

THE REPUBLIC OF UGANDA

ARTICLE 19's Submission to the UN Universal Periodic Review

For consideration at the twelfth session of the UPR Working Group, October 2011

Executive Summary

1. ARTICLE 19: Global Campaign for Free Expression (ARTICLE 19) is an international, non-governmental human rights organisation established in 1986 that works around the world to protect and promote the right to freedom of expression and information, including by making submissions to the UN on countries' performance in implementing established freedom of expression standards. ARTICLE 19 has observer status with ECOSOC.
2. With this submission, ARTICLE 19 seeks to make a constructive contribution to the preparation process of the UPR for the Republic of Uganda (Uganda). Given the expertise of ARTICLE 19, this submission focuses on Uganda's compliance with its international human rights obligations in respect of freedom of expression and freedom of information, in particular:
 - **Restrictive legislation** related to the media and freedom of expression, including criminal defamation and arbitrary and excessively broad powers of media regulatory bodies;
 - **Media and other forms of censorship;**
 - **Repression and violence** against journalists, media workers and human rights defenders;
 - **Intimidation of political opponents;**
 - Failure to make operational and fully implement the **Law on Access to Information.**

These concerns are discussed in detail, followed by ARTICLE 19's recommendations for actions to address them.

Legislation restrictive to freedom of expression

3. Although the 1995 Ugandan Constitution guarantees the rights to freedom of expression and freedom of information and media freedom, several restrictive legislation are contrary to the principles enshrined in the Constitution and Uganda's obligations under international law, including the International Covenant on Civil and Political Rights and the African Charter on Human & People's Rights. At present, the instances of infringement of these rights are frequent and a firmer legal grounding is needed to support them. Such a legislative reform has not been forthcoming and moreover, the recent legislative proposals drafted by the Government have been even more regressive. The following legislations are of particular concern to ARTICLE 19:
 - **The Ugandan Penal Code** contains a number of offences that unjustly restrict the freedom of expression. The Code defines offences related to promotion of sectarianism, criminal defamation, and terrorism. Charges of criminal defamation can be brought against any alleged offender even if the person who allegedly offended the said provisions is alive or dead (art. 175.2). It also gives a minister unlimited discretion to prohibit the importation of a publication whenever she/he 'considers it in the public interest' (art.37); and provides for a punishment of two years or a fine of two thousand shillings or both on a first offence and an array of other punishments on subsequent offences. The Code also prohibits publication of

false news – an offence termed as misdemeanour (art.50). The offence of sectarianism prohibits acts in the form of printing, publishing, utterance or any other form that “expose to contempt, create alienation, raise disaffection or promotes ill feeling among or against any group or body of persons on account of tribe or ethnicity”. All these provisions are very vague and are therefore susceptible to an unreasonably wide interpretation by both authorities and those subject to the law. ARTICLE 19 has repeatedly criticized them for their unacceptable chilling effect on freedom of expression.

- **The 1995 Press and Journalist Act** contains a number of provisions which breach fundamental aspects of the right to freedom of expression. The oversight bodies it establishes, in particular the Council and Disciplinary Committee, lack independence from government. It also provides for the licensing of journalists, including conditions on who may work as a journalist, for the registration of editors, for a complaints system for journalists, a code of conduct and various sanctions for unprofessional conduct. Licensing of journalists and placing conditions on who may practise journalism are not permitted under international guarantees of freedom of expression. The complaints system, established by the Act, is weak, non-transparent, and does not have appropriate rules regarding what is prohibited; hence it fails to meet international standards. Instead of improving the Act, in March 2010, the Government proposed the Amendment Bill that further exacerbates its shortcomings. The most significant and alarming changes include obligatory licensing of newspapers, in clear breach of the right to freedom of expression. The Amendment also seeks to alter the composition of the Media Council and Disciplinary Committee, making it less independent. Further, it establishes various content rules for newspapers, particularly for material deemed to be detrimental to national security, under the terms that are simply too vague to be legitimate as a restriction on freedom of expression. If passed in the present form (that is still a possibility), it will impose an oppressive registration and licensing system for the newspapers.
- **The 2002 Suppression of Terrorism Act** defines any act of violence or threat of violence for political, religious, economic or cultural ends as a terrorist act and imposes harsh penalties on suspected terrorists and has raised fears that it could be unjustly used against political opponents and infringe upon the freedom of the press. Publishing news that is “likely to promote terrorism” can result in up to ten years’ imprisonment. The Law virtually outlaws any form of coverage of any person or organisation gazetted as engaged in terrorism and also establishes the death penalty for acts of terrorism or financial support for terrorist organisations.
- **The Regulation of Interception of Communications Act, 2010** lacks adequate safeguards to ensure respect of a number of rights, including the freedom of expression. The Act gives the government far-reaching discretionary powers in surveillance and interception of electronic, telecommunications and postal communications between individuals, groups and organisations. The broad and undefined basis for interception of communication also allow for possible intrusion into communications of individuals and professionals – such as journalists, human rights defenders and political dissidents engaged in legitimate activities and exercising their human rights.
- **The Draft Public Order Management Bill, 2009**, currently pending in the Parliament, also poses a serious challenge to freedom of expression. It seeks to regulate the conduct of public gatherings, and grants the Inspector General of Police (IGP) and the Minister of Internal Affairs wide discretionary and unjustifiable powers over the management of public meetings, meaning that people wishing to

hold public gatherings would have to seek permission from the IGP. If passed in its current form the implications of the Bill would be far reaching; it would affect the operation of the civil society organisations, human rights defenders, academic and professional institutions.

- **The 1996 Electronic Media Act** provides the Broadcasting Council with excessively broad powers to grant or withhold licenses on the basis of an opaque set of conditions as well power to seize and confiscate transmission equipment without a hearing or other forms of due process. For example, it has the discretion to grant licences as long as “such conditions as it may deem fit” are met. A one-year license is a serious burden on the owners who have invested significant financial capital to function and is considerably shorter than the license duration permitted in several other African countries. Several reported incidents show that the Council is also susceptible to influence and manipulation by the executive.

Media and other censorship

4. The restrictive legislations outlined above are often used by the Government to prosecute journalists, restrict who can lawfully work as a journalist, and revoke broadcasting licenses without due process. The media therefore has to operate in an intimidating atmosphere and a principal consequence of this is **self-censorship** by many journalists. It has also prevented journalists from accurately reporting clashes between government forces and rebel groups because of the risk of a prison sentence. ARTICLE 19 has also previously criticized the fact that the war with the Lord’s Resistance Army has led to many **specific restrictions on journalists. Reporting from the north of Uganda**, where the Lord’s Resistance Army is active, is restricted by the government, despite a clear public interest involved, and the concern over serious human rights abuses taking place. Despite the ceasefire agreed in 2006, the government continues to use the fragility of peace in Uganda to justify repression of information.
5. Other forms of censorship have also been documented by ARTICLE 19. For example, in 2005 the Media Council, followed by the government, banned the screening of a documentary about the play Vagina Monologues – a clear restriction of freedom in a cultural context. Other forms of cultural censorship are said to take place on a regular basis. The views of certain groups within Uganda are under-represented. Both the Muslim population and women claim that they face exclusion from the public arena. Homosexuality is still very much a taboo subject (moreover, the homosexuality is criminalized under the Penal Code with life imprisonment). In 2009, a **draconian Anti-Homosexuality Law** was proposed in the Parliament. This Law, if passed, would represent another serious attack on freedom of expression since it includes a new, wide-ranging provision that would forbid the “promotion of homosexuality” – including publishing information or providing funds, premises for activities, or other resources.

Repression and violence against journalists, media workers and human rights defenders

6. ARTICLE 19 is also concerned about the numerous instances of violence against journalists, media workers and human rights defenders and about an ongoing trend of impunity for perpetrators of such violence. Various tactics of intimidation and harassment, through summons, interrogations, raids to media houses, charges and outright threats by Police and Resident District Commissioners, increased especially after the 2009 crack-down on media. It has been reported that in the period of January and October 2010 itself, more than 50 journalists were exposed to violence.

7. The repression and violence were also reported to be on the rise since the start of the official election campaigns in November 2010 as authorities continued to make use of a range of formal and informal tactics to curtail media. For example, journalist Michael Kakumirizi of "Red Pepper" was assaulted on 19 January 2011 by supporters of the ruling National Resistance Movement (NRM), in Alebeatong. On 20 January, journalist Issa Aliga of NTV and Ssozi Ssekimpi, the editor of Top Radio Masaka, were both assaulted by Sauda Namagwa, the Masaka district Member of Parliament. On 17 December 2010, journalist Drake Kizito was beaten by supporters of the NRM parliamentary candidate running in the Mawokoa North constituency. Most disturbing is the case of Arafat Nzito, journalist of Radio Simba, who often reports news from the leading opposition party Forum for Democratic Change; he went missing on 4 November 2010, was detained for a week, assaulted and then dumped in a suburb of Kampala by security agents. Nzito, who often reported news from the leading opposition party Forum for Democratic Change (FDC), went missing on 4 November 2010. Charges were never laid, and Nzito has yet to receive an explanation for his detention. On 18 February 2011, Julius Odeke, a freelance photographer for the "Red Pepper" daily and "Razor" publication, was shot by the military while covering an election fracas in eastern Uganda; he was also later threatened with arrest while recovering in hospital. On 23 February 2011, six journalists were attacked and beaten during a scuffle that ensued at Kakeeka polling station in Rubaga division in Kampala.
8. The **safety of LGBTI human rights activists** is also a matter of concern. For example, in June 2008, three activists were arrested by police at the 2008 HIV/AIDS Implementers' Meeting during a peaceful protest against the Government's failure to offer HIV/AIDS prevention programs and treatment to LGBTI people. They were released on bail after having been charged with criminal trespass. On 26 January 2011, a prominent LGBT activist David Kato Kisule, considered the father of Uganda's LGBT-rights movement, was attacked at his home and died later in hospital. The motive is not yet clear, but comes after his name appeared in the list '100 Pictures Of Uganda's Top Homos' published by weekly newspaper *Rolling Stone* in October 2010. Another list of sexual minorities in the same paper carried the headline 'Hang them' and subsequently four people on the list have been attacked..
9. All these instances of infringement have so far gone with impunity as the Government has failed to conduct effective investigation into the violence and bring the perpetrators to justice.

Intimidation of political opponents

10. There are frequent attacks or threats against the political opposition, their supporters and the critical media and journalists. Consequently, the Ugandans face considerable obstacles in exercising their rights to freedom of expression in the context of the elections. Ugandan officials have repeatedly failed to hold the state-actors involved in election-related violence accountable. For example, in January 2010, it was reported in that thirty three women from an opposition coalition were charged with illegal assembly, and they were later severely beaten by the police after they attended the related court hearing. Some opposition-supporters were detained and beaten by the police in March 2010, at the Rukiga by-election. In June 2010, the Forum for Democratic Change presidential candidate Kizza Besigye and other opposition leaders were assaulted at a rally in Kampala.

Failure to make operational and implement the Access to Information Act of 2005

11. The right to access to information is guaranteed in the Ugandan Constitution (art.41) and this right is further specified in the 2005 Access to Information Act. At the time of its adoption, ARTICLE 19 welcomed this legislation and some of its positive features, such as the explicit recognition of the link between the provision of timely, accessible and accurate information and transparent, accountable and participatory governance. However, we note with concern that even six years after its passage, the Act has not yet been made operational. The current situation could be characterised by uncertainty and a degree of confusion about the implementation of the Act. Despite the existence of the Act, there is a general reluctance of government officials to disclose information and a culture of secrecy dominates the public sector. This is particularly worrisome with respect to areas such as accessing information related to provision of health-care and environmental information. For example, the Act requires the government to generate and disseminate environmental information in connection with individual projects, broader natural resources management, and its own functions and as part of general education. However, it has been documented that people are frequently unaware of basic environmental information which is very serious in places such as the Teso region, situated in a wetland where floods are likely to cause major destructions. Furthermore, Parliament has not followed-up on the requirements that each ministry submit the required annual reports on the implementation status of the law.

Recommendations

12. ARTICLE 19 considers the problems described above to amount to serious breaches of the right to freedom of expression and freedom of information as guaranteed under the international law and regional legal standards. We call upon the Human Rights Council to urge the Ugandan Government to:

- Repeal all the provisions of the Penal Code that violate the freedom of expression standards, especially all provisions on criminal defamation, publication of false news and promotion of sectarianism;
- Undertake a comprehensive revision and amendments of the Press and Journalist Law in the line of international freedom of expression standards, in particular abolish the system of licensing of journalist, the complaint system and remove restrictive sanctions;
- Amend the 2002 Suppression of Terrorism Law and the 2010 Regulation of Interception of Communications Law, in full compliance with international standards and ensure that they contain adequate safeguards for protection of human rights, including the freedom of expression;
- Bring the Electronic Media Act, 1996 in compliance with international standards, in particular the grant the full independence from the state for media regulatory bodies;
- Create a safe environment for journalists, media workers and human rights defenders and take active measures to protect them against violence and cease all the harassment and intimidation targeting them.
- Undertake prompt, effective and impartial investigation into all cases of killings and violence against journalists, media workers and human rights defenders and bring those responsible to justice;
- Ensure that opposition voices are not excluded from Uganda's political process, compromising freedom of expression during such pivotal processes as election;
- Take immediate action to fully implement the law on Access to Information.