those who own and control the mass media.²⁶²

This should be a reminder not only to politicians but also “educated journalists”. As Balikowa has noted, “Newspapers need to shift from the dominant, but often misleading view, which equates the democratization role of the media [simply] with writing liberal editorials, opinion pieces and political news.”²⁶³ Freedom of the Press is not the exclusive right of (qualified) journalists but, as the Ugandan Constitution confirms, belongs to “all persons”. As one Kenyan journalist has voiced in respect of Kenya:

The main weakness of the Kenyan media is its elitist orientation. From the print to the broadcasting media even the arena media, the ordinary Kenyan remains a consumer; a spectator, remains sidelined. This is where focus must be placed for a new media in Kenya. The other major weakness of the Kenyan media is the non-participatory nature of its operations. Until the media opens up to its audiences and involves them from the position of

²⁶⁰ Zie Gariyo, *The Media, Constitutionalism and Democracy in Uganda*, Centre for Basic Research Publication, Kampala, August 1993, p. 76.

²⁶¹ *Informationverein Lentia v. Austria*, Judgment of the European Court of Human Rights, (1993) 17 EHRR 93, 113 (para 38).

²⁶² Amos Kajoba, “The State of the Media in Uganda, its growth, constraints, strengths and future trends, Paper delivered at a workshop on Media Laws and Regulatory Systems, Nairobi, 24-27 November 1997.

²⁶³ David Ouma Balikowa, “Media Marketing: an essential part of a free press for Africa”, *Media, Culture & Society*, Vol. 17 (1995), p. 612.

genuine belief that the audiences can bring in exciting media content and indeed fashion it, no major transformation of the Kenyan media will occur.²⁶⁴

In tackling the underdevelopment of the independent press in Africa, this point is crucial. What *The Monitor* (perhaps inadvertently) started in Uganda - a more pluralist and participatory media - is to be protected. It cannot be said for certain that the Press and Journalist Statute was specifically designed as a “measure to kill up-coming rural newspapers and curtail reports from up-country correspondents” - a fear that Ugandan journalists were prepared to express openly in 1993.²⁶⁵ However, the inescapable conclusion, after a studied reading of its provisions, is that the statute, once fully-implemented, will have this effect.

²⁶⁴ Matu Nguri, “Media in Kenya”, Paper delivered at East African Media Workshop, Arusha, November 1997.

²⁶⁵ See Chapter 2.

5.5 Awaiting full implementation

In the absence of a fully-implemented Press and Journalist Statute, the NRM government has continued to employ other *indirect* tactics to stem critical reporting. As Joe Oloka-Onyango wrote in 1996:

The overall problems faced by the press in Uganda, aside from the individual cases of harassment... include: heavy taxes on newsprint, which is constantly on the increase; the award of large sums as damages in libel cases; selective government bans on advertising in private newspapers; being *charged* with sedition (and other quasi-criminal political charges); and regulatory provisions that have the potential of curtailing media freedom. The last of these is manifest in the recently-promulgated Press and Journalist Statute. [Emphasis added]²⁶⁶

Despite the large number of journalists that have been charged with sedition, false news and criminal libel since the NRM came to power, no journalist had, until recently,²⁶⁷ been found guilty of these offences. The charging of journalists with these offences - which are widely acknowledged to violate the constitutional right to free expression - would seem to be, in itself, a means of harassment.²⁶⁸ This was the conclusion of at least one journalist who, writing for *The Crusader* newspaper, stated:

I do not believe the state is always after winning court cases against journalists. More often than not, so it appears, the state is more interested in “punishing” the journalists. Punishment takes the form of a few days in jail [awaiting bail, or before the charges are dropped]. The state, in the last 11 years, has never won a case against a journalist. But mind you, never has it emerged as a loser! It’s the journalists who come out of it bruised. Jail is so

²⁶⁶ J. Oloka-Onyango, “Uganda” in *Human Rights in Developing Countries Yearbook 1996*, (Kluwer Law International).

²⁶⁷ On 20 December 1995, the editor of *The Shariat* newspaper, Haruna Kanaabi was found guilty by the Magistrates Court of the offences of sedition and false news. The convictions were confirmed by the High Court on 13 November 1996; see further below.

²⁶⁸ Richard Carver, *Truth From Below: The Emergent Press in Africa*, ARTICLE 19, October 1991, p. 62-3

traumatising and in many cases has taken the “steam” out of the “errant” scribes who have tasted it.²⁶⁹

The “misuse of criminal charges” in Uganda - as well as a number of other Commonwealth African countries - was the subject of an Amnesty International Report published in 1995. The report expressed concern at the “developing pattern” in a number of countries in Commonwealth Africa where governments “publicly committed” to human rights and democracy have adopted this disguised method of intimidation “designed to minimise the likelihood of international disapproval and to keep their democratic credentials intact”.²⁷⁰ Recognising this form of intimidation as “a serious violation of international human rights standards”, Amnesty recommended that the authorities “as a matter of urgency end the use of charges such as sedition” and that a comprehensive review of national laws and procedures be promptly initiated in order to bring them into line with international human rights standards.

Although the use of sedition-related laws (i.e., laws capable of penalising the mere criticism of government or public officials, such as sedition, false news, criminal libel or defamation of a foreign prince²⁷¹) under the NRM administration is by no means a recent development,²⁷² the frequency of arrests linked to sedition-related offences has increased over the last few years. Recent examples, subsequent to the publication of the Amnesty International report, include: (1) the arrest, in April 1995, of the editor of the *The Citizen* newspaper, Lawrence Kiwanuka, on charges of sedition and false news. Kiwanuka later fled into exile before his case was heard; (2) the arrest, on 18 August 1995, and subsequent

²⁶⁹ Martin Lutalo Mpungu, “Bad signs for scribes are here”, *The Crusader*. 28 October 1997.

²⁷⁰ *Kenya, Tanzania, Uganda, Zambia and Zimbabwe: Attacks on human rights through the misuse of criminal charges*, Amnesty International, (AFR 01/01/95), January 1995.

²⁷¹ The last of the aforementioned offences, although present on most Commonwealth Statute books (having been first enacted during colonial times), has been rarely invoked by States. A notorious exception to this was the prosecution in Uganda, in 1990, of three journalists, including the late BBC stringer Hussain Abdi Hussain, for defaming the “foreign prince”, President Kaunda of Zambia. Hussain was denied bail on the grounds that he was a “Ugandan of Somali origin” who according to the court had “no permanent place of abode” as he was living in rented accommodation. The case was appealed all the way up to the Supreme Court which found that the particulars of the charge were insufficient to constitute an offence; Silvia Tamale-Balaba, “Press Freedom and the Law In Uganda Today”, Paper delivered during a seminar on “Challenges of the Mass Media in the 1990s”, Kampala, 20 July 1991; Richard Carver, *Truth From Below: The Emergent Press in Africa*, ARTICLE 19, October 1991, p.64.

²⁷² In December 1987, for example, the editor of the *Sunday Review*, Francis Odida, was arrested on charges of sedition. Unable initially to raise the high cash bail which had been set by the courts, he was still in detention when the non-bailable offence of treason was added to his charge sheet. Although all charges were eventually dropped, the journalist spent seven months in prison. It was during this time that his paper collapsed; Richard Carver, *Truth From Below: The Emergent Press in Africa*, ARTICLE 19, October 1991,

conviction on 19 December 1995, of the editor of *The Shariat*, Haruna Kanaabi, on charges of sedition and false news. Kanaabi's convictions were later confirmed by the High Court on 13 November 1996 and he was sentenced to five months in prison with a fine of US \$1,200; (3) the arrest, on the same day in 1996 as Haruna Kanaabi, of the editor of *Assalaam* newspaper, Musa Njuki. Njuki, had also been arrested and charged with false news and sedition together with Haruna Kanaabi in 1994. On this occasion he died in police custody before any charges were laid; (4) the arrest, in December 1996, of the editor of *The Uganda Express*, Peter Busiku, on charges of sedition and false news; (5) the arrest, in January 1997, of Muasazi Namiti, a freelance journalist writing for *The Crusader* newspaper, on charges of false news;²⁷³ (6) the repeated detention for questioning in March 1997 of the editor of *The People* newspaper, Amos Kajoba, for alleged criminal libel; and (7) the arrest of the editor of *The Monitor* newspaper, Charles Onyango-Obbo, and senior *Monitor* journalist, Andrew Mwenda, jointly charged on 24 October 1997 with the offence of false news.

The judicial process itself may be an ordeal. On 24 October 1997, the magistrate charging Charles Onyango-Obbo and Andrew Mwenda with the offence of false news, imposed Shs 2 million cash bail on each of the defendants, setting the highest bail sums ever recorded for a misdemeanour.²⁷⁴ Earlier on, the defendants, despite having driven themselves to the court, upon summons by telephone call, had been whisked away on arrival to holding cells by the police who reportedly told the defendants that they were "likely to escape."²⁷⁵ In addition to setting such an "outrageous"²⁷⁶ bail sum, the magistrate rejected the Local Council (LC) letters, required from the defendants' sureties, as they had been obtained from LC officers of the sureties' places of work. The magistrate insisted that letters be produced from LC officers of the sureties' residences. According to *The Monitor*, "this seemed nearly impossible to achieve as it was beyond 4:00pm and offices close at 5:00pm. The deadline for the letters was beaten just minutes before the Prisons bus set off for Luzira [prison] after 5:30pm."²⁷⁷ On 15 December, in a petition brought by Obbo and Mwenda to determine the

p. 63; Zie Gariyo, *The Media, Constitutionalism and Democracy in Uganda*, Centre for Basic Research Publications, Kampala, August 1993, p. 37.

²⁷³ The charges against Peter Busiku and Muasazi Namiti have not yet been dropped but it would appear that the State no longer intends to pursue these cases.

²⁷⁴ "Better be defiler, than scribe", *The Monitor*, 3 December 1997.

²⁷⁵ "Court told to refund Obbo, Mwenda's 3.6m /=", *The Monitor*, 23 December 1997.

²⁷⁶ Justice Solome Bbosa of the High Court later ordered that the bail terms be revised to Shs 200,000 each, finding the amount of bail set by the Magistrate (Chief Magistrate Flavia Munaaba) to be "outrageous".

constitutionality of the offence of false news, the Constitutional Court found that “the purpose of this petition is to circumvent and pre-empt... criminal prosecution”. Surprisingly, in what can only be regarded as a “constitutional non sequitur,”²⁷⁸ the court concluded, “accordingly we order that this petition be stayed pending determination of... [the] criminal case”.²⁷⁹ On 12 January 1998, the hearing of the criminal case was adjourned as, according to the prosecution, “the police file had been called back to the DPP’s [office] for some reasons” and President Museveni, who was the complainant and was supposed to appear as a witness, was kept away by a busy schedule.²⁸⁰ On 20 January the case was again adjourned when the magistrate (the fourth to be assigned to the case), discovered to his surprise that the written ruling of the previous magistrate had recorded that “court be adjourned to January 20th when the case will come up for *mention*”.²⁸¹ The magistrate reportedly stated to the prosecution, “this is the last adjournment.... If you cannot proceed next time, I will have the case dismissed”.²⁸² On 30 March however, the same magistrate felt compelled to adjourn the case yet again when the prosecution revealed that Senior Principal State Attorney, Byabakama Mugenyi, was “critically ill”. At this point, in what *The Monitor* has proclaimed “a miracle”, a “visibly healthy and jovial Byabakama Mugenyi entered [the court room] carrying a heavy pile of files”.²⁸³ The magistrate declined, nevertheless, to reverse the adjournment as the remaining three witnesses for the State were not present in court.

The prevailing risk to journalists and newspapers in Uganda of being charged with the sedition-related offences²⁸⁴ carries with it the threat of high legal fees incurred during protracted proceedings,²⁸⁵ as well as onerous bail conditions which may include non-monetary conditions such as having to report regularly to a police station. By the time the charges are dropped, the journalist acquitted, or it

²⁷⁷ ‘Kabala gold’ lands Obbo in Court’, *The Monitor*, 25 October 1997.

²⁷⁸ The main purpose of a constitutional Bill of Rights is to protect individuals from human rights violations.

²⁷⁹ “Court stays Obbo, Mwenda petition”, *The Monitor*, 18 December 1997.

²⁸⁰ “Museveni Fails to Appear in Obbo-Mwenda Case”, *The Monitor*, 13 January 1998. During the January 20 proceedings, Counsel for the State denied that they ever intended to convey that the President was the complainant or that he was supposed to appear as a witness; “Confusion as Obbo-Mwenda case is put off”, *The Monitor*, 21 January 1998.

²⁸¹ That is, to set another date - not to hear the case; italics added.

²⁸² “Confusion as Obbo-Mwenda case is put off”, *The Monitor*, 21 January 1998.

²⁸³ “Miracle’ in Obbo-Mwenda gold case”, *The Monitor*, 31 March 1998.

²⁸⁴ That is, offences which criminalise mere criticism of government or its officials such as sedition, false news and criminal libel.

becomes reasonably clear that the State no longer intends to pursue the case, the damage, in terms of press freedom, has already been done. The possible consequences of being charged with these types of criminal offences, even if the charges are dropped, is enough to discourage even those newspapers which would appear, financially, to be relatively secure.

Another informally repressive means of stifling criticism has been the award of large sums of damages in libel cases. The early 1990s saw a dramatic increase in the number of civil libel proceedings taken against Ugandan journalists, and the amount of damages awarded in such cases. Whereas sedition-related offences have generally been invoked against journalists publishing stories critical of military operations, or the government's foreign relations, civil libel actions have tended to be brought by public officials who have been allegedly linked to corrupt practices. Addressing a workshop in November 1997, the editor of the independent *Crusader* newspaper, Onapito-Ekomoloit, stated:

Some years back there were many stories about corruption in the Ugandan press, but today they are virtually non-existent because ministers and other bureaucrats implicated in the stories took to courts using the libel law. They got exorbitant awards from judges perceived as friendly to ministers.²⁸⁶

In 1992, in *A. K. Mayanja vs. The Editor of Mulengera*²⁸⁷ the court awarded U.Shs. 8,000,000/= (Approx. US \$8,000) against *Mulengera* newspaper for having defamed a minister. Shortly afterwards, *Mulengera* closed down. In the same year the court awarded U.Shs. 19,300,000/= (Approx. US \$19,300), in the case of *Tumusiime Mutebile vs. Uganda Confidential*.²⁸⁸ Another record-setting amount, U.Shs. 20,000,000/= (Approx. US \$20,000), was awarded against *The Monitor* newspaper in *Wolimbwa and Kabuga vs. The Monitor*²⁸⁹ in 1993. And in 1995,

²⁸⁵ Charles Onyango-Obbo told ARTICLE 19 in April 1997 that legal costs amounting to U.shs. 11,000,000 (approx. US \$11,000) had already been incurred by *The Monitor* in respect of the case in which he and Andrew Mwenda had been jointly charged with false news.

²⁸⁶ Onapito-Ekomoloit, "The Government and Private Media: Enemies, Friends or Partners", Paper delivered at East African Media Workshop, Arusha, November 1997.

²⁸⁷ HCCS 459 of 1992; cited in E.F. Ssempebwa, "The Press and the Law", Paper delivered at the Uganda Law Society Seminar, 30 March 1996.

²⁸⁸ HCCS 340 of 1992; cited in Ssempebwa, (*supra*).

²⁸⁹ HCCS 397 of 1993; cited in Ssempebwa, (*supra*).

The Uganda Confidential was ordered to pay another U.Shs. 15,000,000/= (Approx US \$15,000) in the case of *G. Wavamunno vs. Uganda Confidential*.²⁹⁰

In a number of common law jurisdictions, the courts have recognised the need, in view of the important role of a free Press “as a powerful antidote to any abuses of power by governmental officials”,²⁹¹ to modify the law of libel in cases where public officials claim to have been defamed. In the US Supreme Court case of *New York Times Co. v. Sullivan*, it was held that in such cases, the public official must prove not only that the statement was false, but also that it was published with knowledge that it was false or with reckless disregard of whether it was false or not. In Uganda, the courts have yet to make an exception to the general rule that the defendant (i.e., the person publishing the statement) must prove its truth. The US Supreme Court had found in *Sullivan* that:

Under such a rule, would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so. They tend to make only statements which “steer far wider of the unlawful zone” [the so-called “chilling effect”]. The rule thus dampens the vigor and limits the variety of public debate. It is inconsistent with the First and Fourteenth Amendments [guaranteeing *inter alia* freedom of expression and the Press].²⁹²

In the United Kingdom, the House of Lords, in holding that governmental bodies cannot bring an action for libel, similarly emphasised:

What has been described [by US Courts] as “the chilling effect” induced by the threat of civil actions for libel is very important. Quite often the facts which would justify a defamatory publication are known to be true, but admissible evidence capable of proving those facts is not available. This may prevent the publication of matters which it is very desirable to make public. It is of the highest public importance that a democratically elected governmental body, or indeed any governmental body, should be open to

²⁹⁰ HCCS 651 of 1995; cited in Ssempebwa, (*supra*).

²⁹¹ *Mills v. Alabama*, Judgment of the US Supreme Court, 384 US 214 (1966) at 218-9.

²⁹² *New York Times Co. v. Sullivan*, Judgment of the Supreme Court, 376 US 254 (1964) at 278-279.

uninhibited public criticism. The threat of a civil action for defamation must inevitably have an inhibiting effect on freedom of speech.²⁹³

As Onapito-Ekomoloit has noted, the difficulty of having to prove the truth of statements defamatory of government officials in Uganda is compounded by the difficulty in obtaining access to official information²⁹⁴:

Matters are complicated for the press by the fact that the system [in Uganda] remains closed, such that all that you may be able to adduce in court in form of evidence is a photo-copied document, leaked to you by a junior civil servant not ready to risk losing a job by testifying in court.²⁹⁵

The threat of damages of between 15 and 20 million Ugandan Shillings creates a chilling effect on any newspaper in the possession of information which points to the misuse of power by public officials;²⁹⁶ “in Ugandan terms, these figures are such as could kill off the independent press. Very few, if any, papers can afford these outrageous fines.”²⁹⁷ Yet despite very high damages awarded against the *Uganda Confidential*, the paper survived. How this was possible provides a pointed example of what may be the hidden costs of high libel awards.

Selective government bans on advertising in private newspapers as a means of “informal repression” of the press, has been discussed already in the previous section. In Uganda, however, there have been two sides to the advertising coin. By the beginning of 1996, the editor of the *Uganda Confidential*, Teddy Seezi Cheeye, faced bankruptcy, having been ordered, in a string of libel cases, to pay damages

²⁹³ Emphasis added; *Derbyshire County Council v. Times Newspapers Ltd & Ors*, Judgment of the House of Lords, [1993] 2 WLR 449 at 456-459. For a brief survey of relevant decisions from other common law jurisdictions, see J. Stevens, “Sullivan’s Travels: *New York Times vs. Sullivan* visits the Court of Pakistan”, *Southern African Media Law Briefing*, Vol. 2, No. 1, ARTICLE 19 / Freedom of Expression Institute / Media Institute of Southern Africa, April 1997.

²⁹⁴ Although section 41 of the 1995 Ugandan Constitution provides that: “(1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person; (2) Parliament shall make laws prescribing the classes of information referred to in clause 1 of this article and the procedure for obtaining access to that information”, a Freedom of Information Act is yet to be enacted into Ugandan law.

²⁹⁵ Onapito-Ekomoloit, “The Government and Private Media: Enemies, Friends or Partners”, Paper delivered at East African Media Workshop, Arusha, November 1997.

²⁹⁶ *The New Vision* has reportedly promulgated a rule passing over 25 per cent of any court judgment awards to the Reporter who brought the story in question; Patrick Kiggundu, “Media Laws and Regulatory Systems: Uganda’s Legal Framework”, Paper delivered at a workshop on Media Laws and Regulatory Systems, Nairobi, 24-27 November 1997.

totalling around U.Shs. 90,000,000/= (Approx. US\$ 90,000).²⁹⁸ Interestingly, a provision in the Press and Journalist Statute 1995, which was not part of the 1994 Bill, disqualifies a person from becoming an editor if “he is an undischarged bankrupt or insolvent.”²⁹⁹ According to *The New Vision*, at the beginning of 1996, it seemed “unlikely that the *Uganda Confidential* will continue publication unless it is sold to another proprietor by the receivers”.³⁰⁰

From the middle of 1996, however, newspapers began to comment on the *Ugandan Confidential*'s change of direction. From a highly critical (although, at times, inaccurate) newsletter “trailblazing the exposure of... the abuse of power in Uganda”³⁰¹ the paper came to be widely regarded as a “government propaganda sheet”.³⁰² More particularly, newspapers remarked on the government advertising “windfall” which coincided with this change. On 23 June, *The Sunday Vision* commented:

Uganda Confidential[’s]... June 6 issue alone carried 12 pages of the list of parliamentary candidates. At Shs. 500,000 per page, this deal cost the interim Electoral Commission a cool Shs. 6m... The newsletter has also lately carried advertising from the Non-Performing Assets Trust, the Privatisation Unit of the Ministry of Finance and other institutions. Whether this advertising was tendered and went to them on merit is another matter, but few institutions under receivership would stick to moral principles in the face of such a windfall.³⁰³

In its 3-5 July issue, *The Monitor*, reporting that the *Uganda Confidential* newsletter had suddenly emerged as “Uganda’s first newspaper to hit a record 100 pages”, wrote:

[The 22 June issue of] the *Uganda Confidential* of 100 pages had 92 of them as adverts from Custodian Board, a government department. Each ad cost the government one million shillings bringing to Cheeye’s pocket a windfall of 92 million. In the [following, 29 June] issue, the paper carried

²⁹⁷ “Uganda: Striving for Press Freedom”, *African Topics*, 16, (Jan/Feb 1997).

²⁹⁸ *Ibid.*

²⁹⁹ Section 8(c) of the Press and Journalist Statute, 1995.

³⁰⁰ “Publish facts”, *The New Vision*, 16 January 1996.

³⁰¹ *Ibid.*

³⁰² “Uganda: Striving for Press Freedom”, *African Topics*, 16, (Jan/Feb 1997).

³⁰³ “Born-again Cheeye surrenders”, *The Sunday Vision*, 23 June 1996.

100 pages of ads with 96 of them from the same Custodian Board. That meant an additional Shs. 96 million. Talk about rewarding! ...Placing Shs. 198 million worth of ads by a government department that seeks to reach as many citizens [as possible] in a weekly newspaper that circulates only about 2,000 copies, yet there are reputable newspapers that circulate over 30,000 copies per issue is preposterous.³⁰⁴

Whatever the reason for *The Uganda Confidential's* sudden “windfall”, the message to private newspapers is clear: the government possesses the power both to punish and reward newspapers. An amount of money owed (to defamed public officials) large enough to send a small newspaper into receivership *can*, at the same time, be paid from a single day's (albeit 90 odd pages) worth of government advertisements.³⁰⁵

Despite the indirect measures available in Uganda to stifle criticism emanating from the press, there is no guarantee that the state will not make use of the powers of prosecution under the Press and Journalist Statute once the registration process is complete. Over the last couple of years, President Museveni has repeatedly used press conferences to lambast the press, accusing it of furthering the interests of armed rebellion in the North and West of Uganda. In June 1997 he warned, "I'm looking at ways of taming this irresponsibility. I will not tolerate the *amateurs* who are beginning to write at the expense of the country."³⁰⁶ Parliament has also attacked the press for what they have described as “irresponsible and inaccurate reporting”. Most notably, the Chairman of the Media Council, Professor Mondo Kagonyera (also a Member of Parliament), has been reported as saying in Parliament that freedom of the press must be enjoyed and practised responsibly “once you are irresponsible you must be in Luzira [Prison]”.³⁰⁷ As Peter Kasoma observed in 1995:

³⁰⁴ “Government bribes independent press”, *The Monitor*, 3-5 July 1996.

³⁰⁵ In a 1997 article which denounced the filing of a petition by journalists to determine the constitutionality of the law of sedition, *Uganda Confidential's* editor, Cheeye, recited wearisomely: “A profession cannot be developed by going against the country's laws. We at the Uganda Confidential have had two sedition cases and we managed to get over them without intimidating the government to scrap the law of sedition.” Emphasis added; “The Media should not blackmail the state”, by Teddy Sseezi Cheeye, *Uganda Confidential*, 28 November - 4 December 1997.

³⁰⁶ Emphasis added. “Museveni leads charge on press,” *Electronic Mail & Guardian*, 30 July 1997.

³⁰⁷ “Angry MPs fire Press at meet”, *The Monitor*, 6 February 1997.

The experience in many of Africa's multiparty states, where the independent press is beginning to have a democratising effect by revealing malpractice in government, is that those in government, embarrassed by the press revelations, have been looking for excuses to restrict freedom of the press. Their most common allegation is that the independent media have taken freedom of the press too far and have become irresponsible...³⁰⁸

The Ugandan Press has long been familiar with charges of irresponsibility.³⁰⁹ In May 1954, for example, the Colonial administration banned three newspapers, the *Uganda Post*, *Uganda Express* and *Uganda Eyogera*, for their critical reporting of the deportation of the Kabaka (the traditional ruler of the Buganda Kingdom) under Emergency Regulations. According to the (then) Governor, Andrew Cohen, the bans had an additional motive, namely: "to warn other newspapers to be *responsible* and objective in their reporting".³¹⁰

Although the NRM government has resorted to the formal banning of one publication only - *The Weekly Digest* in 1988 - the warning to "irresponsible" journalists has been clearly voiced. In the opinion of the editor of *The Monitor*, Charles Onyango-Obbo:

Whereas past governments just killed or arrested a journalist who published a story the regime didn't like, or banned a newspaper that annoyed the rulers, over the last two years, the Museveni government has adopted a more sophisticated anti-free media strategy. The first step in this strategy has been to attack the very idea of a free press, and to engineer a public mood in favour of censorship... because of these constant intellectual

³⁰⁸ Francis P. Kasoma, "Independent media and Africa's change to democracy", *Media, Culture & Society*, Vol. 17 (1995), p. 551.

³⁰⁹ Indeed, during the colonial period, charges of "irresponsibility" levelled at Africans in general, and African nationalists and journalists in particular, by the European population in Uganda (including successive Governors), frequently appeared on the pages of the settler press and were invariably cited as the justification for the introduction of more repressive measures or for denying greater freedom. See e.g., "Topical Topics", *Uganda Herald*, 14 February 1945, p. 4; "Editorial", *Uganda Herald*, 20 June 1945, p. 6; "Correspondence", *Uganda Herald*, 15 January 1947, p. 11; "Editorial", *Uganda Herald*, 5 February 1947, p. 12. Governor John Hall's opinion of Africans, for example, was well-known: "the Africans of Uganda judged by European and Asian standards are indolent and irresponsible." *Uganda Herald*, 7 August 1946, p. 10; J. Stevens, *Nationalism and the Cold War: The Uganda Herald 1945-1955*, unpublished Study Project, SOAS, University of London, 1990.

³¹⁰ Zie Gariyo, *The Press and Democratic Struggles in Uganda: 1900-1962*, Centre for Basic Research Publication, Kampala, 1992.

assaults on freedom of the press, there is relatively more tolerance of restrictions on the media today, than there was at any time in the past....³¹¹

During the frequent verbal assaults, since the Press and Journalist Statute was passed, another common allegation against the press is that it has become “unpatriotic”. Responding to this emotive charge, in an article published by *The East African* newspaper, Charles Onyango-Obbo stated:

The notion of "patriotism" is very much in fashion in Uganda today. It used to be that patriotism was the love of one's country, and a willingness to fight for it. That was then. In Uganda patriotism has been redefined to mean uncritical support for the government of the day... However, the idea that a minister who steals public funds loves his country more than the journalist who criticises the theft is not something free men and women will accept willingly. Where that is patriotism, who would want it?³¹²

A similar point had been expressed in *The Weekly Topic*, in 1993, in an article which sought to explain why African leaders appeared unable to tolerate criticism:

...the crucial point we should take note of is that a country and the people of a country are not the same thing as the government of a country. It is this difference the African leaders have not appreciated or are not prepared to appreciate. And it is the failure of the African leaders to appreciate this difference that has mainly caused the “mutual hostility” between the leaders and the African pressmen.³¹³

The recent emphasis on “patriotism” appears in addition to be linked to the fact that, over the last few years, Ugandan news has become more readily accessible outside the country. In January 1997, the Minister of Information, Dr Rugunda, issued a scathing attack on the press stating “you are no longer local, you are on the Internet and E-mail. You have abandoned revolutionary spirit for the nation.”³¹⁴ According to Rugunda, the Ugandan Press, by portraying the country as insecure

³¹¹ “Why ‘Enemy’ ‘Sensational’ Press Is Good For You”, *The Sunday Monitor*, 2 November 1997.

³¹² “Patriotism in Uganda smells bad - stuff it,” by Charles Onyango-Obbo, *The East African*, 13-19 January 1997.

³¹³ “Why did politicians turn against the press?”, *Weekly Topic*, 24 September 1993.

³¹⁴ “Gov’t won’t tolerate ‘negative’ press aides insist”, *The Monitor*, 11 January 1997.

and corrupt, had been responsible for the refusal by the Consultative Group of donors to release four loan disbursements to Uganda.

In June 1997, President Museveni admonished both *The Monitor* and *The New Vision* for reporting the brief capture of a small town by rebels in Uganda: "you have Internet, and information is thrown out there to the world with these kinds of stories of capture (of towns by rebels). This is discouraging investors and I think you are doing a big disservice to the country", he said.³¹⁵

In an editorial, *The Monitor* reacted sharply to the government's references to the Internet:

The Monitor is the only paper that is fully accessible on the Internet. *The New Vision* does briefs of its headline stories. But the public will realise the absurdity of all this if it is learnt that there are nearly 300 sites (points) on the Internet where you can find a lot of information on President Yoweri Museveni alone. Some of these are a million times worse than anything the local press has ever reported.³¹⁶

As media analyst R. C. Moore pointed out in 1991:

[As] technology of the media makes information more instantaneous, widespread, and democratic, governments are finding it far more difficult to keep secrets, to control information flow, and to limit access. If domestic media does not report the events truthfully, the international media... will report it.³¹⁷

The Press and Journalist Statute would, in this respect, seem to represent the temporary last gasps of an outdated state policy which, against the tide of an increasingly globalised media, has sought to keep the flow of information under its control. It is likely that the Ugandan government had in mind the changing technology when introducing the Press and Journalist Statute. In 1994, in justifying the need for the statute before the NRC Select Committee, the (then) Minister of Information, Paul Etiang, was reported as saying, "Journalists need to be sensitised

³¹⁵ "Museveni leads charge on press," *Electronic Mail & Guardian*, 30 July 1997.

³¹⁶ "Here is why they want to kill press", *The Monitor*, 11 January 1997.

³¹⁷ R. C. Moore, *The Political Reality of Freedom of the Press in Zambia*, 1991, Multimedia Publications, Zambia, p. 136.

about their new role in a changing world where communication will play the vital role previously executed by military might.”³¹⁸

While the most objectionable features of the Press and Journalist Statute are yet to be fully felt, the constant “warnings” of President Museveni and his ministers would tend to suggest that hard times are ahead for press freedom in Uganda. The repeated threat voiced by President Museveni, that he will bring the recalcitrant press to book after “balancing the budget” in 1998, has not been taken lightly by journalists³¹⁹

The degree of press freedom currently enjoyed in Uganda compares favourably with a number of other Commonwealth African countries including Nigeria, Gambia, Sierra Leone and Zambia, and certainly with the situation under previous regimes in Uganda. Nevertheless, even in the absence of the more overt forms of oppression:

...it is evident that the state can employ other methods including intimidation, harassment and the condemnation of the Press... and... given the historical experience that [Uganda has] undergone, it is clear that the Press requires fewer, rather than more stringent controls, greater rather than more restricted access to the people in government and other state-controlled agencies. The onus thus shifts to the government, not the Press to clean up its act.³²⁰

Unfortunately, the full implementation of the Press and Journalist Statute will put an end to any legitimate claim to “press freedom” in Uganda. There can be no press freedom - nor indeed “democracy” - in a country possessing a law that allows all but around 200 people (out of a population of over 20 million) to be sent to jail as criminal offenders for merely gathering, processing, publishing or disseminating information for payment. This is just one effect of the Press and Journalist Statute; “whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license”.³²¹

³¹⁸ “Media Bill restrictive - Etiang”, *The New Vision*, 24 November 1994.

³¹⁹ “Information Bill in cabinet soon”, *The New Vision*, 10 November 1997; “Uganda: Striving for Press Freedom”, *African Topics*, 16, (Jan/Feb 1997).

³²⁰ Silvia Tamale-Balaba, “Press Freedom and the Law In Uganda Today”, Paper delivered during a seminar on “Challenges of the Mass Media in the 1990s”, Kampala 20 July 1991.

³²¹ *Lovell v. City of Griffin*, Judgment of the US Supreme Court, 303 US 444 (1938) at 451-2.