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STIFLING DISSENT

RESTRICTIONS ON THE
RIGHTS TO FREEDOM OF
EXPRESSION AND
PEACEFUL ASSEMBLY IN
UGANDA

AMNESTY
INTERNATIONAL



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We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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1. INTRODUCTION

The Uganda government and various public authorities have in recent years resorted to illegitimate restrictions on the exercise of the rights to freedom of expression and peaceful assembly in response to some of the critical voices on a number of governance issues. In particular, journalists, civil society activists, opposition political leaders and their supporters risk arbitrary arrest, intimidation, threats and politically-motivated criminal charges for expressing views deemed by public authorities to be too critical of the conduct of officials or government policies and for holding peaceful demonstrations to express concern about certain government policies.

The measures taken by the authorities violate Uganda's international and domestic human rights obligations, and have culminated in widespread official intolerance of criticism of some of the government's policies and practices and a crackdown on political dissent.

This report highlights Amnesty International's concerns about official repression of the rights to freedom of expression and peaceful assembly and the failure to hold perpetrators of human rights violations committed against political activists, journalists and civil society activists to account. The report focuses on the general clampdown on the right to freedom of expression, in particular press freedom, between 2007 and 2011, and official intolerance of peaceful protests in the wake of public protests regarding rising costs of living in April and May 2011.

The official response to public protests over rising costs of living involved the widespread use of excessive force, including lethal force, to quell protests; the arrest, ill-treatment and levelling of criminal charges against opposition leaders and their supporters, the imposition of restrictions on the media and attempts to block public use of social networking internet sites. A proposal by the President, announced in May, to amend the Uganda Constitution in order to remove the right to bail for, among others, persons arrested for involvement in demonstrations and other vaguely defined "crimes" point to increasing repression of the rights to freedom of expression and peaceful assembly.

Officials deny that there are undue restrictions on the rights to freedom of expression and of peaceful assembly and contend that various government actions are justified. However, international human rights law places clear limits on the restrictions which may be imposed on the exercise of these rights. A number of existing, recently-passed and proposed laws in Uganda contain provisions which, or which if enacted would, result in impermissible restrictions on the exercise of these rights, in breach of Uganda's obligations under international law.

Amnesty International calls on the Uganda government to comply with its obligations under international law to respect and protect the right of everyone in Uganda to exercise their rights to freedom of expression and peaceful assembly.

Ugandan authorities should put an end to the increasing levels of repression of human rights currently prevalent in the country. They should allow journalists, human rights defenders, political and other activists to carry out their media, political, human rights and other work without the fear of intimidation and retribution from the authorities.

METHODOLOGY

This report documents Amnesty International's regular and ongoing research and the findings of two fact-finding missions carried out in December 2010 and August 2011. In the course of these missions Amnesty International delegates visited towns¹ in all the geographical regions of Uganda (Eastern, Central, Western, Southern and Northern Uganda) in order to assess the extent to which journalists, political and civil society activists were able to conduct their work prior to and following the February 2011 general elections.

Interviews were conducted with over 30 journalists, 20 human rights defenders and civil society activists, a number of managers of media outlets and representatives of non-governmental organizations (NGOs), as well as representatives of the major political parties. The research findings and key concerns were discussed with various government officials, including from the Ministry of Information and Communication Technology, the Directorate of Criminal Investigations of the Uganda Police, a number of District Police Commanders, Regional Internal Security Officers and Resident District Commissioners. Amnesty International also met with the three statutory authorities responsible for licensing and regulation of the media and communication services: the Uganda Communications Commission, the Broadcasting Council and the Media Council. Despite two written and follow-up phone requests Amnesty International was not able to meet with the Inspector General of Police, the Ministry of Internal Affairs and the management of the state-owned television broadcaster – the Uganda Broadcasting Corporation.

Amnesty International would like to thank all the respondents who shared their testimonies and insights into the exercise of the rights to freedom of expression and of peaceful assembly and the various government and public officials who agreed to be interviewed.

BACKGROUND

Amnesty International has previously expressed concerns over growing restrictions on the rights to freedom of expression, and of peaceful assembly in Uganda.² The organization has criticized various government actions that stifled dissent including the police's use of excessive force to bar opposition political rallies;³ the harassment and suspension of a privately-owned newspaper considered to be too critical of the government;⁴ the arrest, detention and levelling of criminal charges against journalists⁵ and political activists.⁶

There has been a huge increase in the number of media outlets in recent years. According to public officials responsible for regulating the media, Uganda currently has over 250 licensed (mainly privately-owned) radio stations, 50 licensed television stations and up to 50 print media outlets.⁷ Following a public referendum in the year 2000 in which an overwhelming majority of Ugandans voted in favour of a multiparty political system, previous restrictions on

political activity were lifted through amendments to the 1995 Constitution. Over a dozen political parties have been registered since then, and a number have seats in Parliament.

Despite the increase in the number of media outlets and political parties the repression of human rights documented in earlier years remains. There are increasing restrictions in law and practice on the operation of the media which severely impede it in carrying out its function to facilitate the right of everyone to receive information.

Opposition politicians and their supporters also face considerable restrictions – including in relation to holding political rallies and peaceful protests. The police usually block public gatherings and meetings convened by the opposition or other political activists on the basis that they were not informed beforehand or that such public assemblies pose a threat to public order or safety. There is no legal basis for such action by the police.⁸ Opposition political activists also face an ever-present threat of being charged for criminal offences solely on account of having engaged in political activity.

2. RESTRICTING THE FREEDOM OF THE PRESS

THE RIGHT TO FREEDOM OF EXPRESSION

The right to freedom of expression is essential for the realization of other human rights and is integral to the rights to freedom of assembly and association, and the right to take part in public affairs.

Article 29 of the Uganda Constitution provides for the right to freedom of expression. In international human rights law this right, comprising “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of [one’s] choice” is provided for under Article 19 of the UN International Covenant on Civil and Political Rights (ICCPR). The right is also provided for under Article 9 of the African Charter on Human and Peoples Rights (ACHPR) and states that “every individual shall have the right to receive information... [and] to express and disseminate his opinions within the law”. Uganda has ratified both the ICCPR and ACHPR, thereby committing to ensuring that these rights are fully enjoyed in Uganda.

A free, uncensored and unhindered press or other media is essential in any society to ensure freedom of opinion and expression and the enjoyment of other rights. The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion. The public also has a corresponding right to receive media output. This applies to new media such as websites and social media platforms, as well as printed media and broadcasting, which are vital to the individual exercise of the right to freedom of expression, including the right to seek and receive information and ideas of all kinds.

The right to freedom of expression is not absolute. Under Article 19(3) of the ICCPR any legitimate interference with the exercise of the right to freedom of expression must pass a stringent three-part test: it must be provided for by law; and only for certain legitimate purposes, namely respect of the rights or reputations of others or for the protection of certain specified public interests such as national security and public order; and must be demonstrably necessary for that purpose. The Human Rights Committee, the body of independent experts responsible for monitoring states’ compliance with their obligations under the ICCPR, has underlined in its General Comment on Article 19 that a State party imposing restrictions on the exercise of freedom of expression, must do so only for those purposes for which they were prescribed and must be directly related to the specific need on which they are predicated. The restrictions must conform to the strict tests of necessity and proportionality, and may not put in jeopardy the right itself. Any law which places restrictions on the exercise of freedom of expression must be accessible to the public, formulated with sufficient precision to enable individuals to regulate their conduct, and may

not confer on the authorities unfettered discretion for the restriction of freedom of expression; it must make clear what sorts of expression are properly restricted and what sorts are not. The ICCPR sets out a similar three-part test for any restrictions that states impose on the exercise of the right to freedom of peaceful assembly.

Article 43(1) of the Uganda constitution contains a general provision permitting limitations to Constitutional rights, stating that: “In the enjoyment of the rights prescribed in this chapter (the Bill of Rights), no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest”. Article 43(2) provides that “public interest shall not permit (a) political persecution (b) detention without trial (c) any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society or what is provided in this Constitution.” The Constitutional Court interpreted the nature of the limitation to the right to freedom of expression under the Constitution, in *Charles Onyango Obbo & another Vs Attorney General*:⁹

“...The limitation provided for in clause (1) is qualified by clause (2) which in effect introduces a limitation upon limitation”. It is apparent from the wording of clause (2) that the framers of the Constitution were concerned about probable danger of misuse or abuse of the provision in clause (1) under the guise of defence of public interest. For avoidance of that danger, they enacted clause (2) which expressly prohibits the use of political persecution and detention without trial as a means of preventing, or measures to remove, prejudice to public interest. In addition, they provided in that clause a yard stick, by which to gauge any limitation, imposed on the rights in defence of public interest. The yard stick is that the limitation must be acceptable and demonstrably justifiable in a free and democratic society...”

CRIMINAL CHARGES USED TO RESTRICT THE FREEDOM OF THE PRESS

In spite of the legal guarantee of freedom of expression in the Constitution, the ICCPR and ACHPR, certain domestic laws have been used by the government to effectively restrict the freedom of the press in breach of Uganda’s obligations under international law and standards. Provisions in the Penal Code Act have been used to charge journalists, political and other activists for activities which are a legitimate exercise of their right to freedom of expression. Up to 30 journalists currently face charges including ‘the promotion of sectarianism’, ‘forgery’, ‘incitement to violence’, ‘criminal defamation’ and ‘sedition’. All charges relate to instances where the journalists’ have expressed views that are critical of government policies or of the actions, conduct or views of government or public officials.

It is well established in international law that public officials should tolerate more, rather than less, criticism than private individuals. It is unjustifiable to use defamation laws to prevent legitimate criticism of government or public officials or to prevent the exposure of official wrongdoing or corruption. The UN Human Rights Committee has underlined that the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties, and all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.¹⁰ Defamation laws should not

provide special protection for public officials, nor should the criminal law be used in cases of alleged defamation against public officials. Public officials should not receive any assistance from the state in bringing private civil actions for defamation. Imprisonment is never an appropriate penalty for defamation.

The Ugandan courts have declared the offences of 'sedition' and 'publication of false news' as unconstitutional in two separate cases. In August 2010 the Constitutional Court declared the offence of sedition unconstitutional in the case *Andrew Mwenda and the Eastern African Media Institute (U) Limited Vs Attorney General*.¹¹ The applicant in this case – a journalist – had been charged with sedition for views that he expressed in a live radio talk show in August 2005. In the show he alleged that the Ugandan government was culpable in the fatal helicopter crash in 2005 that killed Sudan's former First Vice-President and Southern Sudanese Leader, John Garang and seven Ugandan crew members. The prosecution asserted that the statements were made "with the intention to bring into hatred or contempt or to excite disaffection against the person of the President, the Government as by law established or the Constitution". The applicant denied the charge and challenged the constitutionality of the offence. In declaring sedition unconstitutional, the five-judge Constitutional Court held that:

"...The wording creating the offence of sedition was so vague that one may not know the boundary to stop at, while exercising one's right ...The wording is so wide it catches every body to the extent that it incriminates a person in the enjoyment of one's right of expression of thought..."¹²

The court's reasoning in this case was similar to its earlier decision in the case, *Charles Onyango Obbo & another Vs Attorney*¹³ decided in February 2004, where the court struck down the offence of 'publication of false news' under section 50 of the Penal Code¹⁴ as unconstitutional. In the lead judgment the court stated in part that:

"...Section 50 lacks sufficient guidance on what is, and what is not, safe to publish, and consequently places the intending publisher, particularly the media, in a dilemma. In my view, given the important role of the media in democratic governance, a law that places it into that kind of dilemma, and leaves such unfettered discretion in the state prosecutor to determine, from time to time, what constitutes a criminal offence, cannot be acceptable, and is not justifiable in a free and democratic society..."

Despite the court's decision seven years ago that the offence of 'publication of false news' was unconstitutional, some journalists are still being charged with this offence, which along with 'sedition' are still retained in the Penal Code Act. In March 2011 Yoweri Musisi, a journalist working for Central Broadcasting Services – a privately owned radio station – was charged with 'publication of false news'. The prosecution alleged that Musisi had published false statements regarding an alleged rise in security incidents in one area of Uganda and that "these statements were likely to cause fear and alarm to the public". Musisi pled to the charge before a Magistrate's Court, and was subsequently released on bail and ordered to regularly report to the police. It was only after he filed an application, before the trial Magistrate, challenging the legality of the charge on the basis of the 2004 Constitutional court judgment that the charge was declared defective on 18 May.

Two journalists, Patrick Otim and Augustine Okello who are in pre-trial detention are charged with treason in two separate court cases. The penalty for treason is death. According to the court charge sheets the two journalists are charged for their alleged involvement in the activities of rebel groups apparently operating in northern Uganda. Patrick Otim was charged and held in pre-trial detention over two years ago. According to Otim's lawyer, as of August 2011, a date for the start of the trial of the case against Otim and his co-accused was yet to be set. Augustine Okello was arrested by unidentified state security personnel on 12 July 2011 and held in incommunicado detention for over two weeks before being produced in court and charged with treason. As of early September 2011 neither he nor his lawyers had been provided with detailed information regarding the evidence the state has in relation to the allegations against him. This is contrary to Uganda's obligations as a state party to the ICCPR to ensure, under Article 9 (2), that anyone who is arrested shall be informed, at the time of arrest, of the reasons for their arrest and be promptly informed of any charges against them. Both journalists have reportedly been subjected to torture and other ill-treatment in the course of interrogations by security authorities while in detention.

Amnesty International and other human rights organisations are concerned at the failure to disclose the particulars of the evidence against the two individuals, their incommunicado detention, reported torture or ill-treatment and delayed trial.

CONCERNS REGARDING MEDIA REGULATION

States have an obligation to ensure that legislative and administrative frameworks regulating the mass media are consistent with the provisions of the ICCPR.¹⁵ For instance, states should not refuse to permit the publication of newspapers and other print media other than in the specific circumstances of the three-part test set out in Article 19(3) of the ICCPR. Such circumstances may never include a ban on a particular publication unless specific content, that is not severable, can be legitimately prohibited on this basis. With regard to the broadcast media, states must avoid imposing onerous licensing conditions and fees, including on community and commercial stations. The criteria used to apply such conditions and licence fees should be reasonable, objective, clear, transparent, non-discriminatory and otherwise in compliance with the ICCPR. The UN Human Rights Committee recommends that licensing regimes ensure equitable allocation of access and frequencies between public, commercial and community broadcasters, and that the power to grant licences should be exercised by an independent and public broadcasting licensing authority.¹⁶

The Press and Journalists Act, 1995 requires all journalists to be registered and accredited to practice journalism¹⁷ and be subject to a disciplinary process by the Media Council – the body established under the Act to regulate the print media and which is subject to considerable ministerial control and direction.¹⁸ Similarly, the government plays a dominant role in the establishment and operations of the Broadcasting Council and the Uganda Communications Commission. The two bodies are respectively in charge of, among other things, the licensing and regulation of the electronic media and the allocation of radio frequencies.¹⁹ Amnesty International and the media fraternity are concerned that all three regulatory bodies are not independent from the Executive and hence vulnerable to political control potentially leading to illegitimate restrictions of the right to freedom of expression.²⁰

The Broadcasting Council for example, has previously taken action which illegitimately restricts the right to freedom of expression. The Broadcasting Council has closed radio stations and banned live debates for instance during September 2009 demonstrations that led to violent clashes involving supporters of the King of Buganda,²¹ the police and other security personnel. The Council arbitrarily ordered the closure of four radio stations, reportedly for failing to comply with the minimum broadcasting standards provided for under the Electronic Media Act before and during the demonstrations, and for 'promotion of sectarianism' and 'incitement of violence'. All the four radio stations denied these allegations. They were not given adequate notice of the closures, explanations for their closure or an opportunity to appeal the Council's decision. The Council also arbitrarily ordered the discontinuation of some radio programmes during this period. The Council's representative explained to Amnesty International that the relevant law, the Electronic Media Act, section 10(1) grants the Council the function, among others, "to coordinate and exercise control over and to supervise broadcasting activities" and does not explicitly require a hearing process. Amnesty International believes that the three-part test to ensure legitimate restriction of freedom of expression requires the Broadcasting Council to make certain that the affected stations had a specific opportunity to be heard on the allegations and complaints facing them irrespective of whether or not the Electronic Media Act explicitly outlines a hearing and appeals process.

Although the four radio stations were re-opened after some time – two of them after a number of months, media practitioners told Amnesty International that they believed that the closures has led to self-censorship. They said that journalists and radio talk shows now try to avoid discussing certain topics, including the political differences between the central government and the Buganda Kingdom.²²

The Broadcasting Council has also reportedly put pressure on radio station managers not to broadcast some radio talk show programmes on a number of occasions. Such pressure is usually verbal, including through phone calls, with the message that a failure to comply would lead to the withdrawal of a radio operation licence. Amnesty International delegates were told of at least two incidents between May and June 2011 affecting a privately owned radio station in Fort Portal in western Uganda, and a state owned radio station in Gulu in northern Uganda. A manager at a privately owned radio station in Fort Portal told Amnesty International:

*"...Things have been very bad since the September 2009 riots in Kampala. Between that time and now we have seen an increasing amount of surveillance and monitoring of radio programmes by the district security officials led by the Internal Security Organization...We (radio station managers) receive more regular calls from the security officials and the Broadcasting Council than before. We are usually called to meetings with security officials to discuss why we are hosting this or that programme or talk show especially programmes in which government critics have some radio air time...We then have to find a way of doing our job without offending these officials. Some times this involves asking the moderator on a given programme to tone down the level of criticism, not to discuss certain topics or not to host certain critical civil society activists..."*²³

Broadcasting Council officials deny these allegations.²⁴ The officials maintain that the Council's only interventions were "normal interventions to enforce the minimum broadcasting standards and were justifiable in the context of the developing media industry in the country".²⁵

THE PROPOSED PRESS AND JOURNALISTS (AMENDMENT) BILL

The government plans to amend the Print and Journalists Act, 1995 through a Press and Journalists (Amendment) Bill, a draft copy of which was made public in 2010. A cabinet discussion is pending on the proposed Bill. It would, if adopted and supported by the cabinet, be tabled in Parliament to be enacted into law.

The Media Council established under Press and Journalists Act, 1995 is under considerable ministerial control and direction.²⁶ The Media Council has powers in relation to the registration and accreditation of journalists and the power to take disciplinary measures against journalists for violations of a code of ethics under the Act. The proposed Press and Journalist (Amendment) Bill seeks to further empower the Media Council to register and issue licences to print media outlets.²⁷

Under the proposed Press and Journalists (Amendment) Bill the Media Council will, in exercising its powers over the registration and granting or revocation of licences of the print media, make determinations on the basis of imprecise and undefined considerations such as the "social, cultural and economic values of the newspaper" as a pre-condition for granting a licence, and determine whether material published is prejudicial to "national security, stability and unity" or "Uganda's relations with new neighbours or friendly countries" or whether material published amounts to "economic sabotage".²⁸

The Bill also stipulates that the publication of newspaper material "that is prejudicial to national security or stability and unity" or "that amounts to economic sabotage" is a crime by a newspaper and/or journalist(s), punishable by a heavy fine or up to two years' imprisonment or both.²⁹

The overly-broad and vaguely-defined provisions stipulated as a pre-condition for newspaper licensing, a power to be exercised by the Media Council which is subject to control by the government, are *prima facie* an illegitimate restriction to the right to freedom of expression. The vague and overly-broad nature of these provisions and the lack of definition of the terms such as economic sabotage, 'national security', 'stability' and 'unity' do not meet the specificity standard required for permissible restrictions on the exercise of the right to freedom of expression, including press freedom, earlier discussed in the report. To this extent, the Bill would, if enacted into law, provide a basis for the violation of the right to freedom of expression, and should therefore be withdrawn.

OTHER LAWS RESTRICTING THE RIGHT TO FREEDOM OF EXPRESSION

The Regulation of Interception of Communications (RIC) Act, 2010, in force since 3 September 2010, lacks adequate safeguards to ensure respect and protection of human

rights, and in particular threatens the exercise of the right to freedom of expression and the right to privacy. It introduces far reaching government discretion in surveillance and interception of electronic, telecommunications and postal communications between individuals, groups and organisations. Amnesty International previously raised concerns over the broad and loosely defined grounds for authorizing interception of communication and the increased risk of abuse of broad ministerial powers.³⁰ The organization has also criticized the lack of independent oversight over the exercise of executive powers in relation to the Monitoring Centre -- an institution through which private communication companies will enable interception of communication by the authorities.³¹

The Anti-Terrorism Act, in force since June 2002, defines 'terrorism' and other offences such as the 'aiding and abetting of terrorism' in overly broad terms in a way that could inhibit media work. Additional offences created under sections 8 and 9 of the Anti-Terrorism Act including establishing, running or supporting an institution for "publishing or disseminating news or materials that promote terrorism" could illegitimately restrict the right to freedom of expression, in particular, by the press. The 'promotion of terrorism' is not defined under the Act leaving the potential for an interpretation which criminalizes legitimate media coverage. Section 19 of the Act provides a security officer designated by the Minister in charge of security with powers of interception for purposes including for safeguarding the public interest, preventing or detecting terrorism offences, or safeguarding the national economy from terrorism. Journalists' communications with their sources could be intercepted because they are communicating with people who, due to broad interpretation under the Anti-Terrorism Act, are suspected of committing offences linked to terrorism.

3. THE IMPACT OF CRIMINAL CHARGES ON JOURNALISTS

Journalists facing criminal charges as a result of their media work usually experience serious obstacles to continuing their roles.

The court cases can be pending for many years, with very slow progress or none at all. As a result the affected journalists are restricted in their movement and work. A political editor with a privately-owned newspaper *Daily Monitor* who faces two separate cases of criminal libel and forgery, in relation to material critical of a public official, has had to regularly attend court for over three years. He told Amnesty International:

"The first case of criminal libel has not gone any step further than the one instance when my co-accused and I were charged. The case has only been mentioned once in court...We are often told that there is no state prosecutor to carry on with the case. Yet the state would not withdraw it....In the second case of forgery at least we have had some progress with the case and some witnesses have testified. The key issue in the cases we face regards the inconvenience to one as a person and the chilling effect that it has on other journalists. The cases take a lot of your time. You have to go back and forth through the process of police interrogation and court attendance...Initially we had to report to the police every week although this requirement is now relaxed but on condition that you would have to check in with the police from time to time and can't travel without notifying the police...Young journalists who work under us look at what this job entails –including these kind of cases – and some of them question whether they want to be journalists working on coverage of political and governance issues..."³²

A newspaper columnist charged with criminal defamation in relation to a media story questioning the amount of remuneration paid to a state official told Amnesty International:

"My two co-accused persons and I were charged with the offence of criminal libel in September 2007. The case is still active some four years on yet no witnesses have been called by the prosecution even before we decided to file a legal petition to the Constitutional court challenging the constitutionality of the offence of criminal libel...Our legal petition was rejected by the court and we appealed to the Supreme court – an appeal which is pending for hearing. We spent a whole year between late 2007 and late 2008 in and out of court and during this time we had to comply with instructions to regularly report to the police as part of our bail terms. Of course the threat of pre-trial detention hangs over one's head...The police interrogation process before I was charged went on for six hours. I was lucky that I had a lawyer hired by my employer who was representing me in the process otherwise you can end up being intimidated and susceptible to breaching media professional ethics standards such as the confidentiality of one's sources ..."³³

One local human rights activist told Amnesty International delegates that:

*"The state seems to deliberately design the process in such a way that the court cases are not finalized...The individual journalist has to keep on reporting to the police. Many times this entails restrictions on one's travel and of course the kind of media undertakings the journalist would do. His/her family would start questioning him/her ..."*³⁴

A representative of the Media Council told Amnesty International that these criminal charges levelled against journalists are in fact an indication that the government "is complying with the law by going to court rather than acting extra-judicially".³⁵ The official added that "it was healthy that journalists are taken to court when they are deemed to have breached the country's laws in the course of their work".³⁶ This practice however undermines the right to freedom of expression. Uganda's obligations to respect the freedom of expression includes the duty to ensure that criminal charges are not levelled against journalists simply for criticizing the government or public officials, or for discussing contentious issues and/or as a pretext to gag them such as is apparent in most of the criminal cases against journalists in Uganda.

Some of the affected journalists have been subjected to a number of human rights violations, including torture and other ill-treatment in custody before being charged in court. Kalundi Serumaga, a radio journalist, told Amnesty International:

"I was arrested in September 2009 in relation to my remarks on a radio talk show where I questioned the political leadership of the country under President Museveni. My arrest, if you may call it an arrest as I was virtually abducted happened during the September 2009 demonstrations that led to clashes between supporters of the King of Buganda and the police... I was not told what I was being arrested for and I was ill-treated before being put into a police cell where I was severely beaten up in the course of interrogations by security personnel..."

Affected journalists may face further sanctions such as arbitrary suspension from their media work or put out of employment at the instigation of official authorities. Serumaga told Amnesty International:

"...I was subsequently charged with the offence of sedition. The offence has since been declared unconstitutional. Although I no longer face the criminal charges I continue to face what is clear persecution. My employer – a private radio station – cites a letter from the Broadcasting Council dated 14 September 2009 – stating that I cannot work at the radio station because I am suspended from any radio programmes pending police investigations over allegations that I incited public violence. Other media outlets, including the state television broadcaster cites this same reason for not allowing me to appear for any media talk shows which I used to appear in before September 2009. It is puzzling that the letter from the Broadcasting Council to my former employer states that I'm being investigated over allegations of 'inciting violence' yet I was charged in court with the offence of sedition. The radio station management has refused to allow me back to work as a journalist. Since my suspension, over two years ago, I've not been informed of progress regarding the police investigations stated in the letter as ongoing...I have neither been called to assist in or contribute to the investigations nor have I received direct correspondence from the

Broadcasting Council on this issue..."37

Harassment of journalists includes instances where they are summoned and interrogated by police, but not charged, over work deemed too critical or offensive to the government. As a result, affected journalists live under the threat of arrest and possible charges in court in addition to the prospect of being forced to incriminate their interlocutors or media sources. Tabu Butagira, a journalist with the privately-owned *Daily Monitor* was interrogated by the police between February and August and remains at risk of being charged with unspecified crimes over a report based on an interview with Dr. Kizza Besigye, Uganda's leading opposition leader. In the interview the politician reportedly, among other issues, called for citizens to "use all means necessary to oppose this government while adhering to the law". Tabu Butagira was summoned by the police's special investigation unit after the report was published. He was questioned on two separate occasions and informed that he was required to provide the police with the full audio recording of the interview transcript and to testify in court as a state witness in prospective (unspecified) criminal charges against the politician.³⁸

RESTRICTION OF OPPOSITION AND CIVIL SOCIETY ACCESS TO THE MEDIA

Radio journalists have also been intimidated and harassed in order to stop them from airing views critical of government, the ruling party, government policy or practice. In the lead-up to the February 2011 general elections, media coverage of the campaigns of key opposition leaders, in particular radio talk shows, were arbitrarily blocked or stopped, in spite of explicit provisions on broadcasting standards under Ugandan law, specifically the Electronic Media Act which, in its First Schedule, requires that in elections for public office the electronic media –whether privately or publicly owned – must afford equal coverage to all candidates.³⁹ Journalists working for privately-owned radio stations told Amnesty International that they received implicit and some times explicit instructions from the station owners (believed to be loyal to the ruling party) not to allow opposition parliamentary candidates to hold media events such as talk shows even where the candidates had agreed to pay for radio station air time.

Amnesty International delegates were told how a former editor at the state owned television broadcaster, the Uganda Broadcasting Corporation (UBC), was fired because he tried to ensure balanced coverage of the views of all political parties and candidates around the elections. According to one credible source, journalists at the state broadcaster worked under "constant pressure from the station management to black out coverage of the opposition during the general elections".⁴⁰ An employee at a state radio station managed by UBC in one of Uganda's upcountry districts showed Amnesty International delegates a series of letters written by UBC's management to the individual employee which appeared to support the individual's transfer from a previous position of news editor as "punishment for attempting to give coverage to criticism of government policies". The UBC management did not meet with Amnesty International delegates to discuss these incidents despite a written commitment on 16 May 2011 by the Corporation's public relations office to arrange such a meeting.

Human rights defenders and activists in a number of up country districts have expressed concern over arbitrary restrictions by government officials to civic education radio programmes. A civic education talk show run by Twerwaneho Listeners Club, a community-

based organization in Fort Portal, western Uganda is an example. In 2007 the talk show was ordered off air by the Regional Police Commander who wrote to the owners of the private station hosting the talk show stating that the content of the show incited violence. Six members of Twerwaneho Listeners Club were subsequently arrested and charged with 'incitement and criminal libel' on the basis that the earlier talk shows had discussed government policy and practice in the area. The station owners and the members of the community-based organization were not given an opportunity to respond to the allegations of incitement and libel. The criminal case filed against the six members of the community based organization was later dismissed in September 2009 for lack of evidence and the talk show resumed. However, arbitrary restrictions on the talk show continue.

Members of Twerwaneho Listeners Club told Amnesty International that the radio station hosting the talk show in February 2011 required them to submit the proposed content of the show in advance for approval. The content would be approved if it did not include any discussions of local governance issues which would cast certain political leaders, who were in government and were running in the February 2011 elections, in negative light. The station management admitted that programme content was pre-approved, but denied that the exclusion of certain issues was politically-motivated and claimed that the basis for such exclusion was to avoid "inflammatory discussions". The radio station did not provide any specific examples of discussions that may be deemed inflammatory. Since April 2011 members of the group have moved to a second radio station to host the radio talk show because of the restrictions over what they could discuss at the previous station. However the second radio station still imposes restrictions regarding the topics that are allowed for discussion during the programme.⁴¹ The station management confirmed these restrictions, explaining that they are not related to any broadcasting standards but were geared to ensuring that certain authorities were not offended.⁴²

JOURNALISTS PHYSICALLY ATTACKED WITH IMPUNITY

Journalists were physically assaulted in a number of instances before, during and after the February 2011 general elections, by aides or supporters of political candidates, the police or security personnel while reporting violations to the electoral process including political violence. In most incidents the journalists believed that they were attacked because the politicians or security personnel believed that media coverage would lead to adverse media publicity to the security personnel, individual politicians or their supporters.

Most journalists who have attempted to seek redress in relation to incidents of physical assault are unable to access justice mechanisms, because the police – the first step in the process – consistently failed to investigate complaints, which led most journalists to conclude that the police condone human rights abuses committed against them. In December 2010, Amnesty International delegates were told about three incidents where journalists were attacked while covering electoral-related violence and irregularities during political campaigns for party and general election nominations between August and December 2010. In all three incidents the affected journalists believed that their assailants were acting with the knowledge and acquiescence of the politicians – in two of the incidents the journalists were attacked by political aides while the politicians stood by watching. In one incident the journalist was attacked by a group of police officers during elections for the ruling party

primaries as a senior government official watched. The journalist attacked by a group of police officers told Amnesty International how the government official in question watched as the police officers beat her up and he (the official) shouted that he did not want “any journalists covering the event” (the ruling party primaries). The journalist sustained serious abdominal injuries that subsequently required hospitalization. The journalist reported the incident to the police and recorded a statement. She also duly filled and submitted a medical examination form following a medical examination at the hospital. However the police took no further action to investigate, arrest or prosecute the suspected perpetrators.

Dozens of journalists were beaten, harassed and intimidated by the police and other security personnel in the course of their coverage of the police's reaction to the April-May 2011 ‘walk to work’ protests discussed in the next chapter of this report. Amnesty International has been told that the security personnel implicated in the various incidents of physical assault against journalists have to date, not been held to account for such conduct.

4. RESTRICTING THE FREEDOM OF PEACEFUL ASSEMBLY

THE RIGHT TO PEACEFUL ASSEMBLY

As a state party to the ICCPR Uganda has an obligation to respect and protect the right of peaceful assembly (Article 21). The Uganda Constitution (Article 29 (1) (d) and the African Charter on Human and Peoples' Rights (Article 11) also recognize this right. Under international law no restrictions may be placed on the right of peaceful assembly other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others – that is, a similar three-part test, including the key elements of necessity for a specific legitimate purpose as outlined earlier in this report in relation to the right to freedom of expression.⁴³

International standards on law enforcement, in particular, the UN Code of Conduct for Law Enforcement Officials⁴⁴ and the UN Basic Principles on the Use of Force and Firearms,⁴⁵ are clear that the police and other law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,⁴⁶ and that in carrying out their duty they must as far as possible, apply non-violent means before resorting to the use of force and firearms, which they may use only if other means remain ineffective or without any promise of achieving the intended result.⁴⁷ With specific regard to policing demonstrations, these principles stipulate that in dispersing assemblies that are unlawful but non-violent, police must avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.⁴⁸ In dispersing violent assemblies they may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.⁴⁹ They must not use firearms in such cases, except in defence against an imminent threat of death or serious injury or to prevent the perpetration of a particularly serious crime involving grave threat to life and only when less extreme means are insufficient to achieve these objectives; intentional lethal use of firearms is permissible only when strictly unavoidable in order to protect life.⁵⁰ In cases where police are reported to have used excessive force, the authorities must ensure an effective independent review process to investigate such reports, and arbitrary or abusive use of force and firearms by police should be punished as a criminal offence.⁵¹ Victims and survivors of human rights violations resulting from the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process.⁵²

OFFICIAL REACTION TO THE APRIL-MAY 2011 PROTESTS

For several weeks starting 11 April 2011, country-wide public protests called by a political lobby group, Activists for Change, broke out in Uganda's capital Kampala and in other parts of Uganda. The lobby group called on people to shun vehicles and walk to work in protest at

the rising prices of fuel and other essential commodities. The official response to the protests was to enforce a continuing general ban on all forms of protests, use excessive force in quelling demonstrations some of which had turned violent and to level criminal charges against opposition politicians and their supporters participating in the protests.

BANNING THE APRIL PROTESTS

In reaction to the announcement for the April protests the Inspector General of Police stated that the police would not allow the 'walk to work' protests since "...the organizers of the protests aimed to overthrow the government. Terrorists may use the opportunity afforded by the protests to conduct terrorist activities".⁵³ In a state public address on 8 June 2011 the President said:

"I would like to advise those championing riots in the name of protesting against high fuel prices and other commodity prices to stop. The ulterior motives behind those riots are already known by all the concerned agencies of Government. Consequently, any riots will be handled firmly and decisively, basing on the provisions of Article 43 of the Constitution on the enjoyment of fundamental and other human rights and freedoms..."⁵⁴

In a July 2011 interview with Amnesty International the police maintained that there was no ban in place against all forms of protests but that the police's role is to ensure law and order which necessitates that the police do not allow certain forms of protests to take place especially where violence was likely to occur.⁵⁵

The government's position as stated by the President, the Inspector General of Police and other government officials has been to effectively outlaw all forms of public demonstrations, rallies or assemblies in the wake of the 2011 general elections and especially those which criticize the electoral process, current government policies and the conduct of public officials. This ban is an illegitimate restriction of the right to peaceful assembly. It fails the tests of necessity and proportionality for a legitimate purpose set out in the ICCPR.

THE USE OF LETHAL FORCE

On at least six different occasions in April during a number of demonstrations throughout the country, the police and military personnel used excessive force, including firing live ammunition into crowds of protesters, killing at least nine people, including a two year old baby, and injuring dozens others. Typically the protests, declared unlawful by the police, first involved unarmed demonstrators attempting to 'walk to work' by shunning public transport. Subsequent to various instances of police intervention to disrupt protests a number of protests turned violent with protesters hurling stones and other objects at the police and other law enforcement officials. The UN Basic Principles on the Use of Force and Firearms stipulate that in the dispersal of assemblies that are unlawful but non-violent, police must avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.⁵⁶ In dispersing violent assemblies they may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.⁵⁷

The Inspector General of Police has since apologized in the media for the police actions during the protests and promised “to follow up on the cases of those killed or injured” but stating that “these were errors which were consequential from the activities of the opposition”.⁵⁸

Since May 2011, the police have changed their tactics to disrupt planned protests. The heavy strong presence of police and security personnel in major public venues serves as a deterrent to any protests; they use anti-riot pink spray (ostensibly aimed at identifying persons for police arrest) and tear gas instead of firearms as was witnessed in April. However official intolerance to any forms of public protests remains, including through the continued disruption of the ‘walk to work’ protests by the police and the arrest and levelling of criminal charges against political leaders and their supporters participating in the protests.

With the exception of criminal investigations and a commitment to try the police officer involved in the fatal shooting of the two year old baby, which was highly publicized, Amnesty International is concerned that the government is yet to ensure that any police officer or law enforcement official responsible for any of the killings or any human rights violation has been brought to justice and victims granted full access to their right to effective remedies.

The disruption of peaceful protests and demonstrations and the ban on public rallies violate the freedoms of expression and peaceful assembly which are provided for under the Ugandan Constitution and international law.

ARBITRARY ARREST AND ILL-TREATMENT OF POLITICAL LEADERS

A number of key opposition leaders, including opposition leader Dr. Kizza Besigye of the Forum for Democratic Change, Olara Otunnu of the Uganda Peoples’ Congress, Norbert Mao of the Democratic Party and hundreds of their supporters were, on more than one occasion, arrested in April and May for their participation in the protests.

A number of political leaders and their supporters were ill-treated by the police and other security personnel in the course of their arrest during the protests. In one incident on 28 April the opposition leader Dr. Kizza Besigye was the victim of a brutal arrest by the police and unidentified law enforcement personnel. Following a scuffle with the political leader’s aides, government security personnel forced him out of his car on one of Kampala’s roads. The officers broke the car’s windows using gun butts and a hammer, and sprayed cans of teargas and pepper spray into the politician’s vehicle and directly into the politician’s eye in order to force him and his aides out of the car. The officers then beat the politician and his aides before violently pushing them into a police van and driving them to a Kampala police station. Dr. Besigye suffered various serious injuries, including to his eyes. Various government officials publicly stated that this action and the level of force used against the politician was justified despite the clear excessive and disproportionate nature of the force used in the arrest of the political leader. The government did not take any action to hold accountable the security officials involved in the ill-treatment of Dr. Besigye.

Most of the political leaders and their supporters were held in police custody for various number of days and subsequently charged in courts with various criminal offences under the

Penal Code Act including ‘incitement to violence’ and disobeying lawful orders issued by the police.

The charges against the opposition leaders have since been dismissed by the courts for lack of evidence. However similar criminal charges against dozens of opposition political supporters remain pending.

On at least two occasions during the protests in April and May the police refused to allow Dr. Besigye to leave his home stating that the political leader was under ‘preventive arrest’ because his participation in the protests, by walking to work, was a threat to ‘public peace and security’. It appeared that the implementation of this measure was a direct result of the general ban on the protests on the basis of ‘national security’ which as already pointed out in this report is an illegitimate restriction of the right to peaceful assembly. In addition, in the absence of a precise and sufficiently defined justification for Dr. Besigye’s ‘preventive arrest’ Amnesty International considers that the measure fell short of meeting the specificity required in the three-part test for the restriction of the right to freedom of peaceful assembly, namely that: the restriction must be provided by law; and only for certain legitimate purposes, must be for the respect of the rights or reputations of others or for the protection of certain specified public interests such as national security and public order; and must be demonstrably necessary for that purpose.

ATTEMPTS TO BLOCK THE USE OF SOCIAL NETWORKING SITES

Different sections of the Ugandan public and members of civil society debated the rationale for and the developments around the April and May protests on various social networking sites, particularly on Facebook. The authorities attempted to block the use of social networking internet sites, such as Facebook and Twitter citing the potential for widespread violence, even though there is no evidence that the protest organizers were or have been using the various sites to organize the protests in any way.

A letter by the Uganda Communications Commission dated 14 April 2011 and addressed to all ten internet service providers in the country reads in part:

“We have received a request from the security agencies that there is need to minimize the use of the media that may escalate violence to the public in respect of the ongoing situation due to demonstration relating to “Walk to Work”, mainly by the opposition in the country...You are therefore required to block the use of Facebook and tweeter for 24 hours as of now, that is: 14 April 2011 at 3.30 p.m. to eliminate the connection and sharing of information that incites the public...”⁵⁹

According to the BBC two out of the ten internet service providers complied with the directive.⁶⁰ In a meeting with Amnesty International the Uganda Communication Commission’s Director confirmed that the letter had been sent. The Director stated that although there was no evidence that the social networking sites were being used as a platform for inciting violence during the April protests “the spirit of the letter was right because the letter sought to direct the attention of internet service providers to the potential for danger in the use of the networking sites in the context of the protests”.⁶¹ He added that

the “actual wording of the letter calling for a ‘shut down’ of the networking sites was wrong”.⁶²

On 11 August the Security Minister told a press conference that the government had information that the opposition was “using Twitter, Facebook and YouTube to wage a propaganda campaign against the security forces and to “psychologically prepare the people, especially young people, for armed insurrection”.⁶³ The Minister’s statement came after a press announcement by political activists calling for further protests similar to the April protests. The Minister did not discuss the content of the “propaganda campaign” that he referred to. The political lobby group calling for protests and representatives of opposition political parties has publicly denied the assertions of the Minister and the police.

In the absence of clearly defined concerns regarding security or violence the official proposal and consideration to shut down social networking sites exceed the restrictions governments may impose on the exercise of the rights to freedom of expression and peaceful assembly. The use of websites and social media platforms, as well as printed media and broadcasting, are vital to the individual exercise of the right to freedom of expression, including the right to seek and receive information and ideas of all kinds. The proposed blockage of social networking internet sites and subsequent official statements on the danger of the use of these sites have not been based on evidence that the various social media and networking forums were being used to disseminate messages that would lead to violence. In the absence of such concrete evidence and the undefined concerns regarding ‘national security’, Amnesty International believes that regulatory authorities and public officials have illegitimately restricted the right to freedom of expression, including the use of social media.

‘PROTECTING NATIONAL ECONOMIC INTERESTS’

The police and other government officials have cited the disruption of economic activity and businesses as one of the key reasons for not permitting most public protests, including the April protests. The Director of criminal investigations confirmed this position in a meeting with Amnesty International.⁶⁴ Since early May the local media has widely reported on a proposal by President Museveni for a constitutional amendment to deny pre-trial bail for a period of six months for ‘protestors’, ‘rioters’, ‘rapists’ and ‘economic saboteurs’.⁶⁵ The President’s proposal is intended to “discipline individuals undermining the country’s economy”.⁶⁶

A State Minister told Amnesty International in July that the President’s proposal was yet to be discussed by the cabinet. The Minister’s view was that the proposal “should be the subject of discussions because there was a need for a law to address legal responsibility for economic sabotage in connection to violent protests”.⁶⁷

Amnesty International is concerned that the president’s proposal signals an intention by the government to further erode freedoms of expression and peaceful assembly in Uganda. A general reference to ‘economic interests’ or ‘economic sabotage’, such as in the President’s proposal, is not sufficiently specific and therefore not a legitimate reason to limit freedoms of expression or peaceful assembly.

MEDIA RESTRICTION AROUND THE PROTESTS

Amnesty International was told that a representative of the Broadcasting Council had informal telephone communications with the management of all television stations during the April protests, directing them to stop live coverage in order to discourage the prospect of incitement of further violence.⁶⁸ A television media black out of the protests was subsequently noticeable for a period of about two weeks from mid-April.

Broadcasting Council officials later told Amnesty International that they were not aware that such a directive had been made by government officials or any of the Council's representatives and were surprised that the television stations had stopped live coverage of events during the protests.⁶⁹ The officials explained that the Council had called a meeting with media practitioners where they agreed to form a joint committee which was tasked with drafting guidelines for live coverage of events during the protests. Included in these guidelines was a proposal for "a delayed 3-minute relay of events" to allow "for any necessary edits of offensive material before the public airing of images".⁷⁰ The nature or interpretation of what constitutes "offensive material" referred to in the guidelines is not clear though the Council's representative stated that the delayed broadcast and edit of media material was necessary because: "it is important that live television coverage of events such as the protests is done in compliance with media ethics for example by not carrying sensitive images such as dead human bodies".⁷¹ However, the representative did not clarify if an alleged failure to comply with media ethics in particular in relation to the airing of sensitive images was the reason for the Council's decision to restrict live coverage of events during the protests. A manager of a privately-owned television station interviewed by Amnesty International confirmed the Council's version of events but explained that the head of the Council had earlier issued phone directives ordering the stoppage of live television coverage and that the directive "seemed principally aimed at blacking out live coverage of the large groups of people participating in the protests and critical media coverage of the police's reaction to the protests" which had involved the use of excessive force in disrupting the protests.⁷²

In the absence of specifically-defined reasons for imposing a ban on live media coverage of events, which should be in compliance with the earlier stated stringent test for the restriction of the right to freedom of expression, Amnesty International considers that the Council's decision to restrict live coverage of the developments during the April to May protests constituted a violation of the right.

A number of journalists covering the protests were harassed and their media equipment was confiscated by the regular and military police deployed to quell the protests. Some of them were beaten by the police and security personnel and warned against any negative coverage of the actions of the security agencies. The government has not taken measures to hold accountable any security personnel alleged to have been responsible for the harassment, intimidation and beatings of journalists.

5. POLICE BLOCKAGE OF PUBLIC POLITICAL ASSEMBLIES

The Uganda Police and other security officials, usually in election-related contexts, block or disperse political rallies by opposition politicians often without providing valid reasons for these actions. The police usually cite the provisions of section 32 of the Police Act which requires persons intending to hold public assemblies to inform the Inspector General of Police of assemblies. The section provides:

32 (1) “Any officer in charge of police may issue orders for the purpose of – (a) regulating the extent to which music, drumming or a public address system may be used on public roads or streets or at occasion of festivals or ceremonies; (b) directing the conduct of assemblies and processions on public roads or streets or at places of public resort and the route by which and the times at which any procession may pass.”

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

The constitutionality of Section 32 (2) was challenged in the case *Muwanga Kivumbi vs the Attorney General*⁷³ decided by the Constitutional Court in May 2008. In this case the Constitutional Court unanimously declared the sub-section unconstitutional on the basis that it amounts to granting ‘prohibitive’ rather than ‘regulatory’ powers to the police and hence was an unjustifiable restriction to the exercise of the freedom of assembly and peaceful demonstration guaranteed under Article 29 of the Ugandan Constitution. In the lead judgment the court stated that:

“...Peaceful assemblies and protests are a vital part of every democratic society. They can be a very powerful tool and some of the rights and freedoms that some countries enjoy today were gained because some people were prepared to go out on the streets and protest...The right to peaceful protest is not absolute. The police have a wide range of powers to control and restrict the action of protestors. These powers should not be exercised by the police in an unaccountable and discriminatory manner....In the matter now before us, there is no doubt that the power given to the Inspector General of Police is prohibitive rather than regulatory. It is open-ended since it has no duration. This means that the right available to those who wish to assemble and therefore protest will be violated...The Government has a duty of maintaining proper channels and structures to ensure that legitimate protest whether political or otherwise can find a voice...”⁷⁴

Amnesty International welcomes the court decision in light of Uganda's obligation to ensure the rights to freedoms of peaceful assembly and expression. Section 32 (2) of the Police Act were worded in such a manner as to provide the police with far-reaching and broad powers to unilaterally determine whether to allow protests. To this extent the provision failed the three part test under international law in relation to interference with the freedom of peaceful assembly.

In view of the Court's interpretation declaring section 32(2) as unconstitutional the power of the police under the Act is to regulate the conduct of rallies or assemblies as provided under section 32(1). The remaining provisions of section 32 of the Police Act do not grant powers to the police to licence public assemblies as is the current practice of the Ugandan police.

PROPOSED GUIDELINES ON PUBLIC DEMONSTRATIONS

The Constitutional Court, in its decision, recognized the need "for proper channels and structures to ensure that legitimate protest whether political or otherwise can find a voice."⁷⁵

In 2007 the national human rights institution, the Uganda Human Rights Commission, convened a 'task force' comprising of representatives from the police, political parties, Members of Parliament, the Ministry of Internal Affairs, the donor community, academia and local civil society to discuss and develop guidelines on "public demonstrations in Uganda". The task force developed draft guidelines which were finalized and made public in 2009. According to the guidelines:

"Staging public demonstrations in Uganda in the recent years has presented quite a number of challenges for the organizers, the law enforcement officers and the participants leading to, in some instances, quite violent and undesirable occurrences...[The] Commission in consultation with all stakeholders came up with the guidelines by consensus on the interpretation (meaning) and limitation of the right [to freedom to assemble and demonstrate together with others peacefully and unarmed]...It is hoped that the guidelines once agreed upon and approved by all stakeholders would eventually be translated into binding regulations..."⁷⁶

The guidelines refer to the provisions of the Uganda Constitution and international and regional human rights law as the "law applicable to public demonstrations".⁷⁷ The guidelines provide for the roles of the police, organizers of protests and protestors and detailed proposals regarding police preparation; procedures for police notification; the use of force in intervening during demonstrations⁷⁸ and the role of planners of demonstrations including in relation to the preparation of 'an agreed demonstration plan'.⁷⁹

Despite the recommendations of the Guidelines and in stark contrast to their content, the government is instead trying to re-enact the broad statutory powers of the police hitherto provided by the impugned provisions of section 32(2) of the Police Act. The Public Order Management Bill, dated 29 April 2011, has been tabled in Parliament to be enacted into law.

THE PUBLIC ORDER MANAGEMENT ORDER BILL, 2011

According to the Preamble, the Bill is aimed at “safeguarding public order and other related matters”, the meaning and context of which is not defined. While the protection of public order is one of the purposes which international human rights law recognizes as a permissible reason for placing certain restrictions on the exercise of freedoms of peaceful assembly and expression, no such restrictions may be imposed for this purpose unless such restrictions are demonstrably necessary and proportionate.

The Bill provides that any proposed public meeting must be notified to the police at least seven days in advance, giving wide discretionary powers to the Inspector General of the Police to require proposed meetings to be cancelled, rescheduled or relocated. The definition of meetings which are subject to such regulation focuses primarily on political meetings: “any gathering of three or more persons in a road or other public outdoor place... for the purpose of discussing, demonstrating about or protesting about policies or actions of government or governmental institutions”.⁸⁰ The Bill proposes restricting the permissible hours for such meetings to after 6am and before 6pm and that a public address or amplification system can only be used with police permission.⁸¹ It gives a government Minister powers to prohibit certain locations from hosting public meetings of more than 25 persons, without a permit if the Minister’s opinion is that such a prohibition “is desirable in the interests of public tranquillity”.⁸² The Bill also confers wide-ranging powers to the police to regulate the conduct of public meetings and to disperse meetings if any meeting is “held contrary to this Act”⁸³ and if the police have “reasonable grounds to believe that a breach of the peace is likely to occur”.⁸⁴

While a requirement for simple advance notification of a planned public meeting does not in itself amount to an infringement of these rights, it may do so if it amounts to requiring official authorization, which appears to be what the Bill proposes, where the police can require relocation or rescheduling of a planned public meeting “for any reasonable cause”⁸⁵. Under international human rights law, any restrictions on the timing or location of a planned meeting may be imposed only for one of the specific purposes recognized under international law as legitimate, and only where no less restrictive measure will achieve that purpose. Moreover, in view of the nature of the right to freedom of expression, which includes political protest, any requirement for advance notification should contain some provision to allow spontaneous assemblies. The Bill proposes that anyone who holds a public meeting without complying with the notification requirements commits a criminal offence punishable by a fine and/or prison term.⁸⁶

Amnesty International is concerned that the scope and nature of the restrictions proposed in the Bill go well beyond the restrictions permitted under international human rights law. Uganda has an obligation under international human rights law, and specifically as a state party to ICCPR and the African Charter to respect the rights to peaceful assembly and freedom of expression. No restrictions may be placed on these rights except those which are demonstrably necessary and proportionate for certain legitimate purposes, namely the protection of national security, public safety, public order, public health or morals, or the rights and freedoms of others. The exercise of the right must be the norm, and any restrictions must be exceptional. Moreover, the principles of necessity and proportionality

mean that any restrictions must be the minimum level of interference which will achieve the stated legitimate purpose.

The Bill would, if enacted into law, affect not just the exercise of freedoms of peaceful assembly and expression by political parties and activists but other sections of the society, including the media, human rights defenders and organisations. The Bill, in its current form, grants the police powers to refuse or permit public meetings, and regulate aspects of their conduct on the basis of broadly worded and undefined criteria. Such broad discretionary powers carry a very high risk that the rights to freedoms of assembly and expression will be violated. In addition, inadequate safeguards to ensure accountability in the exercise of the proposed powers of the police could lead to other human rights violations, including police misuse of lethal force, and excessive use of force while managing assemblies.

6. CONCLUSION AND RECOMMENDATIONS

Restrictions on the expression of views by journalists, opposition politicians and other civil society activists takes on various forms including existing and proposed restrictive laws, arbitrary arrests and detention, politically-motivated criminal charges such as holding an unlawful assembly and the imposition of media-related criminal charges such as criminal defamation.

The repression of freedom of expression and peaceful assembly has led to, among other issues, self-censorship by some of the sections the media, for example radio stations operating in Uganda's upcountry districts – which are the main source of media information for the majority of Uganda's population.

Various laws including the Press and Journalists Act, the Electronic Media Act, the Anti-Terrorism Act, the Penal Code Act and the Regulation of Interception of Communications Act contain provisions which are vaguely and loosely defined and as such likely to be implemented in violation of the freedoms of expression and peaceful assembly. For example offences such as "sedition" and "criminal defamation" in the Penal Code Act have been used to level charges against journalists for media articles and content critical of the conduct of public officials, government policies or practice. Provisions of the Penal Code and the Police Act have also been invoked by the police to disrupt peaceful political protests and to arrest, charge and detain opposition politicians and their supporters. Proposed laws such as the Public Order Management Bill and the Press and Journalists (Amendment) Bill would lead to further impermissible restrictions on the exercise of the rights to freedom of expression and peaceful assembly.

Government and public officials justify the actions of the police and media regulatory authorities on the basis that freedom of expression and peaceful assembly are not absolute and can be limited in light of public interest. International law is however, very clear that any restrictions on these rights must be exceptional, narrowly defined, only where demonstrably necessary and proportionate for one of the specific purposes recognized as legitimate under international law, and must not place in jeopardy the right itself.

The government has effectively imposed a ban on public protests because it reportedly has information that protest organizers have criminal intentions and plan to cause violence. However, it has not made public any official steps to take action on such information. Amnesty International believes that the stated reasons for this ban do not meet the specificity required in international legal standards for legitimate limitation of these rights. In turn the actions of law enforcement personnel ostensibly enforcing the ban has led to further human rights violations, including unlawful killings because of the excessive use of force by the police and other law enforcement personnel during the April 2011 public protests.

Amnesty International calls on the Uganda government to take action in order to allow people to express their views, through peaceful means without fear. It should take decisive steps to end the increasing levels of harassment and repression of the rights to freedom of expression and peaceful assembly currently prevalent in the country.

In particular, Amnesty International urges the government to:

End the ban on public rallies and assemblies and ensure that people in Uganda are allowed to exercise the rights to freedom of expression and peaceful assembly in line with Uganda's international human rights obligations and commitments.

Ensure that journalists, human rights defenders, opposition politicians and civil society activists can carry out their media, political, human rights and other work without fear of intimidation, harassment or retribution from authorities.

Withdraw all criminal charges levelled against journalists and political leaders and their supporters solely on the basis of their legitimate exercise of their rights of freedom of expression and peaceful assembly.

Carry out independent, full, effective, and transparent investigations into unlawful killings and other human rights violations committed in the context of the April to May 2011 protests and bring to justice any persons found responsible for committing human rights violations.

Hold to account public and security officials implicated in incidents of threats, intimidation and harassment against journalists, human rights defenders, opposition politicians and civil society activists.

Amend or abolish the provisions of the Penal Code Act, the Press and Journalists Act, the Electronic Media Act, the Anti-Terrorism Act and the Regulation of Interception of Communications Act which are vaguely and loosely defined and likely to be implemented to suppress the rights to freedom of expression and peaceful assembly, and to deny people their basic due process and fair trial rights.

Remove the offences of "sedition" and "publication of false news" still in the public versions of the Penal Code Act, in line with the judgments of the Constitutional Court declaring these provisions as unconstitutional.

Withdraw the Public Order Management Bill and the Press and Journalists (Amendment) Bill which lack adequate legal safeguards against human rights violations, and have wide scope for illegitimate suppression of the rights to freedom of expression and peaceful assembly.

Ratify the African Charter on Democracy, Elections and Governance and the Protocol on the Statute of the African Court of Justice and Human Rights, and make a declaration that would allow individuals and non-governmental organizations direct access to the court; as well as to the African Court on Human and Peoples' Rights.

Issue clear public orders to all police and other law enforcement agencies to cease all harassment, intimidation, and abuse of journalists, human rights defenders and activists and opposition political leaders; and order them not to use force or violence to respond to peaceful protests.

The African Commission on Human and Peoples' Rights' Special Rapporteur on Freedom of Expression in Africa should:

Seek an invitation from the Uganda government to visit the country and assess media laws and freedom of expression in the country, and seek the authorities' full cooperation with the mandate in order to effectively carry out this task.

The international community, including governments of the African Union (AU), the European Union (EU), and the United States, and the United Nations should:

Publicly call on the Uganda government to lift the ban on public rallies and assemblies, and to ensure respect for the rights to freedom of expression and peaceful assembly.

Publicly call on the Uganda government to ensure that journalists, human rights defenders, opposition politicians and civil society activists can carry out peaceful activities without fear of intimidation and retribution from official authorities.

Publicly call on the Uganda government to withdraw all politically-motivated court charges against opposition politicians, activists or journalists.

Publicly call on the Uganda government to publicly reaffirm its commitment to its international human rights obligations and its willingness to observe them in good faith.

Publicly urge the Uganda government to urgently reform laws and institutions relating to the rights to freedom of expression and peaceful assembly to bring them into compliance with the government's international obligations and commitments; and provide technical assistance and support to such efforts.

Monitor and respond immediately to any future threats or abuses by Uganda authorities against journalists, activists and political opposition leaders.

7. ENDNOTES

¹Kampala, Mbale, Bududa, Jinja, Masaka, Mbarara, Fort Portal, Hoima, Gulu, Arua, Buliisa and Masindi.

²Amnesty International, *A Human rights manifesto for Uganda: What needs to be done*, 31 December 2000, AI Index: AFR 59/012/2000, available at < <http://www.amnesty.org/en/library/info/AFR59/012/2000/en> > (last accessed 1 September 2011).

³Amnesty International, "Uganda: Police use excessive force to stifle freedom of assembly and expression", 15 January 2002, AI Index: AFR 59/001/2002, available at < <http://www.amnesty.org/en/library/info/AFR59/001/2002/en> > (last accessed 1 September 2011).

⁴Amnesty International, "Uganda: Independent media and journalists at risk", 16 October 2002, AI Index: AFR 59/005/2002, available at < <http://www.amnesty.org/en/library/info/AFR59/005/2002/en> > (last accessed 1 September 2011).

⁵Amnesty International, "Uganda: Independent media and the right to information under threat", 15 August 2005, AI Index: AFR 59/006/2005, available at < <http://www.amnesty.org/en/library/info/AFR59/006/2005/en> > (last accessed 1 September 2011).

⁶Amnesty International, "Uganda: Growing restrictions on freedom of association, movement and expression", 14 September 2001, AI Index: AFR 59/009/2001, available at < <http://www.amnesty.org/en/library/info/AFR59/009/2001/en> > (last accessed 1 September 2011).

⁷Amnesty International interview with the Executive Director, Uganda Communications Commission and representative of the Broadcasting Council, 13 July 2011; Amnesty International interview with Mr. Paul Mukasa, Secretary of the Media Council, 11 July 2011.

⁸As discussed further in Chapter 5 below, of this report.

⁹General SCC No. 2 of 2002 (unreported).

¹⁰UN Human Rights Committee, "Article 19: Freedom of opinion and expression", General Comment No. 34, CCPR/C/GC/34, 21, July 2011, at para 38.

¹¹In the Constitutional Court of Uganda, Consolidated Constitutional Petitions No. 12 of 2005 and No. 3 of 2006 (Unreported).

¹²As above, page 35.

¹³N 9 above.

¹⁴The section provided that: –

"50 (1) Any person who publishes any false statement, rumour or report which is likely to cause fear and alarm to the public or to disturb the public peace is guilty of a misdemeanor.

(2) It shall be a defence to a charge under sub-section (1) if the accused proves that prior to publication, he took such measures to verify the accuracy of the statement, rumor and or report as to lead him to believe that it was true."

¹⁵UN Human Rights Committee, "Article 19: Freedom of opinion and expression", General Comment No. 34, CCPR/C/GC/34, 21, July 2011, at para 39.

¹⁶As above.

¹⁷Press and Journalists Act, sections 26 & 27.

¹⁸Under section 8 of the Act the Minister of Information is empowered to appoint most of the Council's members. In practice the Council's operations are wholly dependent on the Ministry's budget and the Council has its offices in the Ministry's premises.

¹⁹ Under section 9 of the Electronic Media Act, 1996 majority of members of the Broadcasting Council are government affiliated officers from the ministries of Information, Culture, Education, the revenue authority. Further section 9(5) grants the Minister of Information the power to "give directions of a policy nature to the council regarding the performance of its functions" and that "...the council shall comply with the directions". Under the Uganda Communications Act, 1997, section 7, all the members of the 7-member Uganda Communications Commission shall be appointed by the Minister (in charge of communications) with the approval of cabinet. Under section 15 of the Act the Executive Director of the Commission is appointed by the Minister "on the advice of the Commission".

²⁰Amnesty International interviews with media owners and journalists, 2-12 August 2011.

²¹The Buganda Kingdom comprising of the Baganda ethnic group is the largest traditional leadership institution in Uganda. The Buganda King is called the Kabaka. Under Article 246 of the Constitution the institution of traditional or cultural leaders "may exist in any area of Uganda in accordance with the culture, customs and traditions or wishes and aspirations of the people to whom it applies". The Constitution bars traditional or cultural leaders from participation in political activity while serving in their capacity as traditional leaders. It further provides that such leaders shall not have or exercise any administrative, legislative or executive powers of government.

²²Amnesty International interviews with journalists and radio station management representatives, 2-12 August 2011.

²³Amnesty International interview with radio station management, Fort Portal, 11 August 2011.

²⁴Amnesty International interview with the Executive Director, Uganda Communications Commission and representative of the Broadcasting Council, 13 July 2011.

²⁵Amnesty International interview with the Executive Director, Uganda Communications Commission and representative of the Broadcasting Council, 13 July 2011.

²⁶Under section 8 of the Act the Minister of Information is empowered to appoint most of the Council's members. In practice the Council's operations are wholly dependent on the Ministry's budget and the Council has its offices in the Ministry's premises.

²⁷Press and Journalists (Amendment) Bill, Preamble, Articles 2, 5 and 6.

²⁸As above, Article 6.

²⁹As above, Article 9.

³⁰See, Uganda: Amnesty International Memorandum on the Regulation of Interception of Communications Act, 2010, AI Index: AFR 59/016/2010, available at <
<http://www.amnesty.org/en/library/asset/AFR59/016/2010/en/4144d548-bd2a-4fed-b5c6->

993138c7e496/afr590162010en.pdf >

³¹As above.

³²Amnesty International interviews with a political editor at the Daily Monitor, 27 April 2011.

³³Amnesty International interviews with journalist, 21 April 2011.

³⁴Amnesty International interview with civil society activist, 27 August 2011.

³⁵Amnesty International interview with Mr. Paul Mukasa, Secretary of the Media Council, 11 July 2011.

³⁶As above.

³⁷Amnesty International interview with Kalundi Serumaga, 27 August 2011. Mr. Serumaga showed to Amnesty International delegates a copy of the letter from the Broadcasting Council addressed to the management of his employer – the private radio station, Radio One.

³⁸Amnesty International interview with Tabu Butagira, 15 April 2011.

³⁹Electronic Media Act, Chapter 104 Laws of Uganda, the First Schedule provides that: “A broadcaster shall ensure that... (c) Where a programme that is broadcast is in respect to a contender for a public office, then each contender is given equal opportunity on such a programme...”

⁴⁰Amnesty International interview with a confidential source, 27 April 2011.

⁴¹Amnesty International interviews with officials of the Twerwaneho Listeners Club, 11 August 2011

⁴²Amnesty International interviews with management of radio station, Fort Portal, 11 August 2011.

⁴³See Chapter 2 above, of this report.

⁴⁴Adopted by UN General Assembly Resolution 34/169 of 17 December 1979.

⁴⁵Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.

⁴⁶UN Code of Conduct for Law Enforcement Officials, Article 3.

⁴⁷UN Basic Principles on the Use of Force and Firearms, Principle 4.

⁴⁸As above, Principle 13.

⁴⁹As above, Principle 14.

⁵⁰As above, Principle 9.

⁵¹As above, Principle 22.

⁵²As above, Principle 23.

⁵³Transcript of a media interview by a local television station - NTV with the Inspector General of Police, 8 April 2011.

⁵⁴Text of President Yoweri Museveni's 8 June 2011 'state of the nation' address, available at < <http://www.mediacentre.go.ug/details.php?catId=6&item=1308>> (last accessed 6 September 2011) citing the provisions of Article 43 of the Constitution which provides for a limitation clause on the exercise of human rights guaranteed under Chapter 4 of the Constitution.

⁵⁵Amnesty International interview with Mr. Edward Ochom, the Director of criminal investigations, 15 July 2011.

⁵⁶UN Basic Principles on the Use of Force and Firearms, Principle 13.

⁵⁷As above, Principle 14.

⁵⁸See "Kayihura apologizes to opposition over tear gas", *New Vision*, 1 August 2011, available at < <http://allafrica.com/stories/201108021005.html> > (last accessed 6 September 2011).

⁵⁹Letter dated 14 April 2011 from the Uganda Communications Commission, signed by the acting Executive Director, Mr. Quinto Ojok, and addressed to the management of ten internet service providers in Uganda and copied to the Minister of Information and Communications Technology and the Inspector General of Police.

⁶⁰See, "Uganda anger at opposition twitter insurrection", the BBC, 11 August 2011 < <http://www.bbc.co.uk/news/world-africa-14491135> > (last accessed 8 September 2011). For unstated reasons all the internet service providers contacted by Amnesty International for the purposes of this research were all not willing to discuss the issue.

⁶¹Amnesty International interview with the Executive Director, Uganda Communications Commission and representative of the Broadcasting Council, 13 July 2011.

⁶²As above.

⁶³See, "Uganda anger at opposition twitter insurrection", the BBC, 11 August 2011 < <http://www.bbc.co.uk/news/world-africa-14491135> > (last accessed 8 September 2011).

⁶⁴Amnesty International interview with Mr. Edward Ochom, the Director of criminal investigations, 15 July 2011. In the interview the officer stated: "...The police understand legitimate concerns around the rising food and other prices which affect police officers as well. However the way to go about expressing concern is not through the kind of protests that we witnessed in April which led to violence, the loss of lives and property and the disruption of business...People should not be allowed to protests when such protests inevitable involve crowds of people blocking streets and major roads in the city."

⁶⁵See for example, "Rights groups decry new bail terms", *The Sunday Vision*, 15 May 2011, available at < <http://www.newvision.co.ug/D/8/13/754818> > (last accessed 8 September 2011); "Uganda: Museveni Wants Referendum on Bail Terms", *The Daily Monitor*, 13 July 2011, available at < <http://allafrica.com/stories/201107130268.html> > (last accessed 8 September 2011).

⁶⁶See, "Uganda: Museveni Wants Referendum on Bail Terms", *The Daily Monitor*, 13 July 2011, available at < <http://allafrica.com/stories/201107130268.html> > (last accessed 8 September 2011).As above.

⁶⁷Amnesty International interview with Minister of State for Information and Communications Technology, 15 July 2010.

⁶⁸Amnesty International interview with the management of a private television media house, 1 September 2011. The management did not wish to be named for fear of reprisals.

⁶⁹Amnesty International interviews with the Executive Director, Uganda Communications Commission and representative of the Broadcasting Council, 13 July 2011.

⁷⁰Amnesty International interviews with the Executive Director, Uganda Communications Commission

and representative of the Broadcasting Council, 13 July 2011.

⁷¹Amnesty International interviews with the Executive Director, Uganda Communications Commission and representative of the Broadcasting Council, 13 July 2011.

⁷²Amnesty International interview with the management of a private television media house, 1 September 2011. The management did not wish to be named for fear of reprisals.

⁷³*Muwanga Kivumbi vs. The Attorney General*, Constitutional Petition No. 9 of 2005, in the Constitutional Court of Uganda (Unreported).

⁷⁴Judgment, Pp 12- 14.

⁷⁵As above.

⁷⁶Uganda Human Rights Commission (2009) "Guidelines on Public Demonstration in Uganda", Preface, pp 5-6. At page 6 the Guidelines identify 7 'challenges in the enjoyment of the right to assemble and demonstrate' in Uganda as: abuse of police powers through refusing people to assemble and demonstrate; perception by mainly the opposition groups and civil society that the police is not independent of political authority; lack of consensus on the interpretation and limitation of the right to assemble and demonstrate; mistrust between the police and organizers of demonstrations –inhibiting co-operation in the organization and management of demonstrations; poor or lack of communication between the police and organizers; adversarial approach to planning and management of demonstrations by the police and organizers and the threat to safety of demonstrators, security of property, as well as, law and order during demonstrations.

⁷⁷Uganda Human Rights Commission (2009) "Guidelines on Public Demonstration in Uganda", Preface, pp 7-10.

⁷⁸By making explicit reference to the provisions of international and regional human rights the Guidelines invite the application of existing international legal standards on the use of force by law enforcement such as the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms which have been discussed in the report. Further the Guidelines draw from these standards by explicitly providing that police actions in regulating demonstrations must be: "lawful and not arbitrary; proportional to what it seeks to address; appropriate, justifiable in each circumstance at hand and that be subject to accountability", see Uganda Human Rights Commission (2009) "Guidelines on Public Demonstration in Uganda", p 9.

⁷⁹Uganda Human Rights Commission (2009) "Guidelines on Public Demonstration in Uganda", Preface, pp 11-19.

⁸⁰The Public Order Management Order Bill, 2011 (hereinafter, "the Bill"), Article 6.

⁸¹The Bill, Articles 7 & 13.

⁸²The Bill, Article 15.

⁸³The Bill, Article 9 (1) (a).

⁸⁴The Bill, Article 10 (2) (f).

⁸⁵The Bill, Article 8 (1) (c).

⁸⁶The Bill, Article 17.

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